

# Statelessness in Protracted Refugee Situations: Former Angolan and Rwandan Refugees in Zambia

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## Abstract

The risk of statelessness in protracted refugee situations has not received much attention both in academic literature and policy discussions. Yet evidence suggests that for refugees in protracted situations, the bond with their country of origin can become weak while pursuing local integration as a durable solution in the host country, leading to an increased risk of becoming stateless. This can occur depending on the requirements that refugees have to meet in order to become locally integrated in a host country especially when their refugee status ceases. These requirements largely revolve around the issue of citizenship and national identity documents. Many are unable or unwilling to acquire national identity documents from their country of origin for different reasons, including: fear of persecution by the government of their country of origin; criteria that exclude a large number of them from accessing local integration opportunities; and nationality laws that do not automatically grant citizenship by birth. In this paper, I argue that there is need to extend the definition of stateless persons to include de facto stateless persons since they are in effect stateless. This would enable them to access the necessary assistance, chief among which is the regularisation of their legal status. I base my argument on the case of former refugees from Rwanda and Angola in Zambia.

Keywords: local integration, de facto statelessness, protracted refugee situations, Angolan refugees, Rwandan refugees

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## I. INTRODUCTION

In spite of the risk that refugees in protracted situations run to become stateless as they seek to become integrated in the host country, academic literature and policy discussions do not dwell much on statelessness in the context of local integration as a durable solution. Yet evidence suggests that once the cessation clause has been effected, former refugees may find themselves at risk of becoming stateless depending on the requirements that they have to meet to become locally integrated in a host country. Local integration refers to the granting of full and permanent asylum, membership, and residency status, by the host government. It takes place through a process of legal, economic, social, and cultural incorporation of refugees, culminating in the offer of citizenship.<sup>1</sup> Fielden<sup>2</sup> argues that the process becomes a durable solution only at the point when a refugee becomes a naturalised citizen of their asylum country. However, some scholars point out that it is possible to obtain social and economic integration without ever being offered citizenship. This applies to self-settled refugees — those who become integrated in a host community without official assistance.<sup>3</sup> Hovil and Maple<sup>4</sup> refer to this type of integration as *de facto* local integration. They argue that although it is possible that naturalisation and/or citizenship may be part of the process of local integration, citizenship means little if former refugees are not accepted by the local communities in which they are living.

In this paper, I understand local integration as a process that leads to citizenship or at least safeguards the citizenship of refugees trying to regularise their stay by facilitating their access to identity documents. Regarding protracted refugee situations, I apply the definition used by Milner and Loescher,<sup>5</sup> as “one in which refugees have been in exile ‘for 5 years or more after their initial displacement, without immediate prospects for implementation of durable solutions’”.

The process of integration can be seen as largely revolving around the issue of national identity documents. For instance, in Zambia refugees whose status has ceased are required to provide a national registration card and passport to be considered for local integration.<sup>6</sup> With these documents, refugees, can get residence permits, employment permits, business permits and other permits. Ultimately, it allows them to apply for citizenship after ten years of being ordinarily resident in Zambia.<sup>7</sup> In spite of this, many refugees from Rwanda seeking to become locally integrated are unable to acquire national identity documents from their country of origin for various reasons, including fear of persecution by the government of

<sup>1</sup> Karen Jacobsen ‘The forgotten solution: Local integration for refugees in developing countries’ (2001) *New Issues in Refugee Research Working Paper No. 45*.

<sup>2</sup> Alexandra Fielden ‘Local integration: an under-reported solution to protracted refugee situations’ (2008) UNHCR.

<sup>3</sup> Jacobsen *op cit* note 1.

<sup>4</sup> Lucy Hovil & Nicholas Maple ‘Local integration: A durable solution in need of restoration?’ (2022) 41(2) *Refugee Survey Quarterly*.

<sup>5</sup> James Milner & Gil Loescher ‘Responding to protracted refugee situations: Lessons from a decade of discussion’ (2011: 15) *Forced Migration Policy Briefing No. 6*

<sup>6</sup> Government of the Republic of Zambia (GRZ) ‘The Refugees Act of 2017’ available at <https://www.refworld.org/docid/5a97c5154.html>, accessed on 15 August 2022.

<sup>7</sup> Government of the Republic of Zambia (GRZ) ‘The Immigration and Deportation Act No.18 of 2010’.

their country of origin, and administrative challenges in issuing the documents. For former Angolan refugees, the Zambian government had also offered to locally integrate those who arrived between 1966 and 1986. This excludes those who arrived in Zambia after 1986, the majority of whom are without any form of identification.<sup>8</sup>

Without any form of national identity document, both groups risked having a weak bond with their country of origin and subsequently risked becoming stateless. They faced several challenges in accessing livelihood opportunities, including employment and social services such as education and healthcare. This risk extended to children born to refugees not only because of their parents' weak link with their country of origin,<sup>9</sup> but also because Zambian laws do not automatically grant citizenship to children born to foreign parents on Zambian territory. I argue that people in such circumstances are in effect stateless and should be considered and treated as such by providing them the necessary assistance and protection. It is important to examine protracted refugee situations because more than two-thirds of refugees in the world today are trapped in such situations.<sup>10</sup> I analyse this from the political theory perspective that argues that, as suggested by authors, examining exclusions arising from migration provides a useful basis for thinking about statelessness.<sup>11</sup>

