



**ICGLR**

INTERNATIONAL CONFERENCE  
ON THE GREAT LAKES REGION



**REFUGEES FROM GENERATION TO GENERATION**  
**PREVENTING STATELESSNESS BY ADVANCING DURABLE**  
**SOLUTIONS IN THE GREAT LAKES REGION**

*A study by the International Conference on the Great Lakes Region (ICGLR) with support from  
United Nations High Commissioner for Refugees (UNHCR)*



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A Study by Dr. Bronwen Manby for ICGLR with the support of UNHCR  
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# REFUGEES FROM GENERATION TO GENERATION – PREVENTING STATELESSNESS BY ADVANCING DURABLE SOLUTIONS IN THE GREAT LAKES REGION

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This report may be quoted, cited, and uploaded to other websites, provided that the source is acknowledged. The views expressed and any errors and omissions are those of the author, and do not necessarily reflect the official view of UNHCR.

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## 1. Summary

This study investigated risks of statelessness among long-term refugees in three countries of the Great Lakes region in Africa: Democratic Republic of Congo (DRC), Rwanda and Uganda. The study focused on refugees who had left their country of origin more than twenty years ago – defined as “long-term” refugees for the purposes of the study – and their descendants born in the country of asylum.<sup>1</sup> The populations considered in this report are refugees of Rwandan origin in DRC, refugees of Congolese origin in Rwanda, and refugees of Congolese and South Sudanese origin in Uganda. The study involved both an analysis of laws and policies in all the countries studied, including the countries of origin of the refugees, and quantitative and qualitative research among refugees and host communities. The objective was to understand in greater depth the risk of statelessness among these long-term refugees and their descendants, and potential durable solutions that mitigate this risk. In the context of stateless persons, whether or not they are also refugees, a durable solution is linked to the recognition or granting of a nationality. Among these solutions, the study considers the improvement of access to civil registration and other identity documents, as well as the legal pathways to local integration in the country of asylum, including the possibility of acquiring nationality.

The study found that the vast majority of these long-term refugees had no identity documents of any kind issued by their country of origin. The only official identification recording their nationality is therefore their refugee registration document (issued by the authority of country of asylum, often with UNHCR support).

Most adult refugees have no birth certificates, essential for proof of connection of parent and child on the basis of which nationality might be claimed. Among those born in the country of origin, only 8 percent of the adult long-term refugees surveyed for this report had a birth certificate. Although birth registration has improved significantly for children of refugees born in the country of asylum in recent years and is nearing complete coverage in Rwanda (including for those born in the country who are now adults), only 28 percent of adult refugees born in Uganda, and 6 percent of adults born in DRC held a birth certificate.

Unsurprisingly, a majority of the refugees surveyed stated that their preferred solution to end their refugee status started with resettlement in a third country. Yet, when asked which country they felt closest to, more than 62 percent named the country of asylum (rising to 70 percent of those living in urban areas), and almost half stated that their preferred solution would be to remain in that country.

Although only a minority (12 percent of the total) said that they wished to acquire the nationality of the country of asylum, focus groups indicated that the implications and possibilities of changing legal status were not fully understood, and that this percentage might well increase if the options were easier to access and with greater awareness of the processes. In practice, it is hard for any applicant to acquire nationality based on long-term residence in any of the three countries of asylum, because of the legal and procedural barriers. Although acquisition of nationality based on marriage is relatively more accessible, UNHCR is only aware of a small handful of successful applications by long-term refugees to acquire nationality in Uganda or Rwanda, in most cases based on marriage to a national, and none in DRC.

One reason for wishing to retain refugee status (22 percent of all those surveyed) is that so long as refugee status is viewed as indefinite and refugee identity documents are renewable the status functions as a form of permanent residence in the host country. Refugee status provides the legal residence permit and identity documents that refugees need to access services and facilitate freedom of movement in the country of asylum, as well as receive entitlements to some (limited) humanitarian assistance from UNHCR and partners and the host government. However, refugee status is not intended to be permanent, and is thus precarious over the long term. In the case of refugees who fled the events in Rwanda between 1959

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<sup>1</sup> A list of terminology used in this report is provided at Annex 1.

and 1998 in particular, UNHCR recommended in 2013 that the “ceased circumstances” clause under the 1951 UN Convention Relating to the Status of Refugees could be invoked, although a majority of countries in the Great Lakes region, including DRC and Uganda, have decided not to do so.

In some other contexts, statelessness has only become apparent when refugee status ends (or an asylum application fails), and repatriation is neither desired nor possible to arrange because of lack of proof of a nationality of origin. This was the case, for example, for former Angolan refugees turned back at the border between DRC and Angola during the repatriation process in 2010. Recognition of refugee status thus conceals the risks of statelessness created by gaps in laws and procedures relating to nationality in the countries of origin and of asylum.

As a first gap, the refugee registration and status determination processes do not generally consider whether a person might be stateless or at risk of statelessness, but only eligibility for protection as a refugee. This is true in very many countries, including those considered for this report, and especially when recognition of refugee status is done on *prima facie* basis and not through individual determination.

Secondly, there are major gaps in birth registration coverage and legal frameworks. Birth registration is the most authoritative evidence of the facts on the basis of which nationality may be determined. Although the laws of all three countries considered in this report establish the right to free and compulsory birth registration, with no exclusion for refugees or children of other foreigners, birth registration rates have historically been low in all three countries. While these rates are increasing for current births, only in Rwanda is there a systematic effort to carry out late registration for all births of refugees (including for adults) that have taken place in the country of asylum. However, universal birth registration in itself is not sufficient to resolve statelessness, especially if the nationality of parents is uncertain or undocumented or if the child cannot acquire their nationality. In many countries, including DRC and Rwanda, national laws and procedures provide that the nationality of children born outside the country will only be recognised if the parents register the birth with the consulate, or the foreign birth certificate is transcribed into the civil registry of the country of origin. Special procedures to bypass these formal legal requirements are usually incorporated into the tripartite agreements for “comprehensive durable solutions” (including repatriation or local integration) made between UNHCR and the governments of the countries of origin and asylum of the refugees. But the situation is different outside of such contexts. Refugees cannot easily approach the embassies of their country of origin, since it may put at risk their refugee status; and almost all are in any event unaware of such requirements. Because the interpretation of the law of another country in relation to attribution of nationality to a child born abroad is a complex question, not within the competency of a civil registrar, UNHCR does not recommend that birth certificates record the nationality of a child. In any event, a record of the nationality of parents or child mentioned in a birth certificate issued by the country of birth does not bind the authorities of the country of origin of the parents. These problems related to birth registration and conflicts of law increase risks of statelessness and impede durable solutions for long-term refugees – yet they lack clear international guidance for their resolution.

Thirdly, there are important gaps in the nationality laws of all three countries, and their implementation in practice, especially in relation to protection against statelessness for children born in their territory. All three countries provide in principle for a child of unknown parents found in the territory (a foundling) to be granted nationality. To provide real protection against statelessness, it is important that this protection apply not only to newborn babies. It is positive, therefore, that Rwanda defines a foundling as any child “without comprehensive information pertaining to the identity of his or her parents or his or her origin”. However, this protection is restricted to newborn children in DRC, and to children under five in Uganda. Although the nationality code in DRC provides for the right to nationality for children of stateless parents, and for those born in the territory to be able to acquire nationality at majority, there are no procedures to allow these provisions to be implemented in practice. Rwanda’s 2021 nationality law establishes the most comprehensive protections against childhood statelessness. However, the law also imposes the requirement that all children must apply for recognition of nationality, rather than providing for (automatic) attribution of nationality by operation of law in most cases, potentially leaving some children at risk of statelessness even if both their parents are Rwandan nationals. Uganda establishes no general



rights based on birth in Uganda for those who are not members of one of the indigenous communities listed in a schedule to the constitution, creating significant risks of statelessness. This even includes the children of parents who registered or naturalised as Ugandan citizens before their birth, who must apply for citizenship in their own right after accumulating the required period of residence as an adult (residence as a minor is not counted for the purposes of registration or naturalisation; while minor children can also not be included within a parent's application to naturalise). Since the required period of residence for naturalisation is 20 years, even the stateless child of a former refugee born in Uganda could only acquire Ugandan citizenship at 38 years old at the earliest. Naturalisation based on long residence is generally very hard or impossible to access for refugees in all three countries (as it is throughout the African continent, except in the few cases where there have been special initiatives to facilitate acquisition).

The key issues in preventing statelessness among refugees and their descendants therefore include assessing potential statelessness as part of refugee registration, and/or when applicable, individual refugee status determination procedures; the issuance and renewal of refugee identity documents; ensuring universal birth registration for all children of refugees born in country of asylum (with attention to the details that should be recorded in the birth register and especially the birth certificate); and the facilitation of access to substitute civil registration certificates for those whose births or marriages took place in another country. There is also the need to establish of minimum rights to nationality based on birth in the territory of the country of asylum, as well as the possibility of acquisition of nationality based on long-term residence, and the removal of procedural barriers to accessing these rights.

The detailed content of such provisions can seem quite abstract, but they profoundly impact upon the search for durable solutions for these long-term refugees. The practical implications reported by the refugees themselves relate to livelihoods, including access to food, housing, healthcare and education, and freedom of movement. The idea that a legal change of nationality is even possible can be hard to grasp. However, a significant minority mentioned access to identity documents in the country of asylum (and their renewal) and civil registration among the main problems they faced. Expired or inaccessible identity documents also restrict freedom of movement and access to services – meaning that there is overlap among these responses.

Many refugees are closely integrated into the societies where they now live, even as the older refugees in particular retain links to their countries of origin. There is a need to develop legal pathways that allow for this integration in their host country to be fully recognised: it is neither practical nor desirable for refugee status to be maintained over multiple generations, and risks of statelessness are compounded. There are often political challenges to the development of pathways towards acquisition of nationality, and the challenges over questions such as rights of access to land need to be resolved. There are also potential dangers if individuals feel pressurised into accepting a new status as an alternative to refugee status, especially if it may lead to the cessation of their refugee status, or does not provide a route to (re)acquisition of nationality. However, the indefinite status of refugee is also not sustainable, and creates its own political dangers, if a group that as a matter of fact is permanently resident is at the same time permanently excluded from full membership of society. It is also notable that in Uganda, where focus groups were also conducted with host communities, no objection was expressed to the concept that refugees might acquire Ugandan citizenship; a view confirmed by survey data from other sources.

The 1951 UN Refugee Convention provides for the naturalisation of refugees to be facilitated. The 1969 African Refugee Convention calls for the “settlement” of refugees to be secured. In addition to these provisions relating to the status of adults, there are stronger rights to nationality in case of children born in the country of asylum. Article 6(3) of the African Charter on the Rights and Welfare of the Child provides, in line with the UN Convention on the Rights of the Child, that every child has the right to acquire a nationality. Article 6(4) adopts a similar minimum protection to that provided in Article 1 of the Convention on the Reduction of Statelessness, requiring states to provide in law that *“A child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws.”*

The risks of statelessness created by refugees' lack of documentation and weakening connections to their country of origin increase with each successive generation born in exile. The risks can, however, be mitigated through reforms to bring national laws into line with international law, including African regional standards, especially by providing rights to acquire nationality for children born in the country of asylum. In addition, access should be facilitated to the procedures for adults to be able to acquire nationality in the country of asylum that already exist in law but are inaccessible to refugees.

