

# Senate hansard 10 may 2017 vol 26 no 53

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## PARLIAMENT OF ZIMBABWE

*Wednesday, 10<sup>th</sup> May, 2017*

*The Senate met at Half-past Two o' clock p.m.*

### PRAYERS

(THE HON. PRESIDENT OF THE SENATE *in the Chair*)

### MOTION

ADOPTION OF A DRAFT PROTOCOL ON THE AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHTS ON THE RIGHT TO NATIONALITY AND THE ERADICATION OF STATELESSNESS IN AFRICA

**HON. SEN. TIMVEOS:** I move the motion standing in my name:

That this House;

RECALLING ongoing efforts of the African Union to move towards the adoption of a Draft "Protocol to the African Charter on Human and Peoples' Rights on the Right to Nationality and the Eradication of Stateless in Africa;

TAKING NOTE of the conclusions and Recommendations on statelessness adopted by the SADC "Technical Migration Dialogue for Southern Africa Addressing Mixed Migration in Southern Africa: Linking Protection, Immigration, Border Management and Labour Migration, Gaborone, Botswana from 16-18 August 2016";

ACKNOWLEDGING the Conclusions of the "Conference on Ensuring Everyone's Right to Nationality: The Role of Parliaments in Preventing and Ending Statelessness, co-organised by the Parliament of South Africa, the inter Parliamentary Union and the Office of the United Nations High Commissioner for Refugees, from 26 to 27 November 2015";

RECOGNISING the requirement by the Sustainable Development Goals (SDGs) endorsed by the UN General Assembly on 25 September 2015, in particular SDG target 16,9 to provide by 2030 legal identity for all, including birth registration;

FURTHER RECOGNISING the numerous formal pledges of SADC Member States to accede to the 1954 UN Convention relating to the Status of Stateless Persons and the 1961 UN Convention on the Reduction of Statelessness and the Recommendations from the Human Rights Council's Universal Periodic Review to the same effect;

COGNISANT that the Zimbabwe National Constitution provides for Fundamental Human Rights and Freedoms incorporating the right of children to a name and provision of identity documents;

NOW THEREFORE calls upon the Government to:

- i) resolve any existing situations of statelessness within our own country;
- ii) review the legislative frameworks and administrative practices in nationality matters with a view to ensure their consistency with the Zimbabwe Constitution and International standards on the prevention and resolution of statelessness, as well as on protection of stateless persons;
- iii) initiate legislative reforms which address any identified gaps or challenges, including any discrimination on the basis of race, ethnicity, religion or gender, thereby helping to prevent statelessness;
- iv) ensure gender equality as regards the equal right of men and women to pass on their nationality to their children and spouses and to change or retain their nationality.
- v) expedite the implementation of Article 6(4) of the African Charter on the Rights and Welfare of the Child, thereby preventing childhood statelessness;
- vi) establish and maintain comprehensive birth registration and civil registration systems within Zimbabwe with a view to prevent statelessness;
- vii) accede to the 1954 UN Convention relating to the status of Stateless Persons, the 1961 UN Convention on the Reduction of Statelessness and the 1990 UN Convention on the rights of all migrant workers and members of their families.
- (vii) support the drafting, adoption and ratification of a Protocol to the African Charter on Human and People's Rights on the Right to Nationality and the Eradication of Statelessness in Africa.

**HON. SEN. CHIMHINI:** I second.

**HON. SEN. TIMVEOS:** Thank you Mr. President for affording me an opportunity to speak on this motion. What is statelessness? A stateless person is someone who is not considered as a national by any State under the operation of its law. A person becomes stateless, for example if they lose citizenship of one country without having acquired any alternative citizenship. Such a person Mr. President, will not have any nationality under the laws of any State.

Here, nationality refers to the legal bond between a person and a State. This legal bond in the Constitution of Zimbabwe is established under Section 35.1 of the Constitution which stipulates citizenship by birth, descent or registration. Mr. President, Sections 36 and 45 of the Zimbabwe Constitution say, it is of essence that the State fulfills its constitutional

mandate through elaborating national laws in compliance with constitutional provisions that provide for the establishment of statehood and guarantee of nationality through laws that promote ready access to national registration and documentation.

Mr. President, the 1961 Convention is the leading international instrument that sets rules for conferral and non-withdrawal of citizenship to prevent cases of statelessness from arising. By setting out rules to limit the occurrence of statelessness, the Convention gives effect to Article 15 of the Universal Declaration of Human Rights which recognises that everyone has the right to a nationality. Why is it that Zimbabwe should ratify the 1961 Convention on the reduction of statelessness? The adoption of the 1961 Convention on the reduction of statelessness will contribute to the balancing of the rights of individuals with the interests of States by setting out general rules for the prevention of statelessness and simultaneously allowing some exceptions to those rules. By adopting the 1961 Convention that prevents statelessness, States contribute to the reduction of statelessness over time. This means that Zimbabwe can foster the progressive realisation of registration of all persons within the country avoiding statelessness.