I start by examining the issue of statelessness in the context of local integration in the literature. This is followed by an overview of protracted refugee situations in Zambia and the government's attempts to provide local integration as a durable solution with a focus on the case of Rwandan and Angolan refugees. In the next section I demonstrate how large sections of the two refugee populations are in effect stateless due to their refusal to acquire national identity documents (as in the case of Rwandans), and as a result of being excluded from the local integration process (as in the case of post-1986 Angolan arrivals). I also show the impact of the laws concerning the assistance and protection of refugees in Zambia, especially the Zambian Constitution<sup>12</sup> and the Citizenship Act<sup>13</sup> with regard to children born to refugee parents. Moreover, I compare Zambia's experience with other countries in the Southern African Development Community (SADC) region with particular interest in how the latter have resolved protracted refugee situations through naturalisation. Thereafter, I consider the policy implications of the protracted refugee situation in Zambian in relation to statelessness, including broadening the definition of statelessness to de facto statelessness.

## II. STATELESSNESS IN THE CONTEXT OF LOCAL INTEGRATION

<sup>8</sup> US State Department 'Development and Training Services' (2014).

<sup>9</sup> United Nations High Commissioner for Refugees (UNHCR) 'Statelessness and issues relating to nationality in Zambia Final Report (21 November 2016) UNHCR Lusaka.

<sup>10</sup> Milner and Loescher (2011) op cit note 5.

<sup>11</sup> Kristy A Belton 'The neglected non-citizen: statelessness and liberal political theory' (2011) 7 *Journal of Global Ethics* at 59-71.

<sup>12</sup> Government of the Republic of Zambia (GRZ) 'The Constitution of Zambia (Amendment) Act of 2016' Lusaka Zambia.

<sup>13</sup> Government of the Republic of Zambia (GRZ) 'Citizenship Act No. 33 of 2016' Lusaka Zambia.

Local integration has great potential as a durable solution in protracted refugee situations, especially where repatriation or resettlement are not viable options. It becomes even more critical given that early return is not possible for most refugees.<sup>14</sup> Protracted refugee situations can lead to loss of connection with the country of origin, which in turn increases the risk of statelessness. It must be noted that being undocumented does not equate to being stateless, but it makes it challenging to prove nationality, thereby increasing the risk of statelessness particularly for children born and raised in asylum. In spite of this, statelessness is rarely perceived in the context of local integration, both in the literature and policy discourse on protracted refugee situations. Instead, what has dominated discussions are concerns about security challenges;<sup>15</sup> resource burdens on the host country;<sup>16</sup> changing approaches in the provision of assistance to refugees in protracted situations in countries of asylum, for instance from long-term 'care and maintenance' programmes to approaches focused more on self-reliance.<sup>17</sup>

Notwithstanding the above observation, it must be noted that the link between protracted refugee situations and statelessness is slowly emerging. For instance, from the policy view point, governments in Sub-Saharan Africa (SSA) are beginning to consider the possibility of resolving protracted refugee situations through naturalisation and integration of refugees in countries such as Sierra Leone, Liberia, and Tanzania.<sup>18</sup>

In the academic literature, similar developments can be observed. For example, Hovil and Lomo<sup>19</sup> examine citizenship in the context of local integration, though not from the perspective of statelessness. Hovil and Maple<sup>20</sup> acknowledge that refugees face the risk of statelessness while trying to find ways to become integrated in a policy environment that denies them assistance to integrate. They argue that this is the case particularly when refugee status is withdrawn through a cessation agreement. The case of protracted refugee situations in Zambia sheds more light on this issue. It revolves around the issue of citizenship and national identity documents.

### III. FORMER REFUGEES AT RISK OF STATELESSNESS IN ZAMBIA

Zambia has experienced a number of protracted refugee situations in its history of providing asylum. As of February 2022, Zambia hosted 105,868 persons of concern (76,093 refugees, 4,874 asylum seekers and 24,901 others of concern, including self-settled refugees). Of these, 19,660 were from Angola; 9,194 from Burundi; 6,080 from Rwanda; 4,152 from Somalia; and 758 from other countries. During the same

<sup>14</sup> Milner and Loescher (2011) op cit note 5.

<sup>15</sup> Gil Loescher, J. Milner, E. Newman & G.G. Troeller 'Protracted refugee situations: Political, human rights and security implications' (2014); Milner & Loescher (2011) op cit note 5.

<sup>16</sup> Jacobsen op cit note 1.

<sup>17</sup> Milner and Loescher (2011) op cit note 5.

<sup>18</sup> Ibid.