## Key recommendations

The International Conference on the Great Lakes Region (ICGLR) has adopted a Declaration and Consolidated Plan of Action on the eradication of statelessness.<sup>2</sup> In section 5, this report makes detailed recommendations on legal pathways to local integration that support the commitments made in the Declaration and Plan of Action. The most important recommendations include that the ICGLR Secretariat should:

- Develop a regional strategy and policy guidelines on accessing nationality documentation (including but not limited to nationality certificates, national identity cards or passports).
- Promote practical measures to enable citizens living abroad to access civil registration services (including, where applicable, the transcription of civil status records established in another country) and nationality documentation through consular and administrative assistance.
- With the prior agreement of the States concerned, establish bilateral or multilateral commissions to confirm nationality where it is in doubt, including among border populations and those in a migratory or nomadic situation, and to provide access to nationality documentation.

In line with these commitments, UNHCR should support the ICGLR to develop a comprehensive strategy for durable solutions for refugees and other forcibly displaced persons in the Great Lakes region, including the possibility of acquisition of nationality by long-term refugees and their children in their host country.

UNHCR should develop guidance on birth registration for prevention of statelessness, including on best practices for the information to be recorded in birth certificates in relation to refugee children born in a country of asylum. UNHCR should also research and provide recommendations on best practices on mutual recognition of civil registration documents for refugees, especially in the context of voluntary repatriation or resettlement to a third country.

Among the other recommendations (listed in detail below in section 5) are that ICGLR Member States should:

- Continue efforts to **ensure that all refugees have valid identity documents** issued by the country of asylum, including by increasing the validity period and enabling timely renewal of expired documents;
- Continue efforts to achieve **universal birth registration**, including late registration of the adult refugee population born in country of asylum, as well as registration of marriages and deaths, and facilitate access for refugees to the provisions of national law, in line with the provisions of the 1951 Refugee Convention that allow for **alternative forms of proof of civil status**, including where events have taken place in another country.
- Make **acquisition of nationality based on long residence more accessible** to refugees, in the spirit of the 1951 UN Refugee Convention and the 1969 African Refugee Convention, by clarifying and publicising the process for application for refugees, and by ensuring that fees are reasonable, that

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<sup>2</sup> Declaration of International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, 16 October 2017, CIRGL/CIMR/DEC/15/10/2017, <https://www.refworld.org/docid/59e9cb8c4.html>; Consolidated Action Plan of ICGLR on the eradication of statelessness in the Great Lakes (2017-2024), January 2020, available at: <https://www.refworld.org/docid/60e70b3f4.html>. ICGLR Member States: Angola, Burundi, Central African Republic, Republic of the Congo, Democratic Republic of the Congo, Kenya, Rwanda, Sudan, South Sudan, Tanzania, Uganda, and Zambia.

supporting documents required are not impossible to supply, and that a decision is taken within reasonable time and notified to the applicant, with reasons in case of rejection.

- Adapt refugee registration and (where relevant) refugee status determination procedures to ensure that **risks of statelessness are assessed and recorded** so that appropriate additional protection measures can be put in place to reduce those risks, according to national context.
- Provide in law for the minimum protections against statelessness that are set out in Article 6(4) of the African Charter on the Rights and Welfare of the Child and the 1961 Convention on the Reduction of Statelessness, especially for **children born in the territory who do not acquire nationality from a parent**.
- Establish **procedures to implement these protections against statelessness in practice**, including referral mechanisms among the institutions responsible for refugees, civil registration, child protection, and nationality and immigration, and train civil registry and other relevant officials on these procedures.
- Accede to the **international conventions on statelessness**, where they have not already done so, and ensure that national laws conform with their provisions.

## Terminology

A detailed explanation of key terms used in this report is included in Annex 2. The most important terms are the following:

**Long-term refugee:** A term without a definition in international law or UNHCR policy, but used in this report to mean refugees who have been more than twenty years in the country of asylum, and to include children born in the country of asylum who have derivative refugee status through their parents. The term is used to distinguish the focus of the study from “protracted refugee situations”, a term used by UNHCR to refer to a situation where refugees have been displaced for five or more years outside their country of origin.

**Citizenship/nationality:** Terms used as synonyms in international law to describe a particular legal relationship between a person and a state that is defined in national law. In this report, the terms are used according to the terminology of national law, and “nationality” is used at international level.

**Stateless person:** The 1954 Convention relating to the Status of Stateless Persons defines a stateless person as “a person who is not considered as a national by any state under the operation of its law” (Article 1(1)). UNHCR notes that determining whether a person is stateless is a mixed question of fact and law, and thus a person may be stateless even if apparently entitled to citizenship in law, because they cannot prove the relevant facts.

## 2. Background to the study

### Legal pathways to local integration for long-term refugees

The UN Convention relating to the Status of Refugees was adopted in 1951 in recognition of the need to provide protection to those people who had fled their country of nationality<sup>3</sup> or (for those not having a nationality), their country of former habitual residence, for fear of persecution and are therefore unable to access the protection of that state. The status is intended to be temporary.

UNHCR proposes that there are three “durable solutions” to the situation of refugees: voluntary repatriation, local integration in the country of asylum, or resettlement in a third country.<sup>4</sup> Although voluntary repatriation to their country of origin has generally been viewed by many refugees themselves, and by national and international agencies as the preferred outcome for refugees, the reality is that for many refugees, repatriation may not be possible because of continued insecurity – or because the country of origin does not recognise them as its citizens; while long-term refugees may have developed stronger connections in their host country than their country of origin. Resettlement to a third country is only ever going to be possible for a small minority of those affected.

As UNHCR therefore notes, “[g]roups for whom the option of local integration can be the most important include refugees born on a host country’s territory who are of undetermined nationality or at risk of statelessness, and refugees who have established close links in the host country.”<sup>5</sup> The UNHCR Executive Committee adopted a conclusion on local integration in 2005, in which it noted that:

*[C]haracteristics which may assist in determining circumstances in which local integration can be an appropriate durable solution could include, subject to States' consideration:*

- (i) refugees born in asylum countries who might otherwise become stateless; and/or*
- (ii) refugees who, due to their personal circumstances including the reasons prompting their flight, are unlikely to be able to repatriate to their country of origin in the foreseeable future; and/or*
- (iii) refugees who have established close family, social, cultural and economic links with their country of asylum, including those who already have, or have the capacity to attain, a considerable degree of socio-economic integration.*<sup>6</sup>

These categories are of particular relevance in the Great Lakes region. The UNHCR database recorded 4.68 million asylum seekers and refugees in the Great Lakes region at the end of 2022, of whom 1.5 million were in Uganda, 525,000 in DRC, and 121,000 in Rwanda.<sup>7</sup> Because date of arrival is not always reliably recorded in this database for those who arrived many years ago, it is difficult to provide an estimate of the percentage of the total number of refugees who have been hosted in the country of asylum for twenty years or more (and their children born in exile), referred to in this report as long-term refugees. However, a majority have been living for five years or more in the country of asylum, referred to by UNHCR as

<sup>3</sup> In this report, “nationality” and “citizenship” are synonyms. “Nationality” is the term most often used in international law. At national level, the laws of Rwanda and DRC use the term “nationality” (*nationalité*), whereas Uganda’s laws refer to “citizenship”, and the report follows this usage. See also Annex 2 for discussion of terminology used in this report.

<sup>4</sup> ‘Framework for Durable Solutions for Refugees and Persons of Concern’, UNHCR, 2003 <https://www.refworld.org/docid/4ae9ac93d.html>. See also ‘Refugee Resettlement and Complementary Pathways: Opportunities for Growth’, UNHCR, September 2021 <https://www.unhcr.org/afr/614462c94>.

<sup>5</sup> *UNHCR’s 10-Point Plan of Action on Refugee Protection and Mixed Movements*, 2nd ed, UNHCR, 2017, ‘Chapter 7: Solutions for Refugees’, p.186 <https://www.unhcr.org/the-10-point-plan-in-action.html>.

<sup>6</sup> Executive Committee of the High Commissioner’s Programme, Conclusion on Local Integration No. 104 (LVI) - 2005, UNHCR, 7 October 2005 <https://www.refworld.org/docid/4357a91b2.html>.

<sup>7</sup> ‘International Conference on the Great Lakes Region: Overview, Refugees, Asylum-seekers, and IDPs’, UNHCR, December 2022 <https://data.unhcr.org/en/documents/details/98647>.

refugees in a protracted situation.<sup>8</sup> The question of local integration and future legal status for these refugees and their descendants born in the country of asylum is a pressing concern.

The Regional Durable Solutions Secretariat for the Great Lakes (ReDSSGL), a coalition of ten international NGOs, has carried out studies exploring the integration of displaced populations in all three of the countries covered by this study, as well as Tanzania, which provide important information on other aspects of local integration, complementary to the analysis presented in this report.<sup>9</sup>

## Relevant international law

A comprehensive account of international standards in relation to proof of legal identity and access to nationality is provided in Annex 3 to this report. The most important standards are as follows<sup>10</sup>:

***Birth registration:*** The International Covenant on Civil and Political Rights and the Convention on the Rights of the Child provide that it is the right of every child to be registered immediately after birth. This is emphasized by the Migrant Workers Convention and the Convention on the Rights of Persons with Disabilities.<sup>11</sup>

***Identity of children:*** The Convention on the Rights of the Child requires states to respect the right of the child “to preserve his or her identity (including nationality, name and family relations)” and, “where a child is illegally deprived of some or all of the elements of his or her identity, to provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.”<sup>12</sup>

***Recognition as a person before the law:*** A range of international and regional human rights establish the right of every person to recognition as a person before the law, meant to ensure legal status and capacity to exercise rights and enter into contractual obligations.<sup>13</sup>

***Identity documents for refugees, stateless persons and IDPs:*** The 1951 Refugee Convention requires states to provide every refugee with identity documents.<sup>14</sup> Similar obligations apply to stateless persons and the internally displaced.<sup>15</sup>

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<sup>8</sup> ‘Outcome Document: Peer-Learning Event on Comprehensive Durable Solutions for Refugees in the Great Lakes Region’, ICGLR, UNHCR, ReDSS, & European Union, 31 January – 1 February 2023, Bujumbura, Burundi [https://icglr.org/ova\\_doc/outcome-document-peer-learning-event-on-comprehensive-durable-solutions-for-refugees-in-the-great-lakes-region/](https://icglr.org/ova_doc/outcome-document-peer-learning-event-on-comprehensive-durable-solutions-for-refugees-in-the-great-lakes-region/). Annex 2, on terminology, discusses the definitions used in this report.