Mr. President, Zimbabwe is a State party to the 1954 Convention relating to the status of stateless persons and the 1961 Convention complements this Convention. The 1961 Convention guides States with rules for the conferring, granting and non-withdrawal of citizenship to prevent the occurrence of statelessness. It sets out rules to limit the occurrence of statelessness and gives effect to Article 15 of the Universal Declaration.

Failure to ratify Mr. President, the 1961 Convention to the reduction of statelessness reflects negatively on the Government of Zimbabwe's failure to fulfill its citizens' social, economic, civil and political rights. The failure by the Government of Zimbabwe to fulfill the basic right of granting statehood to its people is of paramount importance towards wholesome development. Mr. President, in my research on this motion that I moved, I was shocked during my research to find out that we have over 10 500 refugees who are at Tongogara Camp east of Harare. These are from DRC mostly and DRC has 8 100, Burundi has over 700, Rwanda has 700 and Mozambique over 700 as well. So, there is a school at this camp as well but mostly now, it is crowded and some are actually having to learn from underneath trees. There is a lot Mr. President, such as malnutrition and believe me, there are so many children at this camp. The issue of birth certificates and identification cards is really an issue.

The Citizenship Act should also be aligned to the Constitution. The Constitution is very clear that if you are born in Zimbabwe you are now a Zimbabwean. So, the issue of registration should not be an issue but we have also in Zimbabwe a lot of aliens. I remember the Government introduced an issue to say that aliens should renounce their citizenship but because it is done in Harare I have, especially in Zvishavane, been approached by a number of people who say they do not have money to come to Harare and they do not have Identification certificates. Some of these people who are called aliens have passports but when they went to try and renew their passports, they were told no, you are not Zimbabwean which had actually caused a lot of problems to many people. I think the Registrar General's Office should look at this problem and possibly try to make sure that all districts deal with these issues of identification certificates so that everyone can get one.

Mr. President, it is paramount to note that various rights are infringed when pertinent issues such as birth registration are not addressed. These include issues such as the right to an identity. Stateless people are not able to get relevant documents such as identification certificates like I said. Children are not able to obtain birth certificates and according to the Constitution, this should be easy like I previously said. In addition Mr. President, the right to vote and to be voted into office, under Zimbabwean law, Section 67 of the Constitution, only citizens can stand for election and be voted into office by other citizens.

Right to access to information held by the State; the Constitution provides that citizens or permanent residents can access information held by the State; social and economic rights enjoyed by citizens in Zimbabwe; the right to basic State funded education and the right to access basic health care services. I can go on and on, on this issue of statelessness but surely it really needs to be addressed because we really have – when I was researching on this motion, at Tongogara they are actually suspecting that this year the number of refugees might go up to at least 15 000. You can imagine they have children and mostly when these refugees come to Zimbabwe, they have many children who do not have identification. So, these are issues that we should look at and the Registrar General's Office should look at it closely and take the issue of statelessness very seriously. I thank you Mr. President.

**HON. SEN. CHIMHINI:** Thank you Mr. President. I rise to second the motion moved by Hon. Sen. Timveos. Statelessness is widely seen to have a devastating human impact. It undermines a person's dignity and often deprives him or her of economic, social, cultural, civil and political human rights. Access to education, health care and the labour market may be denied. The resulting marginalisation may even adversely affect social and economic development of the society as a whole. The deprivation therefore becomes a violation of basic human rights.

Mr. President, up to date, statelessness has not yet received the attention it deserves. Estimates indicate that throughout the world, there are about 10 million stateless people. Individuals, women and children are particularly exposed to the risks of statelessness. This is why the *Gukurahundi* issue has remained emotive and the more we need to be sober in discussing this post independence unfortunate period.

In Southern Africa, individuals who are stateless or are at risk of statelessness can be found in their countries of origin and in migratory contexts. In the region, various specific causes may lead to statelessness. These include modernisation and transformation processes, understaffed and underfunded public administrations, shortcomings in birth registration and documentation; disintegration of traditional family bonds; discrimination on the basis of gender or other criteria; and last but not least, the multigenerational movement of migratory workers who have often lost ties to their ancestors' country of origin.

Mr. President, the SADC Member States have already acceded to various universal and regional human rights instruments that enshrine the individual right to a nationality. Among these instruments is, for instance, the African Charter on the Rights and Welfare of the Child, which protects every child's right to acquire a nationality.

However, law and practice in the SADC Member States are not yet in full compliance with international standards regarding the prevention and reduction of statelessness. Mr. President, in some countries, sexual discrimination in nationality laws denied women the right to pass on their nationality under the same conditions as men. Children of foreign descent, for example children from migrant workers often suffer marginalisation. Birth registration practices are not comprehensive or they discriminate between children born to own nationals and children born to nationals of other SADC Member States. In some areas, members of ethnic minorities remain excluded from nationality.