<sup>19</sup> Lucy Hovil & Zachary Lomo 'Forced displacement and the crisis of citizenship in Africa's Great Lakes Region: Rethinking refugee protection and durable solutions' (2015) 31 *Refuge: Canada's Journal on Refugees* at 39-50, available at <https://doi.org/10.25071/1920-7336.40308>.

<sup>20</sup> Hovil & Maple op cit note 4.

period, there were 438 new arrivals mostly from the Democratic Republic of the Congo (DRC), Burundi, Somalia, and other countries.<sup>21</sup> A large portion of these refugees are self-settled or spontaneously settled, meaning they are settled among the local community without direct official (government or international) assistance<sup>22</sup> — 8,253 from Angola<sup>23</sup> and 914 from Rwanda.<sup>24</sup>

Many of these refugees have been in protracted situations, where they have been in exile for five years or more after their initial displacement, without immediate prospects for implementation of durable solutions.<sup>25</sup> For instance, the first flow of Angolan refugees took place in 1966 as a result of the independence struggle from Portuguese rule. This means that this group of refugees has been in Zambia for over fifty years. Rwandan refugees have been in Zambia for a relatively shorter period with the first arrivals happening in 1994 in the wake of the genocide in their home country. Others followed in 1997 and 1998 due to armed clashes in the northwest of the country.<sup>26</sup> Most of these refugees have been repatriated over the years. For instance, between 2004 and 2017, it is estimated that over 132,000 Angolan refugees voluntarily repatriated back to their country of origin.<sup>27</sup> In spite of this, many remained and became integrated in Zambia. For example, out of the more than 5,000 Rwandan refugees in Zambia targeted for voluntary repatriation in the early 2000s, very few returned to Rwanda.<sup>28</sup>

Several attempts have been made to regularise the status of refugees who opted to become integrated within the host communities. These include the Zambia Initiative Development Programme (ZIDP), which was introduced in 2002 in the Western Province of Zambia, home to one of the largest refugee settlements in the country — Mayukwayukwa. The programme had a two-pronged approach of facilitating self-sufficiency among refugees while contributing to the development of the host community. In total, the ZIDP targeted over 450,000 beneficiaries, of whom up to 150,000 were refugees.<sup>29</sup> Another attempt was the Strategic Framework for the Local Integration (SFLI) of Former Refugees in Zambia introduced in 2013/2014.<sup>30</sup> It

<sup>21</sup> United Nations High Commissioner for Refugees (UNHCR) 'Zambia: UNHCR Operational Update' (February 2022), available at: <https://reliefweb.int/report/zambia/zambia-unhcr-operational-update-february-2022>.

<sup>22</sup> Jacobsen op cit note 1.

<sup>23</sup> US State Department op cit note 8.

<sup>24</sup> Global Compact Digital Platform (15 March 2021), available at: [https://globalcompactrefugees.org/article/zambia\\_accessed\\_on\\_10\\_May\\_2022](https://globalcompactrefugees.org/article/zambia_accessed_on_10_May_2022).

<sup>25</sup> Milner & Loescher (2011) op cit note 5.

<sup>26</sup> Global Compact Digital Platform op cit note 24.

<sup>27</sup> Mushiba Nyamazana Grayson Koyi Patricia Funjika & Edward Chibwill 'Zambia refugees economies: Livelihoods and challenges' (2017) UNHCR Lusaka.

<sup>28</sup> Jesuit Refugee Service (JRS) 'Is Rwanda safe?: An inquiry into the reluctance of the Rwandan refugee community to repatriate' (2004), available at: <https://reliefweb.int/report/rwanda/rwanda-safe-inquiry-reluctance-rwandan-refugee-community-repatriate#:~:text=One%20such%20tripartite%20agreement%20between,Rwandans%20have%20elected%20to%20repatriate.&text=After%20the%20tripartite%20agreement%20was,a%20go%2Dand%2Dsee>, accessed on 16 January 2023

<sup>29</sup> Commissioner for Refugees (CoR) 'The Zambia initiative: In pursuit of sustainable solutions for refugees in Zambia (2004) CoR Lusaka; UNHCR 'Citizenship and statelessness in the member states of the Southern African Development Community' (December 2020), available at: <https://www.refworld.org/docid/6012a0d44.html>, accessed on 16 January 2023.

<sup>30</sup> Government of the Republic of Zambia 'Strategic framework for the local integration of former refugees in Zambia' (2014) Ministry of Home Affairs & UNHCR Lusaka.

aimed to regularise the status of 10,000 former Angolan refugees who had settled in Zambia between 1966 and 1986, as well as 4,000 former Rwandan refugees following the cessation of refugee status of the two refugee populations in 2011.<sup>31</sup> Through this initiative, the Zambian government offered to grant permanent residency status to the former refugees from the two countries.<sup>32</sup>