<sup>9</sup> ‘Levels of self-reliance, livelihood opportunities and alternatives to encampment among displaced populations in the Great Lakes Region of Africa: Burundi, Rwanda, Uganda, Tanzania & Democratic Republic of Congo’, ReDSS, March 2022. ReDSS is a coordination and information hub for ten NGOs: ACTED, CARE International, Concern Worldwide, the Danish Refugee Council (DRC), the International Rescue Committee (IRC), Mercy Corps, the Norwegian Refugee Council (NRC), Oxfam, Save the Children, and World Vision. See <https://www.redssgreatlakes.org/>.

<sup>10</sup> Adapted from Bronwen Manby, ‘Identification in the Context of Forced Displacement’, Identification for Development Initiative (Washington, D.C.: World Bank, June 2016), <https://openknowledge.worldbank.org/handle/10986/24941>.

<sup>11</sup> International Covenant on Civil and Political Rights (ICCPR), Article 24(2); Convention on the Rights of the Child (CRC), Article 7; Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (Migrant Workers’ Convention) Article 29; Convention on the Rights of Persons with Disabilities, Article 18.

<sup>12</sup> CRC, Article 8.

<sup>13</sup> Including the Universal Declaration of Human Rights (UDHR) Article 6; ICCPR, Article 16, and Migrant Workers’ Convention, Article 24.

<sup>14</sup> UN Convention relating to the Status of Refugees (Refugee Convention), Articles 27 and 28.

<sup>15</sup> Convention relating to the Status of Stateless Persons, Article 27; UN Guiding Principles on IDPs, Principle 20; Kampala Convention, Article 13.

*Destruction of documents*: The Migrant Workers Convention prohibits the destruction of identity documents.<sup>16</sup>

*False documents*: The Refugee Convention provides that the fact that a person carries false identification documents or has entered the country illegally is not in itself a reason to refuse that person refugee status or impose any penalties.<sup>17</sup> The Protocol to the Convention Against Transnational Organized Crime on the smuggling of migrants provides that, whereas producing or procuring a fraudulent identity document shall be criminalized, migrants themselves shall not become liable to criminal prosecution for that reason.<sup>18</sup>

*“Integrity and security” of documents*: Protocols to the UN Convention Against Transnational Organized Crime require States parties to implement measures to ensure the adequacy of the “quality” and “integrity and security” of documents such as passports.<sup>19</sup>

*Nationality*: The Universal Declaration of Human Rights states that “Everyone has the right to a nationality. No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality” (Article 15).

- The 1961 Convention on the Reduction of Statelessness requires states to grant nationality to a person in some circumstances, notably to a child born in the territory of that state where the child would otherwise be stateless and to a child found in the territory of unknown parents, and also places limits on the deprivation of nationality.<sup>20</sup>
- The Conventions relating to the Status of Refugees and of Stateless Persons create a general obligation to facilitate naturalization “so far as possible.”<sup>21</sup>
- The International Covenant on Civil and Political Rights, the Convention on the Rights of the Child and the Migrant Workers’ Convention all provide for every child to acquire a nationality.<sup>22</sup>
- The African Charter on the Rights and Welfare of the Child provides in Article 6 for every child to have the right to a name, birth registration and to acquire a nationality, and that “a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with its laws”<sup>23</sup>.
- The Convention on the Elimination of All Forms of Discrimination Against Women requires states to end discrimination on the basis of sex in transmission of nationality between spouses and from parent to child, and other conventions prohibit different forms of discrimination.<sup>24</sup>

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<sup>16</sup> Migrant Workers’ Convention, Article 21.

<sup>17</sup> Article 31(1), Refugee Convention: “The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence.”

<sup>18</sup> Protocol Against the Smuggling of Migrants by Land, Sea and Air, Supplementing the Convention Against Transnational Organized Crime, Articles 5 and 6.

<sup>19</sup> Article 12 of both the Protocol against the Smuggling of Migrants and the Protocol to Prevent, Suppress and Punish Trafficking in Persons.

<sup>20</sup> Convention on the Reduction of Statelessness, especially Articles 1, 8 and 9.

<sup>21</sup> Refugee Convention, Article 34; Convention relating to the Status of Stateless Persons, Article 32.

<sup>22</sup> CRC, Article 7; ICCPR, Article 24(3); Migrant Workers’ Convention, Article 29. Every state recognized by the UN except for the United States is a party to the CRC.

<sup>23</sup> African Charter on the Rights and Welfare of the Child, Article 6(4).

<sup>24</sup> Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), Article 9; Convention on the Elimination of All Forms of Racial Discrimination (CERD), Articles 1 and 5; Convention on the Rights of Persons with Disabilities, Article 18.

- The UN Human Rights Council has repeatedly affirmed that arbitrary deprivation of nationality is a violation of human rights and fundamental freedoms.<sup>25</sup>
- The African Commission on Human and Peoples' Rights and the African Court on Human and Peoples' Rights have issued numerous decisions in which they have affirmed these principles.<sup>26</sup>

### Commitments made by ICGLR Member States

The study, undertaken by the International Conference on the Great Lakes Region (ICGLR) with the support of UNHCR, aims at exploring legal pathways to local integration for long-term refugees and their descendants born in the country of asylum.<sup>27</sup> The study is set within the normative frameworks adopted by Member States of the International Conference on the Great Lakes Region (ICGLR) dating back to the Dar es Salaam Declaration establishing the Conference in 2004. The Dar es Salaam Declaration committed states to adopt a common approach for the ratification and implementation of the UN Conventions on Statelessness, to harmonise related national laws and standards, and to provide refugees and displaced persons with identity documents enabling them to access their rights.<sup>28</sup>

In 2017, ICGLR Member States strengthened these commitments by adopting a Declaration and Regional Action Plan on the Eradication of Statelessness.<sup>29</sup> In 2019, the Action Plan was extended to 2024, and additional objectives on civil registration and documentation of nationality were added in 2020. The Consolidated Plan of Action urges ICGLR Member States to ratify the UN conventions on statelessness, reform nationality laws to bring them into line with international standards on nationality and statelessness, adopt national action plans to end statelessness, strengthen civil registration systems and ensure universal birth registration, issue nationality documents to those with entitlement, and nominate government focal points on statelessness.<sup>30</sup>

In line with these commitments, and discussions at meetings held in 2019 of ICGLR ministers in charge of refugees<sup>31</sup> and on the eradication of statelessness<sup>32</sup>, the ICGLR Secretariat and the twelve ICGLR Member

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<sup>25</sup> Resolutions and reports available on the website of the Office of the High Commissioner for Human Rights: <http://www.ohchr.org/EN/Issues/Pages/Nationality.aspx>.

<sup>26</sup> African Commission on Human and Peoples' Rights, 'The Right to Nationality in Africa' (Banjul: African Union, May 2014), <https://www.achpr.org/news/viewdetail?id=112>; Bronwen Manby, 'Case Note: Anudo Ochieng Anudo v Tanzania (Judgment) (African Court on Human and Peoples' Rights, App No 012/2015, 22 March 2018)', *Statelessness and Citizenship Review* 1, no. 1 (2019): 170–76; Bronwen Manby and Clement Bernardo Mubanga, 'Case Note: Robert John Penessis v United Republic of Tanzania (Judgement) (African Court on Human and Peoples' Rights, App No.013/2015, 28 November 2019)', *Statelessness and Citizenship Review* 2, no. 1 (2020): 172–78.

<sup>27</sup> Displacement, Statelessness and Solutions: a study on protracted refugee situations in the Great Lakes (update July 2021), ICGLR & UNHCR, 21 July 2021 <https://data2.unhcr.org/en/documents/details/86160>.

<sup>28</sup> Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, ICGLR, adopted by the First Summit of Heads of State and Government, Dar-es-Salaam, 19-20 November 2004, paragraph 68 [http://www.icglr.org/images/Dar\\_Es\\_Salaam\\_Declaration\\_on\\_Peace\\_Security\\_Democracy\\_and\\_Development.pdf](http://www.icglr.org/images/Dar_Es_Salaam_Declaration_on_Peace_Security_Democracy_and_Development.pdf)

<sup>29</sup> Declaration on the Eradication of Statelessness, adopted by Ministers of Foreign Affairs of ICGLR Member States, June 2017 <http://www.refworld.org/docid/59e9cb8c4.html>.

<sup>30</sup> Consolidated Action Plan of the ICGLR on the Eradication of Statelessness 2017-2024 (revised and expanded in 2019 and 2020) <https://www.refworld.org/docid/60e70b3f4.html>.

<sup>31</sup> Outcome Document of the High-level meeting of ministers in charge of refugees in the Great Lakes Region', 7 March 2019, Munyonyo, Kampala, Uganda [https://ungreatlakes.unmissions.org/sites/default/files/outcome\\_document.pdf](https://ungreatlakes.unmissions.org/sites/default/files/outcome_document.pdf). Other documents from the meeting are available here: <https://ungreatlakes.unmissions.org/refugees-meeting>.

<sup>32</sup> Outcome document – Ministerial Conference on the Eradication of Statelessness in the Great Lakes Region, ICGLR & UNHCR, Nairobi, Kenya, 27 May 2019 <https://data2.unhcr.org/en/documents/download/69687>.

States made pledges important for the eradication of statelessness at both the High-Level Segment on Statelessness held at UNHCR's October 2019 Executive Committee Meeting in Geneva,<sup>33</sup> and at the Global Refugee Forum held in December 2019.<sup>34</sup> A number of Member States had already made similar pledges in 2011.<sup>35</sup>

The countries considered for this report all made relevant pledges in both 2011 and 2019:

- DRC pledged to support integration of refugees, including by facilitating access to long-term residency status (by removing the requirement to produce a passport from the country of origin), by improving civil registration and issue of identity documents, and by identifying cases of statelessness.
- Rwanda pledged to bring its nationality laws and procedures into line with the 1961 Convention on the Reduction of Statelessness; to ensure access to birth registration and identity cards for refugees; to facilitate naturalisation of stateless persons; to adopt a national action plan on statelessness, and to ensure issue of Rwandan nationality documents to those with entitlement.
- Uganda pledged to enhance continued refugee protection in Uganda, and to take action to eradicate statelessness, including adoption of a legal provision at national level to grant nationality to children born on the territory who would otherwise be stateless.<sup>36</sup>

A more detailed list of pledges is found under each country heading in Annex 4.

#### ICGLR commitments on nationality and statelessness

- [Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region](#), ICGLR, adopted by the First Summit of Heads of State and Government, Dar-es-Salaam, 19-20 November 2004
- [Brazzaville Declaration on the eradication of statelessness in the Great Lakes Region, 2017](#)
- [Consolidated Action Plan of the ICGLR on the eradication of statelessness in the Great Lakes Region \(2017-2024\)](#)
- [Outcome Document from the High-Level meeting of the Ministers in charge of refugees in the Great Lakes adopted by ICGLR Member States on 7 March 2019 at Munyonyo, Uganda](#)
- [Outcome Document of the ICGLR Ministerial Conference on the eradication of statelessness in the Great Lakes, April 2019, Nairobi](#)
- [Pledges by ICGLR and Member States at the UNHCR High Level Segment on Statelessness, Geneva, October 2019](#)

<sup>33</sup> 'Results of the High-Level Segment on Statelessness', High-Level Segment on Statelessness, Geneva, October 2019 <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

<sup>34</sup> Global Refugee Forum, December 2019, <https://globalcompactrefugees.org/article/global-refugee-forum>; pledges are summarised in an Excel spreadsheet available at <https://globalcompactrefugees.org/channel/pledges-contributions>.