Mr. President, these gaps in the protection of human beings against the risk of statelessness has recently been addressed in several international frameworks. In 2014, the international community agreed upon a global action plan to end statelessness and called upon the United Nations High Commissioner for Refugees to implement this plan by 2024. With a view to prevent statelessness, the Sustainable Development Goals adopted by the UN General Assembly in September 2015 include the target “to provide legal identity for all including birth registration”. Mr. President, without a birth certificate one cannot claim nationality.

The World Humanitarian Summit in Istanbul in May 2016 confirmed the global commitment of all states to end statelessness. Among parliamentary activities, the most noteworthy has been the ‘ Conference on Ensuring Everyone’s Right to Nationality: The Role of Parliaments in Preventing and Ending Statelessness’ in Cape Town in November, 2015. Members of the National Parliaments of Angola, Malawi, Mozambique, South Africa, Zambia and Zimbabwe participated in this global conference and called upon regional parliamentary assemblies to contribute to the prevention of statelessness and the better protection of persons at risk of statelessness.

On the SADC level, statelessness is discussed by the Migration Dialogue for Southern Africa (MIDSA). At the “MIDSA Technical Workshop on Addressing Mixed Migration in Southern Africa: Linking Protection, Immigration, Border Management and Labour Migration” held in Gaborone August 2016, SADC Member States concretized their recommendations on the prevention of statelessness in the SADC region.

Recently, the ECOWAS Member States intensified their efforts to prevent statelessness. A comparative look at their activities may be informative; with the “Abidjan Declaration on Eradication of Statelessness” of February 2015, the ECOWAS Ministers of Justice and Interior committed to prevent statelessness in migratory contexts, to resolve situations of statelessness in non-migratory contexts, to identify stateless persons, to better protect stateless persons, to create strategies and partnerships and to initiate concrete legislative and administrative reforms to reduce and prevent statelessness. Within the first year after the adoption of the Abidjan Declaration, 22 000 persons acquired identity documents and or late birth certificates and five countries have either recently acceded to the Statelessness Conventions or are in the process of doing so. These are progressive steps which Zimbabwe should embrace.

Mr. President, the Zimbabwean Constitution has a comprehensive Bill of Rights and a specific section (Section 81) to deal with the Rights of Children and in particular every child has a right to be given a name and a family name. The spectrum of right also covers the

provision of a birth certificate to ensure that children born in Zimbabwe are entitled to citizenship.

Section 36, the right to citizenship extends to any child found in Zimbabwe who is or appears to be 15 years of age and whose nationality or parents are not known is presumed to be a Zimbabwean citizen by birth. This provision is meant to guard against statelessness.

The Zimbabwean Government must be proactive in making sure that all the pieces of domestic legislation are in conformity with the Zimbabwean Constitution as well as the relevant international instruments which must be acceded to.

The office of the Registrar-General must be flexible and make it easy for people to obtain identity documents and remove unnecessary red tape and bureaucracy which makes it difficult to obtain identity documents.

The offices must also be decentralized to make it easy and inexpensive for children to obtain identity documents.

Procedures must be accessible for children born in Zimbabwe or refugees or other displaced persons to acquire relevant documents and prevent them from being rendered stateless.

Parliamentarians, as representatives of the people should urge the Executive to keep track of developments in other regions regarding the eradication of statelessness.

### **The Issue of Citizenship and Statelessness**

Mr. President, given the above, it goes without saying that the issue of citizenship is a very important matter, regardless of the nationality. Without the need of exploring jurisprudence, it is essential to note that the holding of national citizenship is a universally guaranteed right.

When one is recognised as a citizen, it provides the individual with various benefits such as the right to register and vote in elections, the rights to unrestricted entry and stay in a country, access to health services and so on. The aforesaid can be classified as socio-economic human rights.

It is worth noting the positive steps made towards reducing statelessness in Zimbabwe.

### **Dual Citizenship**

The right to dual citizenship is only for citizens by birth thus citizens by registration or descent are precluded by the provisions of Section 42 (e) of the Constitution from dual citizenship.

The Constitutional Court in the case of *Mutumwa Dziva Mawere vs. The Registrar General & 3ORS CCZ 4/15* which brief facts are as follows, the Applicant (Mawere), a Zimbabwean citizen by birth sought a declaratur that, being a citizen by birth, he was entitled to dual citizenship and that the law did not require of him to renounce his foreign citizenship before

he could be issued with a Zimbabwean national identity document. The Registrar General contented that the Applicant could not be issued with a Zimbabwean national identity document without first renouncing his South African citizenship.