All former refugees who wished to remain in Zambia were invited to apply for an appropriate immigration permit such as spouse permit, employment permit, and study permit at a reduced fee subsidised by the United Nations High Commissioner for Refugees (UNHCR). Under Zambia's Immigration and Deportation Act<sup>33</sup> former refugees are subjected to laws that apply to any other foreigner on Zambian territory. In line with this legislation, former refugees must acquire relevant permits to continue staying in Zambia and have access to livelihood opportunities and social services, including employment and education. A holder of any immigration permit in Zambia (such as employment permit, investors' permit, study permit, or spouse permit), is eligible to apply for a residence permit after a certain number of years (after ten years for a holder of an employment permit; after three years for a holder of an investor's permit, provided they are operating a viable business; and after five years for a spouse permit).<sup>34</sup> These former refugees would then be eligible for citizenship within a period of ten years. To be eligible for any of the above permits, they were required to be in possession of a passport of their country of nationality, like any other foreigner on Zambian territory.<sup>35</sup>

The countries of origin also facilitated the process.<sup>36</sup> For instance, the Angolan government was going to provide at no cost to the former Angolan refugees, National Registration Cards (NRCs) and Angolan passports, which were required as part of the documentation process.

It is important to note that the period that someone was a refugee on Zambian territory was not considered as part of the period a person is ordinarily resident in the country. But as part of the alternative legal status pillar under the SFLI launched in 2014, this requirement was waived. Hence, for instance, former Rwandan refugees who arrived in Zambia between 1994 and 1998 were eligible to apply for a residence permit.<sup>37</sup> Similarly, former Angolan refugees who arrived in Zambia between 1966 and 1986 together with their children and had continuously lived in Zambia, were

<sup>31</sup> Kaldor Centre for International Refugee Law 'What's behind Zambia's growing welcome to refugees?' (2018), available at: <https://www.kaldorcentre.unsw.edu.au/news/what%E2%80%99s-behind-zambia%E2%80%99s-growing-welcome-refugees>, accessed on 10 May 2022.

<sup>32</sup> US State Department op cit note 8.

<sup>33</sup> GRZ (2010) op cit note 7.

<sup>34</sup> Nyamazana et al. op cit note 27.

<sup>35</sup> Government of the Republic of Zambia 'The Refugees Act No 1 of 2017' (2017) Lusaka Zambia.

<sup>36</sup> ZNBC 'Rwanda to issue IDs to former refugees in Zambia' (22 April 2022), available at <https://www.znbc.co.zm/news/rwanda-to-issue-ids-to-former-refugees-in-zambia/>.

<sup>37</sup> *Times of Zambia* 'Has Rwandan refugees integration hit snag?' (1 March 2016), available at <http://www.times.co.zm/?p=80675>, accessed on 27 November 2018.

eligible to apply for a residence permit.<sup>38</sup>

On the one hand, the offer of local integration to Rwandan and Angolan refugees described above was laudable in terms of finding a durable solution to the protracted situation of the two refugee populations. On the other hand, some of the requirements that accompanied the offer created several challenges with regard to the legal status of refugees, potentially exposing them to statelessness. These requirements also posed a huge challenge to their livelihoods. Furthermore, refugees were obligated to acquire national identity documents from their country of origin — this was particularly challenging for Rwandan refugees. They were reluctant to acquire national identification, due to fear of exposing themselves to possible persecution by the government of their home country. “(I)f going to heaven will mean us passing through Rwanda, then we will miss heaven,” lamented one former Rwandan refugee.<sup>39</sup> Yet another expressed her trepidation and anguish to the *Times of Zambia*:

‘Personally, I am not ready for it. I know that when I get a (Rwandan) passport then I become a citizen. But I am not ready to disown my refugee status right now because I know that there are many things involved in the background that not many people know about...’ She ... fears that once the registration process is undertaken, the data collected may end up in wrong hands thereby endangering her life as some people may use the information to track her and other former refugees down.<sup>40</sup>

Owing to these fears, only a few Rwandan refugees obtained national identity documents. As of March 2016, only 41 out of 4,200 former Rwandan refugees obtained national registration cards and passports. The response was so poor that the ministry of Home Affairs warned that former Rwandan refugees in Zambia risked being declared illegal immigrants and possibly being deported if they did not apply for integration by 5 February 2016.<sup>41</sup> The poor response was also attributed to the cost of obtaining a Rwandan passport, which at the time was US\$100. In acknowledgement of the above challenges, a presidential decision was issued in December 2017 to lift the national passport requirement for Rwandan former refugees to enable them to apply for permits and remain in Zambia legally. This permit was temporary in nature with a validity period of three years (renewable). The permits expired in March 2021 leaving the former refugees at risk of arrest, imprisonment, and substantial fines. In 2021 the Government of Zambia pledged to extend the validity of the temporary

<sup>38</sup> *La Tribune Franco-Rwandaise* ‘Zambia: Public notice on the criteria and procedures for local integration of former Rwandan refugees’ (12 November 2015), available at <http://www.france-rwanda.info/2015/11/zambia-public-notice-on-the-criteria-and-procedures-for-local-integration-of-former-rwandan-refugees.htm>; Nyamazana et al. op cit note 27.