<sup>35</sup> 'PLEDGES 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons', UNHCR ministerial meeting to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness (Geneva, Palais des Nations, 7-8 December 2011) available with other resources at <https://www.unhcr.org/ministerial-meeting.html>

<sup>36</sup> The Ugandan government has also pledged to ensure that unrecognised communities in Uganda are recognised as citizens. This applies, however, only to communities that are considered to have been present in the country before 1926 (the date established by the constitution).



## Objectives and methodology

This study was commissioned by the Secretariat of the ICGLR in collaboration with UNHCR in order to explore legal pathways to local integration and address risks of statelessness for refugees in protracted refugee situations. In 2009, the UNHCR Executive Committee adopted a resolution on protracted refugee situations, that defined a refugee situation as existing when refugees have been in exile “for five or more years after their initial displacement, without immediate prospects for implementation of durable solutions”.<sup>37</sup> The particular focus of this study is on refugees resident in the country of asylum for at least 20 years (referred to in the study as “long-term refugees”), for whom voluntary return to the country of origin, or resettlement or complementary pathways to a third country are not available options, and who may also be at risk of statelessness. The objectives of the study were to assess the risks of statelessness among specific groups of long-term refugees, to develop recommendations for local integration pathways that mitigate risks of statelessness, and to inform the development of a comprehensive durable solutions strategy for forcibly displaced persons in the Great Lakes region, particularly among long-term refugees.

A regional advisory group for the research project was established, chaired by the ICGLR Secretariat and including representatives of the office of the UN Special Envoy for the Great Lakes region, the Special Rapporteur for Refugees, IDPs and Stateless Persons from the African Commission on Human and Peoples’ Rights, the Regional Durable Solutions Secretariat for the Great Lakes (ReDSSGL)<sup>38</sup>, as well as representatives of UNHCR Regional Bureaux for East and Horn of Africa and Great Lakes and for Southern Africa.

The research consisted of a law and policy review in the countries of asylum and in relation to country of origin of main long-term refugee groups subject to this research, a survey of a representative and randomly chosen sample of long-term refugees in each country, focus groups with long-term refugees (as well as host communities in Uganda only), and key informant interviews in Uganda and Rwanda. National consultants in Uganda and Rwanda worked together with UNHCR staff in each country to conduct the research, and focus groups were conducted by UNHCR staff in DRC.

The particular long-term refugee groups chosen for the regional research, in agreement with the regional advisory group, were: (i) Rwandan refugees who arrived in DRC before 1998, and their descendants born in DRC; (ii) Congolese refugees who arrived in Rwanda before 2001, and their descendants born in Rwanda; and (iii) Congolese refugees who arrived in Uganda before 2001 and their descendants born in Uganda; as well as refugees who arrived in Uganda before 2001 from what is now South Sudan, and their descendants.<sup>39</sup> A total of 1,431 adult refugees were surveyed across the three countries. Among those surveyed, 17 percent had been born in the country of asylum. Of those born in the country of origin, the vast majority had been in the country of asylum for more than 20 years.

More details on methodology, including the profile of the refugees surveyed and the sampling strategy, are set out in Annex 1.

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<sup>37</sup> Conclusion on Protracted Refugee Situations No. 109 (LXI), UNHCR Executive Committee, 8 December 2009, <https://www.unhcr.org/excom/exconc/4b332bca9/conclusion-protracted-refugee-situations.html>.

<sup>38</sup> ReDSSGL is a coordination and information hub for ten NGOs: ACTED, CARE International, Concern Worldwide, the Danish Refugee Council (DRC), the International Rescue Committee (IRC), Mercy Corps, the Norwegian Refugee Council (NRC), Oxfam, Save the Children, and World Vision. See <https://www.redssgreatlakes.org/>.

<sup>39</sup> It had been hoped to conduct research also among those Burundian refugees in Tanzania since 1972 and their descendants born in Tanzania who had been missed during previous naturalisation initiatives. However, it was not possible to obtain official approval to conduct the sample survey and other data collection with these refugees during the time frames available.

### 3. Findings of the research

#### Gaps in national laws creating risks of statelessness

The first question to answer in determining whether a person is a refugee or not is what nationality the person holds – it is the person’s nationality (or statelessness) in the place of former habitual residence that establishes the reference country on the basis of which the claim to protection can be assessed. The claim to asylum then rests on a determination that the person cannot currently avail him or herself of the protection of the country of origin (whether the country of nationality or country of habitual residence, if the person is stateless), or of the protection of another country.<sup>40</sup> Questions of refugee nationality can be complex, especially if the refugee is also stateless, or may have a potential claim to more than one nationality but has never been formally recognised by any of the relevant national authorities.<sup>41</sup> Nonetheless, a refugee is generally presumed to retain the nationality of origin even though temporarily unable to benefit from the protection of that state. In principle, refugee protection in another state should be temporary, and resolved with the cessation of refugee status: for example, when the former refugee has voluntarily re-availed him or herself of the protection of the country of origin; when the circumstances causing the original flight have ceased and the refugee can therefore no longer continue to refuse to avail of the protection of the country of nationality; or when the refugee has acquired the nationality, and enjoys the protection, of the state of asylum or another state.<sup>42</sup>

In the case of very long-term refugees, the situation may become blurred by the passage of time and their effective – if not legal – integration into the country of asylum, especially if they hold no official identity documentation issued by the country of origin (or indeed may have been stateless before they fled that country). Other methods of proof of connection to a country of origin would have to be relied upon for nationality to be recognised in case return to that country is possible and desired. It is even more challenging to establish the nationality of their children born in the country of asylum, whose claim to the nationality of the state(s) of origin of the parents may depend on the completion of procedures that are not accessible, or documentary evidence of that nationality is not available. The grant of refugee status to the children of refugees provides those children with the same protection given their parents; but their nationality may be unclear. For these children of refugees, minimum rights to acquire nationality based on birth in the country of asylum will be necessary to protect against statelessness.

An assessment of the risks of statelessness for the children of long-term refugees born in the country of asylum thus requires legal analysis of (a) the rules applying to transmission of nationality to children born outside the country of nationality of the parents; (b) the rules for recognition of civil status events, including those occurring outside the country of nationality of the parents; and (c) the rules for acquisition of nationality of the country of birth. But in each case, the substantive provisions of the law are meaningless if not accessible in practice.

The key issues in preventing statelessness among refugees and their descendants therefore include the consideration of statelessness as part of the refugee registration and status determination procedures;

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<sup>40</sup> Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees, UNHCR, April 2019, HCR/1P/4/ENG/REV. 4, Part I, Chapter II, B(4), available at: <https://www.refworld.org/docid/5cb474b27.html>;

<sup>41</sup> Hugo Storey, “Nationality as an Element of the Refugee Definition and the Unsettled Issues of ‘Inchoate Nationality’ and ‘Effective Nationality’”, RefLaw.org, Parts I and II, 11 June 2017 & 2 June 2019 <https://reflaw.org/nationality-as-an-element-of-the-refugee-definition-and-the-unsettled-issues-of-inchoate-nationality-and-effective-nationality/>; <https://reflaw.org/nationality-as-an-element-of-the-refugee-definition-and-the-unsettled-issues-of-inchoate-nationality-and-effective-nationality-2/>.

<sup>42</sup> See Article 1(C)(3) and Article 1(C)(5) of the 1951 Convention relating to the Status of Refugees. See Annex 2 for the terminology used, as well as the UNHCR Master Glossary of Terms available at: <https://www.unhcr.org/glossary/>.

the issue of identity documents to refugees and stateless persons; ensuring universal birth registration (with attention to the details that should be recorded in the birth register and/or certificate); the establishment of minimum rights to nationality based on birth in the territory of the country of asylum as well as the possibility of acquisition of nationality based on long-term residence; and the removal of procedural barriers to accessing these rights. In many cases, long-term refugees are known to prefer acquisition of the nationality of the country of asylum, especially those who were born in the country of asylum. But in some contexts, a solution could be confirmation of the nationality of the country of origin of the long-term refugee (or of the child born in the country of asylum), with grant of a permanent residence status in the country of asylum and a route to acquisition of nationality of that country.

This section summarises the legal provisions in each of the three countries researched for this study, and their compliance with international standards. It also highlights some situations where international standards do not provide adequate guidance to resolve statelessness or determine nationality.

For more detailed analysis of international standards and national legal frameworks in relation to nationality of both the country of origin and of asylum, including more extensive references, see Annexes 3 and 4.

### Refugee registration and issue of identity documents

The UN and OAU refugee conventions establish the criteria to determine if a person is a refugee, and also require countries of asylum to issue identity and travel documents to refugees that recognise them as such. There is long-standing guidance on the implementation of these provisions.<sup>43</sup>

For those refugees who hold no identity documentation issued by the country of origin, the refugee identity document may be the only official document they hold that would form the basis of a claim to the nationality of that country. Refugee registration and identity documents are thus critical not only for protection and access to services in the country of asylum, but also for the future prevention of statelessness; or for the recognition and protection of the person as a stateless refugee.

The 1954 Convention relating to the Status of Stateless Persons has similar requirements for the issue of identity documents to stateless persons as those established by the 1951 Refugee Convention. UNHCR has also adopted guidance on the protection of stateless persons and establishment of stateless person determination procedures.<sup>44</sup> It is, however, unlikely to be useful to establish a stateless determination procedure and parallel issue of identity documents for those who are already registered as asylum seekers or refugees, since no additional rights would be granted to the individuals concerned. However, it may be important to record within the refugee registration that an individual may additionally be at risk of statelessness, in case this becomes relevant for later voluntary repatriation, local integration or resettlement procedures.

All countries in the Great Lakes region, including those surveyed for this report, have national processes to register refugees; most refugees in the region are recognised on a prima facie basis, without an individual refugee status determination procedure. In practice, refugees who are also stateless are rarely or never registered as such (there are some exceptions, but there is no systematic process of review at the time of registration). In DRC, the *Carte d'identité pour réfugié* is valid for only two years; in Rwanda

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<sup>43</sup> 'Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Reissued)' UNHCR 2019; 'Guidance on Registration and Identity Management', Chapter 5.3: Documentation, UNHCR, 2020 <https://www.unhcr.org/registration-guidance/chapter5/documentation/>

<sup>44</sup> "Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons" UNHCR, 2014 <https://www.refworld.org/docid/53b676aa4.html>; "Good Practice Paper: Action 6 Establishing Statelessness Determination Procedures for the Protection of Stateless Persons" UNHCR, 2020 <https://www.refworld.org/docid/5f203d0e4.html>.

and Uganda, the refugee identity card is valid for five years. For long-term refugees, the renewal requirements for refugee documents can put them out of reach, given travel and other costs.

For more on refugee identity documents, see Annex 3 on international standards, heading on recognition of refugee or stateless person status.