The Court in this matter granted the Application thereby confirming the constitutional recognition of dual citizenship under Zimbabwean law. Thus any person who is a Zimbabwean citizen by birth is entitled to dual citizenship. The law does not require anyone to first renounce their foreign citizenship before they can exercise their Zimbabwean citizenship. This is a positive development Mr. President.

The Constitutional Court re-enforced the position stated in the Mawere Case, in the case of *Farai Daniel Madzimbamuto vs. The Registrar General & 3 ORS CCZ 114/13* whose brief facts are as follows, the Applicant (Madzimbamuto) was a citizen of Zimbabwe by birth. One of his parents was Zimbabwean by birth while the other was South African. He left Zimbabwe for the United Kingdom on a Zimbabwean passport in order to take up employment in that country. On expiry of his passport, he attempted to get a new one through the Zimbabwean Embassy in London but was referred to Harare because the Embassy no longer had the capacity to issue passports.

The Applicant returned home briefly but due to the chaotic situation and long queues then prevailing at the passport office, failed to submit an application for a passport. He returned to the United Kingdom where he was able to obtain a South African passport by virtue of his mother's birth in South Africa. When the Applicant returned to Zimbabwe permanently in 2012, he presented his South African passport to Immigration Officials who treated him as an alien because of his South African passport, even though there was evidence that he was a Zimbabwean citizen. The authorities restricted his stay in Zimbabwe to a specific period.

Mr. President, it is important to note that the Constitutional Court held as follows:

“A Zimbabwean citizen by birth does not lose his or her citizenship on acquiring a foreign citizenship. He or she is entitled to hold foreign citizenship and a foreign passport. Indeed, the Constitution has made it clear that Zimbabwe citizenship by birth cannot be lost except if the citizenship was acquired by fraud, false representation or concealment of a material fact by any person”.

Mr. President, the court further stated that:

“A purposive interpretation of this conferred in Section 66 (Freedom of Movement) read into the Applicant's entitlement to dual citizenship is that the Applicant's right to enter, remain and leave Zimbabwe cannot be restricted even when he presents or travels again on a foreign passport.”

From the above, it is therefore unlawful for the Immigration Officials to ask Zimbabwean citizens entering the country (including those doing so holding a second passport) how long they intend to stay in Zimbabwe and endorsing a date by which they should leave the country. It must also be noted that the information which appears on the inside of the cover of the Zimbabwean passport as well as the information on the Registrar-General's website

to the effect that dual citizenship is prohibited is not only misleading but *ultra vires* the Constitution and same should be disregarded as the matter has been settled by the Constitutional Court. I hope we will all go and check in our passports as we go home today.

## Law Reforms

Mr. President, the need for law reforms cannot be taken lightly. In line with the African Charter on the Rights and Welfare of the child, to which all Southern African States are parties, the Zimbabwean Constitution and nationality laws, especially the Citizenship of Zimbabwe Act (Chapter 4:01) should provide for an explicit and unqualified right of a nationality from birth for all children born on their territory who would otherwise be stateless.

The law should provide that a young child found in the territory of the State shall, in the absence of proof be considered to have been born within the territory of parents possessing the nationality of Zimbabwe.

The Zimbabwean law should facilitate the naturalisation of stateless persons, relaxing the rules applied to them.

Mr. President, the law should protect against arbitrary denial and deprivation of nationality providing for due process protections, including the rights to seize a court in relation to any administrative decision on nationality, providing limited grounds for loss or deprivation of nationality that protect against statelessness.

Mr. President, birth registration and identity documentation have already been mentioned by the mover. Acquisition of birth registration and identity documentation should not be a nightmare in any given country. States should take all measures to ensure that all children born in the country are registered at birth without discrimination, including those children born in remote areas and in disadvantaged communities as well as those in the country as refugees, stateless persons or migrants, regardless of migratory status; and that children not registered at birth can be registered later during childhood or adulthood. These measures should include for example the use of mobile birth registration units, registration free of charge and flexible systems of proof where it is not reasonable to meet the standard requirements.

Children whose births have not been registered should be allowed to access basic services such as healthcare and education while waiting to be properly registered.

In conclusion, Mr. President, States should take measures to strengthen their civil registry systems in general, in particular for the issue of identity cards ensuring that services are accessible across the entire country, staff are trained, discrimination is minimised in administrative decision-making and administrative and judicial review and appeal mechanisms are in place.

Mr. President, it is my humble submission that there is no reason whatsoever to have a person declared stateless, given the advancement in technology which can easily identify any person residing in Zimbabwe, since the majority of cases, traditional leaders and the police do try to account for any person residing in Zimbabwe. With these words, I thank you Mr. President.

**HON. SEN. TIMVEOS:**I move that the debate do now adjourn.

**HON. SEN. B. SIBANDA:**I second.

Motion put and agreed to.

*the House adjourned at Five Minutes past Five o'clock p.m.*

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