<sup>39</sup> *The Mast* ‘If going to heaven means us passing through Rwanda, we’ll miss it – ex-refugees in Zambia’ (7 April 2017), available at: <https://www.themastonline.com/2017/04/07/if-going-to-heaven-means-us-passing-through-rwanda-well-miss-it-ex-refugees-in-zambia/>, accessed on 27 November 2018.

<sup>40</sup> *Times of Zambia* op cit note 37.

<sup>41</sup> *Ibid.*

permits from 3 years to 10 years and issue permits without national passports.<sup>42</sup>

Consideration by the Zambian government to waive the requirement for passports must be equally applauded. Under international law, states have a duty to promote local integration of refugees where repatriation is not possible within a reasonable time. Article 34 of the 1951 United Nations Convention Relating to the Status of Refugees provides that states parties 'shall as far as possible facilitate the assimilation and naturalisation of refugees'<sup>43</sup> by such measures as expediting proceedings and reducing the costs of naturalisation. Article II.1 of the 1969 Organisation of African Unity (OAU) Convention Governing the Specific Aspects of Refugee Problems in Africa<sup>44</sup> requires that countries of asylum should use their best endeavours to 'secure the settlement' of refugees who are unable to return home, which in the long term would need to include citizenship rights.

The problem is that it was temporary. Not until refugees obtained a residence permit could they be considered for naturalisation after a period of ten years. At the time of writing this paper, about three years after the pledge, the extension and issuance of the permits (without passports) had not yet been actualised. Also, it must be noted that while commendable, the offer of temporary permits provided former Rwandan refugees with relief only for the period of validity of the permits. This is because the number of years one is in possession of a temporary permit does not count towards the period of being ordinarily resident in the country, neither does the period one has spent as a refugee in the country. Only the period that one has a full residence permit for counts towards being ordinarily resident in the country.

The Rwandan refugees' refusal to acquire national identity documents of their home country put their legal status in jeopardy because without national identity documents from their country of origin, they could not access a residence permit, which, according to Zambian law, was the entry point for securing one's legal status with the possibility of naturalisation. Section 20 of the Immigration and Deportation Act<sup>45</sup> provides that once a foreigner is in possession of a permit, they are eligible to apply for a residence permit, which in turn makes them eligible to apply for citizenship after ten years. Refugees married to Zambian nationals were eligible to apply for a spouse permit — initially for a two-year period, renewable for a further three years. After five years, the holder of a spouse permit qualifies to apply for a residence permit.

Ultimately, former Rwandan refugees remained at high risk of becoming stateless due to the lack of national identity documents of their home country. This had the potential to weaken their link with their country of origin and expose them to statelessness in the long run. Without meeting the requirements to access a residence permit in Zambia, their stay in Zambia would be illegal.

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<sup>42</sup> World Vision Zambia, the International Council of Voluntary Agencies, & UNHCR Zambia 'Meeting on advancing local integration in Zambia (17 June 2021).

<sup>43</sup> United Nations General Assembly '1951 Convention Relating to the Status of Refugees' United Nations New York.

<sup>44</sup> Organisation of African Unity (OAU) 'The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa' OAU Addis Ababa.

<sup>45</sup> GRZ op cit note 7.

As can be observed from the case of former Angolan refugees, even after so many years of residence in a host country, naturalisation could still be unattainable for former refugees. In spite of being in Zambia since the 1960s, some former Angolan refugees had not become formally integrated.<sup>46</sup> As Manby<sup>47</sup> explains:

While the laws of many countries in principle allow for the naturalisation of refugees and stateless persons on the same or similar terms as other foreigners, through the normal procedures, naturalisation can be very difficult to access in practice for refugees, leaving some at risk of statelessness.

For Angolan refugees, the major challenge was that only those who arrived in Zambia between 1966 and 1986 and had continuously lived in Zambia were eligible to apply for a residence permit. It excluded those who arrived after 1986 and in a way, compelled them to opt for 'voluntary' repatriation. For those who wanted to regularise their stay in Zambia, this was going to pose a huge challenge, since cessation of refugee status also applied to them. Without giving them an opportunity to get the necessary identity documents, immigration permits, and a residence permit, the legal status of former Angolan refugees lay in limbo. It also meant that their pathway to naturalisation was blocked. In the long run, there was a danger that their ties to Angola could be weakened, hence, putting them at risk of becoming stateless. As indicated above, a good number did not have identity cards and many were reluctant to acquire 'alien' cards, which they deemed inadequate in offering meaningful protection.

For both former Angolan and Rwandan refugees, children born in Zambia were also at risk of becoming stateless mainly because Zambia operates on the basis of *jus sanguinis* and therefore does not grant citizenship by birth. Article 35 (1) of the Constitution of Zambia<sup>48</sup> provides that a person born in Zambia is a citizen by birth if, at the date of that person's birth, at least one parent of that person is or was a citizen by birth or descent. On the one hand, this provision reduces the risk of statelessness because it requires that only one parent should have been a citizen for the affected person to be recognised as a citizen. But it must be noted that children born in Zambia to parents who are both non-Zambian citizens are at risk of becoming stateless in the event that they fail to secure the nationality of their parents' country of origin. This is likely, given that their parents' link with their country of origin increasingly weakened without national identity documents. Such a system for granting citizenship at birth only on the basis of descent from a citizen, is in conflict with basic principles enshrined in the African Children's Charter and other human

<sup>46</sup> See World Vision et al. op cit note 42; and UNHCR Zambia (2022) op cit note 21.