### Birth registration

Birth registration is in all countries an important foundation for the protection of children, recognised as a right by both the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), and other human rights treaties. Birth registration is critical to establishing in legal terms the place of birth and parental affiliation, which underpins the right to attribution or acquisition of the parents' nationality or the nationality of the state where the child is born – as well as other rights based on family relationships. However, birth registration in itself is not sufficient to resolve statelessness, especially if the nationality of parents is uncertain or if the child cannot acquire their nationality.

Because refugees will usually be unable to obtain copies of these important documents issued in the country of origin from their own consular authorities, Articles 12 and 25 of the UN Refugee Convention (and of the Convention relating to the Status of Stateless Person) also provide for the recognition of personal status and administrative assistance for the authentication or substitution of personal status documents that would normally be obtained from a consulate of the country of nationality (for more analysis, see Annex 3 on international standards – heading on birth registration and civil registration generally).

The laws of all three countries considered in this report establish the right to free and compulsory birth registration, with no exclusion for refugees or children of other foreigners. Although Uganda provides for a fee for birth certificates, this fee is waived in the case of refugees. The legal frameworks in DRC and Rwanda are comprehensive and detailed in relation to the procedures for birth registration and civil registration, including for late registration of birth. The legal framework for civil registration is much less elaborated in the case of Uganda, although late registration of births is provided for.

Despite the legal frameworks, birth registration rates have historically been low in all three countries. Nonetheless, all three have been making significant efforts to improve coverage, which had reached 89 percent of children under five in Rwanda, by the end of 2020. In Uganda and DRC the survey data is less up to date, but only around one third or less of the births of children under five were reported registered in around 2016/17. It is also of concern that even among those registered, many do not hold birth certificates. This especially a concern among refugees in both Uganda and DRC. Indeed, UNHCR reported in December 2019 that 95% of children aged 0 to 4 being accommodated in UNHCR-coordinated sites for internally displaced people in eastern Congo did not have birth certificates.<sup>45</sup>

One provision of concern may be where the birth certificate records the nationality of the child. The interpretation of the law of another country in relation to attribution of nationality to a child born abroad is a complex question, especially in case of refugees. It is not advisable to give this task to district-level civil registration officials. Moreover, a determination by the country of a child's birth that a child has another nationality does not in itself bind the authorities of that state. UNHCR thus advises in general that birth certificates should not record the nationality of children, but that if a field for child's nationality exists on a birth certificate, it should be left blank where nationality is unclear.<sup>46</sup> If this is the case, there should be a procedure to determine what the nationality of the child is, or what nationality may be acquired, or if the child may be stateless. A new format birth certificate introduced in Rwanda in 2022, however, provides for the nationality of the child to be recorded; there is not yet any guidance on how

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<sup>45</sup> See references with information on civil registration under country headings in Annex 4.

<sup>46</sup> Child Protection Issue Brief: Birth Registration, UNHCR, August 2013  
<https://www.refworld.org/docid/523fe9214.html>.

this status will be determined in case of doubt. In Uganda, the Registration of Persons Act provides for a birth certificate to record the nationality of the child as well as of the parents; however, the current birth certificates only record the nationality of the parents.<sup>47</sup> In DRC, the nationality of the parents is recorded on the birth certificate; the family code provides that a person born on Congolese territory is identified as a foreigner, based on the law of the country of origin of the parents.<sup>48</sup>

The DRC and Rwandan laws provide for the civil registry and courts to be able to substitute civil status records where they are absent, based on submission of evidence about the event (birth, marriage, death, etc).<sup>49</sup> In Uganda, there is the possibility of a “statutory declaration” to establish legal recognition of civil status events, which would appear to apply to events occurring in or outside of Uganda.<sup>50</sup> In principle, these procedures would appear to apply whether the event occurred on the territory of the country or abroad, and would potentially be of use for refugees who do not have birth and other civil status certificates from their country of birth. In practice, they are not easily accessed, especially by refugees.

#### Acquisition of nationality by adult refugees

The 1951 UN Convention Relating to the Status of Refugees provides that states parties “shall as far as possible facilitate the assimilation and naturalisation of refugees”, by such measures as expediting proceedings and reducing the costs of naturalisation (Article 34); a similar clause is included in the Convention relating to the Status of Stateless Persons (Article 32). The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa requires countries of asylum to use their best endeavours to “secure the settlement” of refugees who are unable to return home (Article II.1).

All three countries are party to the UN and OAU Refugee Conventions. Rwanda and Uganda are parties to the 1954 Convention relating to the Status of Stateless Persons, and DRC has pledged to accede.

All three countries include provisions in their nationality laws that would in principle permit refugees to acquire nationality based on long-term residence in the country (seven years in the case of DRC, 15 years for Rwanda, or 20 years for Uganda). In 2021, Rwanda’s new nationality code also established in principle a procedure for stateless persons to be able to acquire nationality, based only on presence in the territory and subject to the condition that the person is not a threat to national security (although this has yet to be put into operation in practice).

In Uganda, the 1995 constitution makes it more difficult for refugees to acquire nationality than other resident foreigners, through a distinction between acquisition of citizenship by “registration”, on the basis of ten years’ residence or marriage, or by “naturalisation”, on the basis of conditions to be established by legislation.<sup>51</sup> The constitution (as implemented by the Citizenship and Immigration Control Act 1999, as amended 2009) limits acquisition by registration to those who have “legally and voluntarily migrated to Uganda”, thus excluding refugees; but allows in principle for a generally available naturalisation process to be established. The Citizenship and Immigration Control Act of 1999 (as amended 2009) provides for naturalisation based on 20 years residence as an adult and other conditions. The Constitutional Court has confirmed that in principle refugees should be able to acquire citizenship by naturalisation.<sup>52</sup>

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<sup>47</sup> Registration of Persons Act, sec. 39; interviews, Kampala, 2021.

<sup>48</sup> Family code, art. 71: “L’identification d’un étranger né sur le territoire congolais se fait dans l’acte de naissance conformément aux dispositions de son droit national.”

<sup>49</sup> Rwanda: Law n° 32/2016, as amended, art. 86-91.; DRC: Family code, arts. 153 – 159.

<sup>50</sup> Statutory Declarations Act, 2000.

<sup>51</sup> Samuel G. Walker, ‘From Refugee to Citizen? Obstacles to the Naturalisation of Refugees in Uganda’ (Kampala, Uganda: Refugee Law Project, 2011), [https://www.refugeelawproject.org/files/briefing\\_papers/Naturalisation\\_of\\_Refugees.pdf](https://www.refugeelawproject.org/files/briefing_papers/Naturalisation_of_Refugees.pdf).

<sup>52</sup> *Centre for Public Interest Law Ltd and Salima Namusobya v. Attorney General*, Constitutional Petition No. 34 of 2010, Judgement of 6 October 2015.

In some protracted refugee situations, a form of permanent residence status has been provided to refugees as a step towards eventual naturalisation (if that is desired).<sup>53</sup> Even though the immigration laws of the three countries allow in principle for a permanent residence status (see Annex 4 on national legal frameworks), these provisions are targeted at those making investments in the country, or working in the formal economy, and with a documented existing nationality. In practice, such a status is not accessible to refugees in any of the three countries surveyed; and the refugees surveyed generally preferred the maintenance of their existing status to a permanent residence option.

In practice, naturalisation is very difficult to access in all three countries, thanks to procedural barriers. The most extreme case is DRC, where an onerous list of conditions applies, and only 22 naturalisations were granted between 1984 and 2020.<sup>54</sup> In Rwanda, 935 people were granted Rwandan nationality between 2009 and 2020.<sup>55</sup> Access to Ugandan citizenship is somewhat easier: between July 2014 and June 2018, Uganda had registered 1,460 people as citizens, and naturalised 452<sup>56</sup>; it is understood that a number of refugees married to Ugandans are included in these numbers.

However, Uganda's law has some very problematic features. The minor children of parents who register or naturalise as Ugandan citizens do not acquire citizenship through that process (and, as noted and analysed in greater detail in the Uganda section of Annex 4), those born after a parent has registered or naturalised are also not attributed citizenship at birth, creating obvious risks of statelessness. By contrast, both the Rwandan law and the Congolese law provide that minor children are automatically granted nationality if a parent is naturalised, in line with the general principle of law from the civil law tradition on "*acquisition de la nationalité par effet collectif*". If acquisition of nationality (including through subsidiary acquisition of nationality for children of those who have naturalised or registered as nationals) were to become more widely available, this would be an important protection against statelessness for descendants of the person acquiring nationality.

All three countries also provide for acquisition based on marriage, based on somewhat less onerous conditions than acquisition based on residence – in all three cases requiring a legally registered (civil) marriage, meaning that acquisition is dependent on the accessibility of civil registration services.

#### Acquisition of nationality by children

The UN Convention on the Rights of the Child provides that every child shall have the right to acquire a nationality (Article 7). This right is also contained in other human rights treaties, including the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of All Migrant Workers and Members of their Families (CMW), and the Convention on the Rights of Persons with Disabilities (CRPD). The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits discrimination based on sex in the transmission of nationality to children (and spouses); while the Convention on the Elimination of All Forms of Racial Discrimination (CERD) also contains provisions that restrict discrimination on racial or ethnic grounds in grant of nationality.

As an important step to ensure that the right to nationality is respected in practice, Article 1 of the 1961 Convention on the Reduction of Statelessness provides that a state shall grant nationality to a child born in its territory who would otherwise be stateless. Article 2 states that a child found in the territory shall

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<sup>53</sup> UNHCR's *10-Point Plan of Action on Refugee Protection and Mixed Movements*, Chapter 7: 'Solutions for Refugees', p.186. Among ICGLR Member States, this has been the case in Zambia, for example: see Annex 3, heading on permanent residence and other forms of long-term immigration status.

<sup>54</sup> Information provided by the Ministry of Justice to the UNHCR Kinshasa office, May 2020, reported in Bronwen Manby, 'Citizenship and Statelessness in the Member States of the Southern African Development Community' (Geneva: UNHCR, 2020), <https://www.refworld.org/docid/6012a0d44.html>.

<sup>55</sup> "Over 900 Got Rwandan Nationality Since 2009", The New Times (Kigali), 5 October 2020.

<sup>56</sup> See Bronwen Manby, 'Citizenship and Statelessness in the East African Community' (Geneva: UNHCR, November 2018), <https://www.refworld.org/docid/5bee966d4.html>.

(in the absence of proof to the contrary) be considered to have been born within that territory of parents possessing the nationality of that state.

Within the African human rights system, Article 6(3) of the African Charter on the Rights and Welfare of the Child provides that every child has the right to acquire a nationality. Article 6(4) adopts a similar minimum protection to that provided in Article 1 of the Convention on the Reduction of Statelessness, requiring states to provide in law that:

*A child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

All three countries considered in this study are party to the principal human rights treaties guaranteeing the right to a nationality, including the CRC and the ACRWC. Only Rwanda is a party to the 1961 Convention on the Reduction of Statelessness, which establishes the minimum protections against statelessness that should be included in national laws. However, Uganda and DRC have both pledged to accede.

The laws of all three countries in this study provide men and women equal rights to transmit nationality to their children, removing one of the principal causes of statelessness in countries where children of foreign fathers cannot acquire the nationality of their mothers.

All three countries make explicit reference to ethnic identity or national origin in their nationality laws, including in relation to attribution of nationality to children at birth, although with different impacts in each case. (These provisions are discussed in more detail in Annex 4 on national legal frameworks.)

The law of Uganda is most problematic. The Ugandan constitution of 1995 and the Citizenship and Immigration Act of 1999 attribute “citizenship by birth” to all those born in the country who are members of one of the “indigenous communities” listed in a schedule to the constitution. The only exceptions to the requirement for membership of an indigenous community in order for a child to be attributed citizenship at birth relate to those whose parents were already citizens of Uganda under the 1962 and 1967 constitutions, who retained their existing status under the 1995 constitution (recently confirmed by the Ugandan High Court in relation to qualifying Ugandans of Somali ethnicity<sup>57</sup>). The risks of statelessness created by this legal framework are clear – including for those who are members of communities that have always been in Uganda, but are not included – and there have been proposals to amend the constitution to add new communities to the list.<sup>58</sup> The constitutional provisions also provide that citizenship is acquired at birth by operation of law only if a parent is a citizen by birth – the child of a registered or naturalised citizen born after the parent acquired citizenship is not attributed citizenship at birth, but must apply on his or her own account.<sup>59</sup> The 20-year period of residence required for refugees to naturalise only begins to run once a person has attained majority, meaning that an application for the child of refugees could only be made at the age of 38. A person who could not acquire a different nationality from a parent at birth would be stateless for almost forty years before an application for the discretionary grant of Ugandan citizenship could be made, with no guarantee of success.

In DRC, the constitution and the nationality code attribute “nationality of origin” to “every person belonging to the ethnic groups of which the people and the territory constituted what became Congo (currently the Democratic Republic of Congo) at independence.”<sup>60</sup> This provision is supplemented by

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<sup>57</sup> *Abdu Abucar Hussein and 7 others v. Attorney General*, Uganda High Court, Civil Suit No. 437 of 2019, Judgment of 18 March 2022.

<sup>58</sup> See discussion in Manby, ‘Citizenship and Statelessness in the East African Community’.

<sup>59</sup> Constitution of Uganda, 1995, as amended, art.10.

<sup>60</sup> Constitution of the Democratic Republic of Congo, 2006, Article 10: “La nationalité congolaise est une et exclusive. Elle ne peut être détenue concurremment avec aucune autre. La nationalité congolaise est soit d’origine, soit

others stating that nationality is attributed at birth if either the mother or the father is Congolese at the time of the child's birth (whatever the means by which the parent acquired nationality); in this case, however, the parentage of the child has no effect on nationality unless it is established during the child's minority in accordance with Congolese law – that is, in accordance with the full requirements of the family code in relation to civil registration. These requirements are already very difficult to fulfil for many Congolese born and resident in DRC, and next to impossible for those born in another country as refugees, leaving the those affected stateless once they become adults.

The Rwandan constitution of 2003, as amended 2015, provides that “All persons of Rwandan origin and their descendants are, upon request, entitled to Rwandan nationality.”<sup>61</sup> This article has been the foundation for provisions in the 2004, 2008, and 2021 nationality laws enabling automatic or facilitated acquisition of Rwandan nationality for people of Rwandan origin returning to Rwanda. The 2021 Rwandan nationality law has somewhat altered the framework, establishing a general distinction between “nationality of origin” and “nationality by acquisition”, rather than providing for facilitated acquisition of nationality for those of Rwandan origin. Those eligible for nationality “of origin” are those who have at least one parent “who is a Rwandan not through acquisition but by virtue of Rwandan ancestry”, supported by corroborating testimony and evidence.<sup>62</sup> There is, however, some ambiguity about this definition and the meaning of “Rwandan ancestry”.<sup>63</sup>

The law states that the child of a naturalised parent acquires automatically nationality at birth; however, the child inherits the status of nationality “by acquisition” rather than “of origin”, with implications for political rights and for the possibility of deprivation of nationality, and for its recovery.<sup>64</sup>

In all other cases, the 2021 nationality law requires every person to apply for nationality, even if one or both parents are citizens, rather than providing for attribution by operation of law at birth to the child of a Rwandan parent.<sup>65</sup> The intention of the application procedure appears to be procedural rather than legal, and the ministerial order implementing the law places the application obligation mainly on those born outside the country who are not recorded within the Rwandan civil registry.<sup>66</sup> Despite positive reforms in the 2021 law, there are therefore concerns about the ambiguity of these provisions. It is too soon to evaluate the interpretation and impact of this framework in practice.

In some contexts, facilitated acquisition of nationality on the basis of ethnic identity or national origin can operate to reduce statelessness, by reducing the requirements to produce birth certificates and other documentary proof of entitlement to citizenship. However, an absolute restriction of entitlement to nationality at birth based on such criteria (as is the case in Uganda) is not permissible in international law. In general, grounds for attribution of nationality at birth or acquisition later in life that discriminate on ethnicity, national origin, or similar grounds should be subject to strict scrutiny in relation to their

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d'acquisition individuelle. Est Congolais d'origine, toute personne appartenant aux groupes ethniques dont les personnes et le territoire constituaient ce qui est devenu le Congo (présentement la République Démocratique du Congo) à l'indépendance.”

<sup>61</sup> Rwanda Constitution 2003, revised 2015, art. 25. The original version of the article also included the provision that “Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31 December 1994 by reason of acquisition of foreign nationalities automatically reacquire Rwandan nationality if they return to settle in Rwanda.” See discussion in Frank Dusabe, ‘Report on Citizenship Law: Rwanda’ (Fiesole: GlobalCit, European University Institute, 2020), <https://cadmus.eui.eu/handle/1814/66908>.

<sup>62</sup> Law No. 002/2021.OL, arts. 2(7), 5, 6 & 7; see also Ministerial Order N° 007/01 of 23/03/2022.

<sup>63</sup> For comments from the Rwandan authorities on the analysis of these provisions, see Annex 4, heading on Rwanda, subheading on access to Rwandan nationality.

<sup>64</sup> Law No. 002/2021.OL, art. 20.

<sup>65</sup> Law No. 002/2021.OL, Chapter II ‘Applying for and granting Rwandan Nationality’.

<sup>66</sup> Ministerial Order N° 007/01, art.3(2).



compliance with human rights standards. There is a need to take particular care that statelessness is not created for those who cannot show that they belong to the required ethnic community or national origin, and have no connection enabling them to claim nationality successfully in any other state.<sup>67</sup> Legal provisions of this type may also create risks of statelessness for those perceived to have that ethnicity or origin, who as a result are denied recognition of nationality by another state where they have as a matter of fact much stronger connections, on the grounds that they should seek recognition of nationality from the state “of origin”.

The laws of all three countries include provisions for adopted children to acquire nationality. In principle, this provides an important protection for children displaced by conflict and separated from their birth parents. However, full legal adoptions are rare, meaning that this protection is of limited real-world significance. In the case of Uganda, moreover, the procedures require a delay until 16 when the child can take an oath of allegiance, and the acquisition of citizenship by registration or naturalisation means that the child would not transmit citizenship to his or her own child.<sup>68</sup> In Rwanda, there is in addition provision for a “simple adoption” which is either with the consent of the parents, or, if the parents cannot consent (because they are missing or dead), consent may be given by others given authority by the law.<sup>69</sup> Simple adoption does not break the link with the birth family, but allows for children looked after by adults who are not their biological parents to have that relationship officially recognised. This could be important also in case of repatriation or resettlement; but simple adoption does not provide rights to acquire Rwandan nationality. The other countries do not have such a procedure.

DRC and Rwanda both have provisions that in principle allow a person born in the territory to acquire nationality at majority on application, if he or she is permanently resident, subject to other conditions.<sup>70</sup> This could be an important right for the children of long-term refugees, if the procedure were made accessible. In practice, however, this procedure is not accessible in DRC. It is not yet clear how easily this procedure may be accessed under the 2021 Rwandan nationality code, but similar provisions under the previous code were not accessed by refugees. Uganda, however, establishes no general rights based on birth in Uganda for those who are not members of one of the indigenous communities listed in the constitution, creating significant risks of statelessness.

Whatever the underlying legal regime, two essential protections against statelessness for children are the presumption of nationality for foundlings (children found in the territory of unknown parents and place of birth), and the attribution of nationality to a child born in the territory not granted nationality at birth by any other state (because their parents are stateless, of unknown nationality, or cannot transmit nationality to a child).

In DRC a newborn child found in the territory of unknown parents is presumed to be Congolese, unless a foreign nationality is established before the child becomes an adult. A child born in DRC of parents “with the status of stateless person”<sup>71</sup> is Congolese, as are those who cannot acquire nationality of their parents

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<sup>67</sup> Background Note on Discrimination in Nationality Laws and Statelessness, UNHCR, 20 October 2021, <https://www.refworld.org/docid/616fda104.html>.

<sup>68</sup> Citizenship and Immigration Control Act 1999, secs. 13 and 15.

<sup>69</sup> Law n°32/2016 of 28/08/2016 governing Persons and Family, as amended 2020, Chapter IV, Adoption, arts. 289-291.

<sup>70</sup> DRC Nationality Code, art. 21; Rwanda Law No. 002/2021, art.9.

<sup>71</sup> There is no process to grant the “status of stateless person” in Congolese law. However, the definition section of the Nationality Code (art. 5) defines “*apatride*” in accordance with the definition in the 1954 Convention relating to the Status of Stateless Persons (“a person who is not considered as a national by any other state under the operation of its law”).

because their law recognises only *jus soli* attribution, or discriminates on the basis of birth in or out of wedlock.<sup>72</sup>

In Uganda a child found in the territory up to the (apparent) age of five is presumed to be a citizen<sup>73</sup>; however, there is no similar provision for otherwise stateless children.

In Rwanda, an application for nationality on behalf of a foundling requires only that the person be found in the territory of Rwanda; an application on the grounds of statelessness requires that the person is a stateless person resident on the territory of Rwanda on the date of application and does not pose a threat to national security.<sup>74</sup> (Notably, and very positively, acquisition of nationality on the grounds of statelessness does not require birth in Rwanda.)

Although requirements to recognise the nationality of foundlings are generally quite straightforward to interpret and apply, provisions on otherwise stateless children are more complex. It is not necessarily obvious if a child born outside the country of nationality of a parent has been granted the nationality of that parent at birth; and this analysis is especially complex in case of refugee children. Many countries require parents to register their children born abroad with state authorities in order for nationality to be acquired by the child – and refugees may compromise their status if they approach the consulate of their country of origin. Refugees who are also stateless are rarely registered as such; and many refugees have no documents from their country of origin, meaning that even if they are nationals of that country under the strict interpretation of the law, they could be unable to prove nationality if they were to return there. It is thus not possible to make the assumption that the child of refugees has acquired the nationality of a parent: their nationality is often unclear.<sup>75</sup>

#### Access to nationality for those born outside the country of the parent's nationality

The 1961 Convention on the Reduction of Statelessness includes provisions that a state shall grant nationality to a child born outside the territory of parents who are its nationals if the child would otherwise be stateless (does not acquire the nationality of the state of birth). It does not include specific provisions governing the situation of the children of refugees.