<sup>47</sup> Bronwen Manby 'Citizenship and statelessness in the member states of the Southern African Development Community' (2020: 96) UNHCR Report; see also: Bronwen Manby 'Statelessness in Southern Africa' (2011) Briefing Paper for UNHCR Regional Conference on Statelessness in Southern Africa; Bronwen Manby *Identification in the context of forced displacement: Identification for development (ID4D)* (2016) The World Bank.

<sup>48</sup> GRZ op cit note 12.

rights treaties,<sup>49</sup> and places substantial numbers of children at risk of statelessness.<sup>50</sup> It is important to stress that this provision is not in line with the UN Convention on the Rights of the Child (CRC), which provides in Article 7 for every child to have ‘the right to acquire a nationality’,<sup>51</sup> and for states to ensure the implementation of these rights, in particular where the child would otherwise be stateless.

It must be noted that Article 37 of the 2016 Constitution of Zambia provides for a person who has been ordinarily resident in Zambia for a period of at least five years and was born in Zambia to apply to register as a citizen. In spite of the existence of this provision, there is no evidence of any former refugee child having benefitted from this provision.<sup>52</sup> As Boyden and Hart observe: in reality, the effective realisation of such rights is often difficult to achieve whether through neglect, design, incapacity, or legal complexity.<sup>53</sup> In the Zambian case, the challenge largely has to do with the issue of one being ordinarily resident in Zambia to be eligible. Just like the issue of permits, the period that one is a refugee is not considered as ordinary residence.

For both groups, the risk of statelessness is also high among those who have settled among the local host community without official assistance (self-settled or spontaneously settled refugees) because they are undocumented. Their livelihoods are severely restricted because they are in constant danger of detention, imprisonment, or deportation.<sup>54</sup>

Compared to other countries, the Zambian local integration process is similar in many respects. In many SADC countries, prospects of refugees acquiring citizenship are limited. Citizenship is generally accessible by birth, registration, or naturalization, but in many cases, there are legal obstacles. Citizenship by birth is accessible only on the basis of inheritance (*jus sanguinis*) and not on the basis of birth in the country (*jus soli*). As a result, citizenship cannot be extended automatically to the children of refugees, even if several generations are born in exile.<sup>55</sup> Hovil and Lomo note that while it is possible to access citizenship through either registration or naturalization, in practice this rarely happens. For instance, in the Democratic Republic of the Congo (DRC), naturalisation requires approval by the National Assembly, and the applicant must have performed ‘major services’ to the country. These are criteria that Hovil and Lomo argue that very few, let alone refugees, are likely to meet. In Rwanda, applicants for nationality must be free of ‘genocide ideology’, a provision that Hovil and Lomo regard as vague and argue that it has been used to persecute opponents. Other obstacles include requirements for very long periods of residency to apply for

<sup>49</sup> See, for example, Organization of African Unity (OAU) African Charter on the Rights and Welfare of the Child 11 July 1990 CAB/LEG/24.9/49 (1990).

<sup>50</sup> African Union (AU) ‘ACERWC General Comment on Article 6 of the Charter on the Rights and Welfare of the Child’ — Adopted by the Committee at its twenty-third Ordinary Session (07–16 April, 2014), available at <http://citizenshiprights-africa.org/wp-content/uploads/2016/01/ACERWC-General-Comment-Article-6-Eng.pdf>, accessed on 10 January 2023.

<sup>51</sup> United Nations General Assembly ‘Convention on the Rights of the Child’ (20 November 1989).

<sup>52</sup> Kelly Kapianga ‘Report on Citizenship Law: Zambia — RSCAS/GLOBALCIT-CR 2020/’ (14 November 2020) Global Citizenship Observatory (GLOBALCIT).

<sup>53</sup> Jo Boyden & Jason Hart ‘The statelessness of the world’s children’ (2007) 21 *Children & Society* at 237–248, available at <https://doi.org/10.1111/j.1099-0860.2007.00105.x>.

<sup>54</sup> Nyamazana et al. op cit note 27.