The nationality laws of DRC, Rwanda, and South Sudan are relevant in assessing the right to nationality of the country of origin by the refugee populations considered in this study.

The Congolese nationality code does not provide additional conditions for those born abroad; however, where nationality is based on the assertion that one parent is a Congolese national (as opposed to membership of one of the ethnic communities of DRC) the parentage of the child has no effect on nationality unless it is established during the child's minority in accordance with Congolese law (that is, through the procedures in the civil code).

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<sup>72</sup> DRC Nationality code, art.9.

<sup>73</sup> Citizenship and Immigration Control Act 1999, sec.13.

<sup>74</sup> Organic Law N° 002/2021.OL of 16/07/2021 governing Rwandan Nationality, arts. 8 & 9. The previous nationality code provided for nationality to be attributed to children born in the territory of unknown or stateless parents, or who could not acquire the nationality of one of their parents, and for abandoned infants to be presumed born in Rwanda: Organic Law No. 30/2008, art. 9.

<sup>75</sup> Gábor Gyulai, 'The Long-Overlooked Mystery of Refugee Children's Nationality', in *The World's Stateless: Children* (Tilburg, NL: Institute on Statelessness and Inclusion, 2017), 242–47, <https://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/the-long-overlooked-mystery-of-refugee-childrens-nationality.html>; Bronwen Manby, "Legal Identity for All" and Statelessness: Opportunity and Threat at the Junction of Public and Private International Law', *Statelessness and Citizenship Review* 2, no. 2 (2020): 248–71.

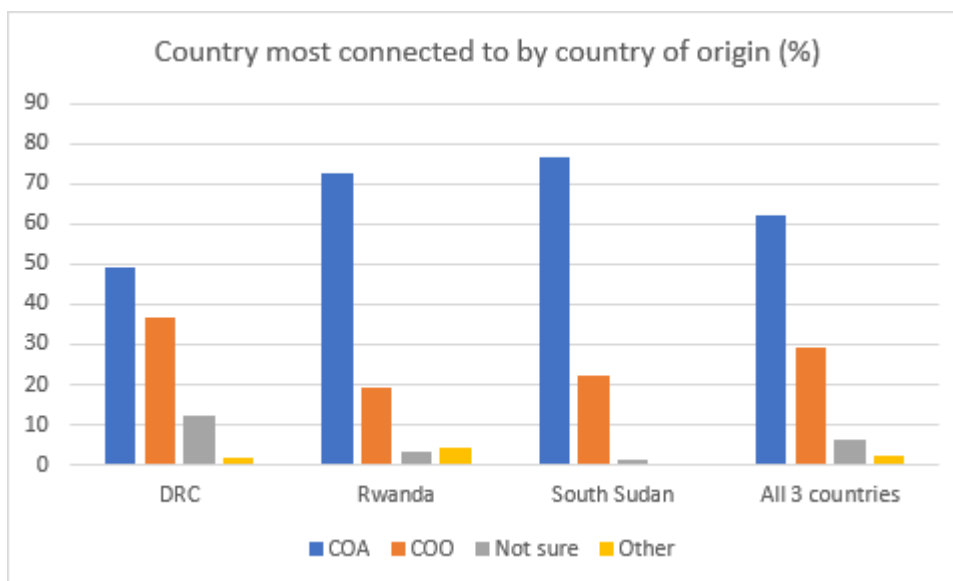
Similarly, no specific additional conditions are applied for the acquisition of nationality “of origin” to those born outside of Rwanda. However, an application is required, as it is for those born in Rwanda.<sup>76</sup> The implication is therefore that those children remain without Rwandan nationality if there is no application. The ministerial order does not specify what information would satisfy the requirements for proof that the parent of an applicant was of “Rwandan ancestry”. According to the family code, foreign civil status documents are authoritative; and in case of doubt, a court will rule on the validity of the record.

The study did not consider Ugandans born in other countries. For South Sudanese born in Uganda, the Transitional Constitution of South Sudan provides that “Every person born to a South Sudanese mother or father shall have an inalienable right to enjoy South Sudanese citizenship and nationality”. The South Sudanese Nationality Act 2011 provides for very broad attribution of South Sudanese nationality to those with parents, grandparents or great grandparents on the male or female line were born in South Sudan; or belonging to one of the indigenous tribal communities of South Sudan. The Civil Registry Act provides that civil status events taking place abroad are recognised if they are registered with the foreign authorities and with the relevant consulate.

## Views of refugees

### Country of strongest connection

The great majority of the long-term refugees surveyed felt more connected to the country of asylum, whether or not their parents and grandparents all originated from the same country (as was true for most of those surveyed). Among the three countries, 62 percent felt closest to the country of asylum (rising to 70 percent of those living in urban areas), and 29 percent to the country of origin as recorded in their refugee registration. The remainder were not sure, or felt more connected to another country.



There are variations among the different countries of asylum. Among the long-term refugees in Rwanda, 54 percent felt most connected to Rwanda; among those in DRC, 72 percent felt most connected to DRC; among those in Uganda, 78 percent felt most connected to Uganda. Among those born in South Sudan, DRC or Rwanda, with refugee status in Uganda or DRC, a significant majority most felt more connected to the country of asylum; whereas just over half of those with refugee status in Rwanda but born in DRC still felt more connected to DRC.

Unsurprisingly, those holding refugee status who were born in the country of asylum were more likely to feel more connected to the country of asylum – 74 percent of all those refugees born in the country of asylum felt more connected there. Among these, 80 percent of those born in the DRC felt most connected

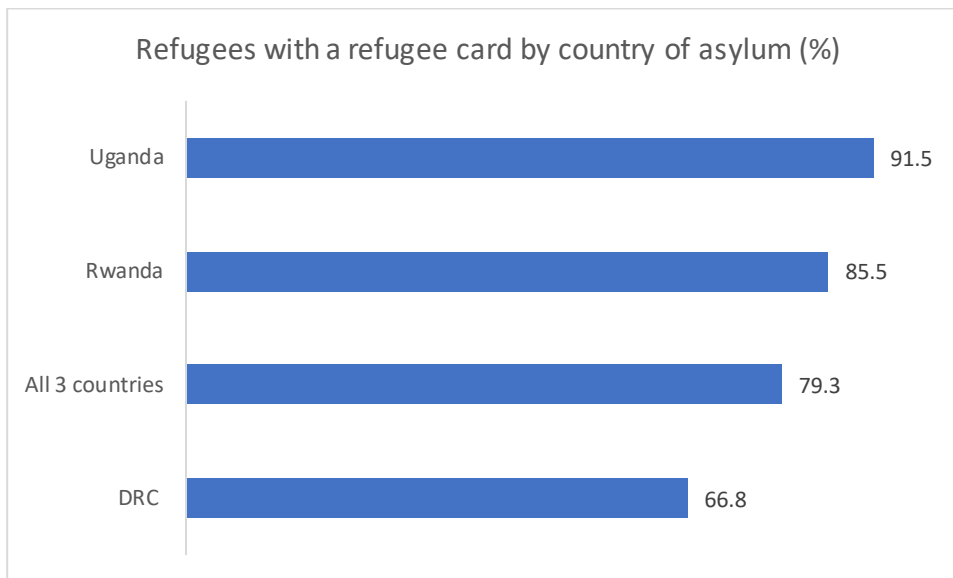
<sup>76</sup> Organic Law N° 002/2021.OL, arts.5–7; Ministerial Order N° 007/01, art.3.

to the DRC; a similar percentage (76 percent) of those born in Uganda felt most connected to Uganda. Again, the percentage was lower among those born in Rwanda, where just under half felt most connected to Rwanda.

Among the refugees surveyed, 6 percent -- 84 in total -- said that they were “not sure” which country they felt most connected to. The “not sure” responses were only 1.2 percent in Uganda; 4.6 percent in DRC; and 13.7 percent in Rwanda.

#### Access to identity documents

Among adults, about 80% of the long-term refugees surveyed across all three countries had been issued a refugee identity document, even if expired: 67 percent in DRC (of which 70 percent were currently valid); 85 percent in Rwanda (of which 85 percent were valid); and over 90 percent in Uganda (of which 58 percent were valid).



Very few (less than 5%) held a convention travel document to enable them to leave the country of asylum.<sup>77</sup> Awareness of such a document was low, including among those participating in focus groups.

The most important problems caused by lack of currently valid identity documents named in the survey were (in descending order) restrictions on freedom of movement, access to primary education, government services generally, health care, secondary education, food, and other services. The focus groups provided more insights into the challenges created by lack of identity documents.

In DRC in particular, refugees highlighted lack of valid refugee ID documents as a problem. Those living in remote rural areas found it difficult to renew their ID documents (necessary every two years). Lack of ID documents placed refugees at risk of extortion or beatings at checkpoints run by the army or police, significantly restricting freedom of movement, and impacting livelihoods by preventing farm produce from reaching markets or other trading activities.

In Rwanda, 7 percent of respondents said that they had faced difficulties through the lack of identity documents, especially in accessing government services. In focus groups, although the great majority held refugee identity cards, some long-term refugees noted problems or delays in renewing or replacing identity documents or getting incorrect details changed.

In Uganda, most long-term refugees had received identity documentation at some point during their asylum in Uganda, but almost half of those interviewed had refugee IDs that had expired. Some refugees

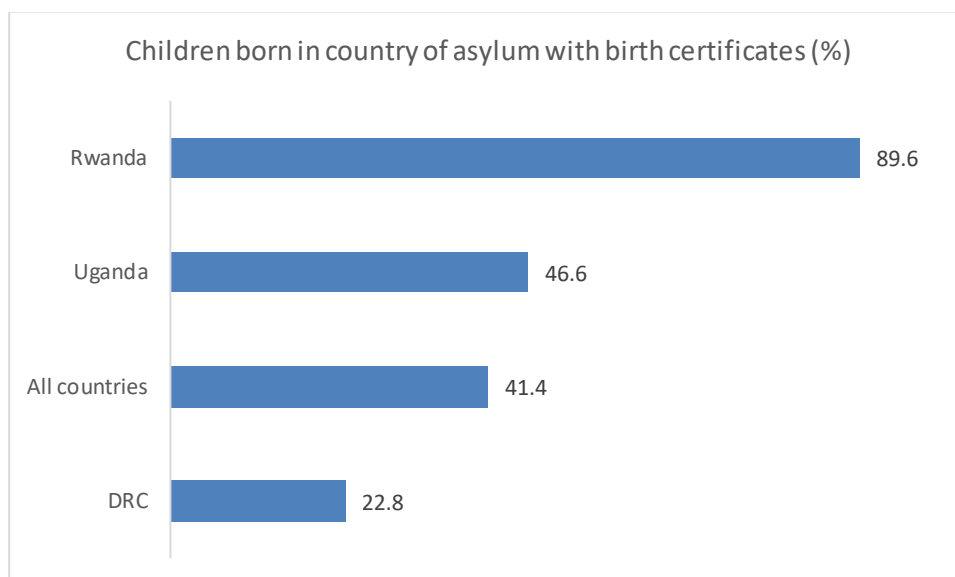
<sup>77</sup> The right to a Convention travel document (CTD) is provided for in Article 28 of both the 1951 Convention relating to the Status of Refugees and the 1954 Convention relating to the Status of Stateless Persons. The term refugee travel document is also commonly used. See UNHCR Master Glossary of Terms <https://www.unhcr.org/glossary/>.

had lost their refugee IDs and were unable to replace them. In focus groups, those with lost or expired IDs claimed that they were unable to obtain replacements in the settlements because the processes for renewal or replacement were difficult to access. These refugees indicated that they rely on their refugee attestation documents as alternative IDs – which are generally accepted as identity documents, including for registration at health facilities and schools. Refugees stated that lack of identity documents constrained freedom of movement to some extent, as well as access to financial services.