<sup>55</sup> Hovil & Lomo op cit note 19.

naturalisation and filing fees that place the process out of reach of most refugees, even when they would otherwise qualify.<sup>56</sup>

Among the states that have been generous in hosting refugees in protracted situations and offering naturalisation in SADC, is Tanzania.<sup>57</sup> The government issued several invitations for the mass naturalisation of refugees, including approximately 25,000 Rwandan refugees who were granted Tanzanian citizenship in 1981; and approximately 3,000 Somali refugees offered permanent settlement in 2003 with the possibility of naturalisation. The government also reduced naturalisation fees from US\$800 to US\$50. In 2008 the Tanzanian authorities began the naturalisation of 171,600 'old caseload' of Burundian refugees who had expressed their wish to become naturalised Tanzanian citizens.<sup>58</sup>

Around 2008 Angola, which has a large population of its people in protracted refugee situations in Zambia and other SADC countries, was also host to 13,000 refugees who fled the violence of a secessionist movement from the DRC in 1977. The refugees had attained a considerable degree of socio-economic integration, and were largely self-sufficient. In 2006, Angolan authorities offered legally secure local integration possibilities in the form of a permanent residence permit under the Immigration Act or naturalisation under the Nationality Act to those who choose to remain indefinitely in Angola.<sup>59</sup>

Namibia offers a good example of how to address the risk of statelessness among undocumented immigrants, including refugees. In 2010, the government undertook an exercise to register undocumented long-term residents at risk of statelessness, including those in its border regions. Under this programme, a total of 3,012 people who could show they were living in the country before 1977 were registered as Namibian nationals by the end of 2016. Most of those registered were of Angolan and South African origin.<sup>60</sup> The case of former Rwandan and Angolan refugees in Zambia and the examples of action taken to address the risk of statelessness among migrant populations in Southern Africa have several implications, which I discuss below.

#### IV. EXTENDING THE DEFINITION OF STATELESSNESS

There is need to consider extending the definition of statelessness to include de facto statelessness. First, de facto stateless persons are in effect stateless. Second, as recommended in paragraph 3 of the 1954 UN Convention's Final Act, those affected can then receive the necessary assistance and protection.<sup>61</sup> Although there is no international instrument or treaty that specifically defines de facto statelessness, the concept is recognised, as evidenced by the reference in the Final Act of the UN's 1961

<sup>56</sup> Ibid.

<sup>57</sup> Fielden op cit note 2.

<sup>58</sup> Ibid.

<sup>59</sup> Hovil & Lomo op cit note 19.

<sup>60</sup> UNHCR (2020) op cit note 29.

<sup>61</sup> United Nations General Assembly 'Convention Relating to the Status of Stateless Persons' (28 September 1954) United Nations New York.

Convention and an implicit reference in the Final Act of the UN's 1954 Convention to 'de facto' stateless persons.<sup>62</sup> I use the definition of 'de facto' statelessness recommended by Section II.A. of the UNHCR Expert Meeting regarding the Concept of Stateless Persons under International Law as "persons outside the country of their nationality who are unable or, for valid reasons, are unwilling to avail themselves of the protection of that country".<sup>63</sup> Applying this definition, many former refugees from Rwanda and Angola could be considered stateless. This is because they had valid reasons that caused them to be unable or unwilling to avail themselves of the protection of their country of origin.

For former Rwandan refugees, this can be demonstrated by their refusal to acquire passports from their home country. They were also outside the country of their nationality, but in addition to that, I argue that they were unable to acquire citizenship of the host country. Therefore, the benefits of the 1954 Convention should be extended to them. It must be stressed that although they have not formally or categorically renounced their Rwandan nationality, they have to some extent done so by questioning their country's willingness to protect them. Besides, it is on the same basis that they were granted refugee status in the first place. For former Angolan refugees (post-1986 arrivals), the primary issue is their inability to avail themselves of the protection of their country of origin given that they have been excluded from the offer to become locally integrated in Zambia.

Those who are in a more precarious situation, are the self-settled former refugees from both countries, given that they were undocumented. This made it very difficult to avail themselves of the protection of their country of origin, nor benefit from the offer of local integration with the possibility of permanent residence or naturalisation.

In light of the above, it can be argued that when it can be established that, with valid reasons, a person is unwilling to avail themselves of the protection of their country of origin and are unable to acquire citizenship of the host country, they should be considered and treated as stateless persons.

From this it is possible to sketch a profile of stateless former refugees in protracted situations. It includes adults who are unwilling, or unable to avail themselves of the protection of their country of origin, and unable to acquire citizenship of the host country. It also includes children born to refugee parents who are unwilling, or unable to avail themselves of the protection of their country of origin, and unable to acquire citizenship of the host country, in a country of asylum that does not automatically grant citizenship by birth.

The case of former refugees from Rwanda and Angola has several policy implications. To start with, their situation calls for the broadening of the definition of statelessness to include de facto statelessness. There are several lessons to be learnt

<sup>62</sup> United Nations High Commissioner for Refugees (UNHCR) *Hand Book on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons* (1954) UNHCR Geneva.

<sup>63</sup> United Nations High Commissioner for Refugees (UNHCR) 'Expert meeting regarding the concept of stateless persons under international law' (2010) UNHCR.

with regard to how the original definition of the 1951 UN Convention definition of a refugee was expanded through the 1967 Protocol, the 1984 Cartagena Declaration on Refugees, and the 1969 Organisation of African Unity Convention Governing the Specific Aspects of Refugee Problems in Africa.

The Zambian government should consider granting nationality to children born in Zambia who would otherwise be at risk of becoming stateless, as the cases described in this paper illustrate. Also, they should waive the requirement for refugees to produce national registration cards from their country of origin and passports for them to access residence permits and other immigration permits. In addition, the Zambian government should consider reducing the number of years one is considered to have been ordinarily resident in the country for refugees who have been in protracted situations, for instance, from ten to five years. Related to this is the need to reduce the fees attached to a resident permit and other related permits as they are prohibitive for an ordinary refugee.

The Zambian government should consider registering undocumented refugees in protracted refugee situations, including a possibility of access to naturalisation without imposing procedural requirements that are impossible to fulfil.<sup>64</sup>

Given the difficulty that former refugees in protracted situations face, as outlined in this paper, as well as the precarity of their situation regarding their nationality, there is need for increased attention on statelessness as one of the risks associated with protracted refugee situations, among both academics and practitioners. It must be acknowledged that some efforts have been made to address issues concerning statelessness in Zambia since the Ministerial meeting held in Geneva in 2011, in commemoration of the 60th anniversary of the 1961 Convention on the Reduction of Statelessness. At this meeting, Zambia pledged to take all necessary measures to observe and ratify the 1961 Convention.<sup>65</sup> In 2015, the Zambian government, with support from the UNHCR commissioned a study to assess the root causes and extent of statelessness in Zambia. Despite being largely exploratory in nature, the study yielded three cases of potential statelessness. It also established that a large section of the Zambian population — both non-migrant and migrant populations — was at high risk of becoming stateless. Another important milestone in establishing an institutional framework for dealing with statelessness in Zambia was the appointment of the office of Commissioner for Refugees in the Ministry of Home Affairs and Internal Security to be the focal point regarding matters pertaining to statelessness in the country in 2017. Among its major tasks was to develop a mechanism for the identification of stateless people. These are quite commendable efforts, but more needs to be done, in relation to both the institutional and legal frameworks, for Zambia to have a fully functional regime for the protection and assistance of stateless

<sup>64</sup> UNHCR (2020) op cit note 29.

<sup>65</sup> UNHCR (2016) op cit note 9; United Nations High Commissioner for Refugees (UNHCR) 'Guidelines on statelessness No 4: Ensuring every child's right to acquire a nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness — 21 December 2012 (2014) UNHCR; United Nations General Assembly 'Convention on the Reduction of Statelessness (30 August 1961) United Nations New York.

persons. Disappointingly, by the end of 2022 the Zambian government had failed to honour its pledge to observe and ratify the 1961 Convention.

## V. CONCLUSION

The extant literature does not pay sufficient attention to the threats and risks associated with protracted refugee situations. I acknowledge the efforts to sound the alarm by scholars such as Hovil and Lomo who emphasize citizenship in the context of local integration; however, they do not examine it from the perspective of the risk of statelessness. Additionally, Hovil and Maple acknowledge that refugees face the risk of statelessness while trying to find ways to become integrated in a policy environment that denies them assistance to integrate particularly when refugee status is withdrawn through a cessation agreement. As can be seen from the two cases of Rwandan and Angolan refugees seeking to regularise their stay in Zambia, a considerable amount of assistance has been provided by the host government, the UNHCR, and the country of origin to enable those wishing to stay, to regularize their status. But challenges have arisen because some refugees do not want to acquire national identity documents of their home country — a key requirement for refugees to be eligible for local integration — due to fear of renewed persecution by their government (as in the case of Rwandan refugees), while others have been excluded from the integration process (as in the case of Angolan refugees who arrived in Zambia after 1986).

The circumstances under which these former refugees find themselves render them effectively stateless; hence, they should be considered and treated accordingly and afforded the requisite assistance largely aimed at securing their legal status and prevention of loss of nationality. Also important is the need for an increased and heightened academic response to the risk of statelessness in protracted refugee situations, among both academics and practitioners. As can be observed from the cases outlined above, protracted refugee situations can lead to loss of connection with the country of origin (where there is lack of national identity documents) which in turn can lead to statelessness. It must be noted that being undocumented does not equate to being stateless, but it makes it challenging to prove one's nationality and increases the risk of statelessness. This is particularly the case as new generations grow up in asylum, especially where nationality laws in the host country do not automatically grant citizenship by birth.

This has several policy implications that national governments should consider, including granting nationality to children born on a country's territory — children who would otherwise be at risk of becoming stateless, as illustrated in this paper. Also, national governments should waive requirements that are difficult for refugees to meet, to become permanent residents and naturalised citizens. These include insistence on legal residence, even for refugees, with evidence of having lived in the host country for many years, before being considered for application for a resident permit. Also important is not to have prohibitive fees attached to immigration

permits. There is a wealth of best practices that Zambia and others in Southern Africa could learn from (notably Tanzania and Namibia) pertaining to the resolution of protracted refugee situations, without putting refugees at risk of statelessness, and instead devise and implement progressive policies governing naturalisation and integration of refugees.<sup>66</sup>

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<sup>66</sup> Milner & Loescher (2011) op cit note 5.