#### Birth registration for adult refugees and their children

Overall, only 10 percent of the adult long-term refugees surveyed for this report had a birth certificate, and only 8 percent of those born in the country of origin. Those registered refugees born in the country of asylum were more likely to have a birth certificate – 28 percent of those born in Uganda (out of 72 people in total in this category); 10 percent in Rwanda (out of 34 people); and in DRC, only 6 percent (out of 137 people).

However, those adult refugees interviewed who themselves had children born in the country of asylum reported much higher rates of birth registration for their children, indicating an improvement in access over time.



Overall, 41 percent of children born to refugees were reported to hold a birth certificate, with the figure similar whether resident in a rural or urban area. In DRC, 23 percent of children born to refugees in that country held a birth certificate; 47 percent of children born in Uganda; and 90 percent of those in Rwanda.<sup>78</sup>

Although a majority did not report significant difficulties as a result of a lack of a birth certificate for the child, 25 percent of respondents mentioned challenges accessing services.

In general, most parents were not legally married at the time of their children's birth – the highest percentage was in Rwanda, where 45 percent reported that they were in a legally registered marriage at the time of the child's birth. The existence of a legal marriage or holding of a currently valid refugee ID did not make a significant difference to the rates of birth registration in any country.

<sup>78</sup> In Rwanda, UNHCR has also been working with NIDA since 2021 to issue or reissue birth certificates to all refugees born in the country, including those born many years ago. According to information received from the Rwandan government in comments on this report, by June 2023, 91% of refugees born in Rwanda had a birth certificate, irrespective of age; while 94.3% of the births of children born in Rwanda aged 0-17 had been registered according to the 2022 census.

The situation is more concerning for children being looked after by respondents who were not their biological parents. More than 30 percent of adults surveyed said that they were looking after children who were not their own. In sixty percent of these cases, there was no official record of this fact, and only one third of these children held a birth certificate.

Focus groups in DRC indicated that in Masisi, North Kivu, the Congolese authorities might refuse to register births on the (illegal) grounds that the refugee parents were not Congolese. However, in both North and South Kivu, focus groups reported that access to birth registration had become easier for children born in recent years, with the facilitation of humanitarian organisations.

In Rwanda, focus groups indicated that the parents' lack of identity documents or of a legally registered marriage could create difficulties in registering children. Although the Family Code provides for a process to fathers to acknowledge children born out of wedlock<sup>79</sup>, it was reported that some women had found it not possible to register children in the name of the father without a legally registered marriage.<sup>80</sup> There could also be difficulties if the parents were of mixed refugee status and Rwandan nationality. If parents were looking after children that were not their own but members of the extended family, the recognition of the legal connection to the children could create challenges – for example, by creating delays in case of potential resettlement.

Focus groups in Uganda indicated that refugees in settlements had some difficulty accessing civil registration services for births, marriage, deaths, and other life events because of the cost of travel to subcounty or district offices. In addition, they were sometimes required to pay for the certificates even though refugee birth certificates are supposed to be free of charge. Despite outreach and awareness-raising campaigns, the refugees were also unsure about the procedures for birth registration, and the assistance available from government village health technicians (VHTs) or NGO workers was intermittent. Most, however, have birth notifications issued by health centres (except for those born in Kiryandongo health facilities where gaps in issuing these documents were reported). There was, however, sometimes a confusion about what constitutes a valid birth certificate, and whether a birth notification was sufficient.

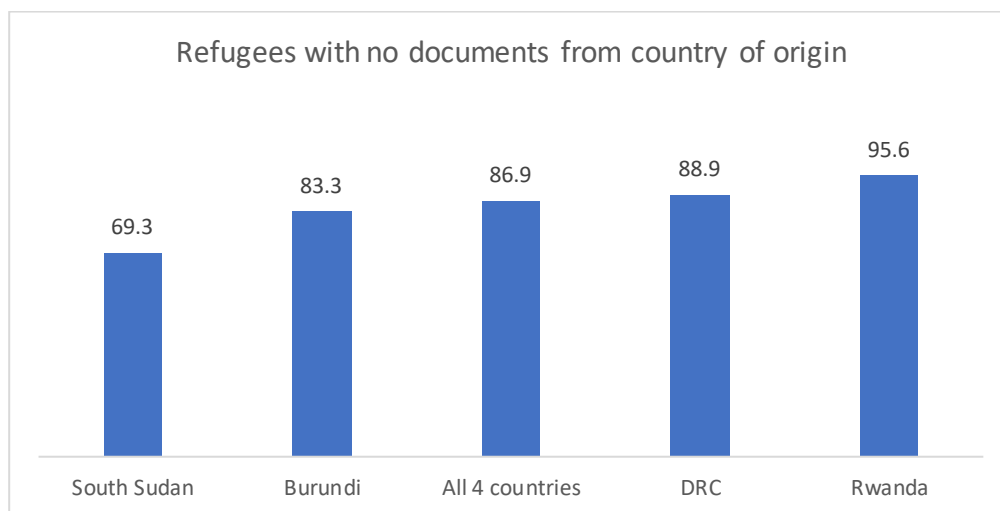
#### Identity documents from country of origin and access to consular assistance

Almost 90 percent of long-term refugees surveyed across the three countries had no identity documents of any kind from their country of origin. Of the remaining handful, some held a national ID, birth certificate, passport, or voter's card, and others held documents such as vaccination certificates or education diplomas. Therefore, the only official evidence of their nationality of origin they held was their registration with UNHCR and/or national authorities as refugees originating from that country. Those least likely to hold documents from the country of origin were refugees from Rwanda, among whom 96 percent held no documents issued in Rwanda; while those most likely to hold such documents were refugees from South Sudan, among whom 69 percent had at least one identity document from South Sudan.

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<sup>79</sup> Law n°32/2016 of 28/08/2016 governing Persons and Family, as amended 2020, Art 262

<sup>80</sup> This issue may relate to refusal of the father to recognise a child born out of wedlock, in accordance with the procedures of the family code. Law n° 32/2016 of 28/08/2016, as amended 2020, art.103: "The parent under whom the child is not registered first recognizes the child before the civil registrar in charge of child recognition for the child to be registered under his or her name."



In Uganda, it has in the past been official practice to require surrender of identity documents from the country of origin when an asylum application is made. This practice aimed to prevent refugees moving backwards and forwards between the two countries. The documents would be handed back to refugees upon repatriation, if it became possible.<sup>81</sup> The practice existed mainly during the period before the Control of Alien Refugees Act 1960 was replaced by the Refugees Act of 2006, and has generally ceased but continues to impact some long-term refugees. It is not in line with international law, and such documents should be returned to the refugees affected.

The long-term refugees participating in focus groups in Uganda confirmed that the great majority had no documents issued by South Sudan or DRC, whether they had been lost in flight or they had come from remote areas where no registration services were available; and in some cases because of arson and theft of property in the settlements in Uganda. While adult refugees without such documents stated that they could likely prove citizenship through their languages and other cultural knowledge, they recognised that their children born in Uganda would have more difficulty. None of the refugees who participated in the FGDs had attempted any access to consular services provided by their country's embassy. Most were ignorant of its existence, while others did not see the need to approach the embassy (unaware of requirements related to birth registration with the consular authorities, for example). A few were not sure how safe such contact would be. None of the Congolese refugees in Rwanda who participated in focus groups had ever approached their embassy, or knew of anyone who had done so.

### Greatest challenges

Unsurprisingly, livelihood questions such as access to food, land and shelter, education, and health care were the most urgent needs mentioned by the refugees surveyed. However, among almost 6,500 responses to the request to list these needs, 8 percent mentioned documentation, nationality or civil registration, rising to 13 percent if freedom of movement – closely linked to identity documents – was included.<sup>82</sup>

The immediate subsistence concerns were also reflected in focus groups. The general standard of living in the areas where refugees live is very poor; and refugees face greater challenges than members of host communities in gaining adequate access to land for farming, even if they may have access to some humanitarian assistance.

<sup>81</sup> Interview with Office of the Prime Minister, Uganda, 2021.

<sup>82</sup> A total of 6476 responses were recorded in response to the invitation to list the most serious problems a refugee faced. Among these responses food was mentioned 1170 times; land, housing or shelter 919; education 901; other livelihood issues 864; healthcare 834; access to formal employment 646; freedom of movement 316; documentation 238; nationality 204; civil registration 89; family reunification 87; and other 208.

In DRC, the security situation in both in North and South Kivu remains very tense, with conflict among different non-state actors, between state armed forces and non-state armed groups, and with interethnic tensions over access to land and other resources. Both non-state armed groups and the various branches of the state security forces extort money from civilians at checkpoints and elsewhere, especially if ID documents are expired. Government authority is limited in some areas. Refugees face the same insecurity as the host communities in eastern DRC, but have specific risks because of their refugee status. Focus group participants reported that men may be subject to arbitrary detention by the Congolese police or army, on suspicion of being members of non-state armed groups; or to forced recruitment by these armed groups. Women are vulnerable to rape and sexual assault, and to early marriage and the sale and exchange of sex. In North Kivu, it was alleged by focus group participants that non-state armed groups have forcibly repatriated some refugees to Rwanda. Access to land is difficult, although refugees are permitted to rent land and even to buy it in some areas. Refugees expressed the view that the assistance available to them had reduced and was insufficient.

Refugees of Congolese origin in Rwanda who participated in focus groups primarily noted difficulties in gaining access to work, especially if they lacked identity documents. Only a small minority expressed interest in acquiring Rwandan citizenship, and there was a lack of knowledge of procedures and requirements.

In Uganda, long-term refugees in Uganda complained that food rations were not sufficient to feed families; and had reduced compared to those issued to new arrivals, on the basis that they were expected by now to be self-sufficient. At the same time, however, the increasing subdivision of plots as new refugees arrived meant that land allocated was insufficient to produce enough food to eat through farming. They also reported insufficient boreholes, especially in Kiryandongo, leading to conflicts over water supplies. Refugees are not permitted to build permanent structures on settlement land, and the quality of housing and shelter is poor. Although the right of refugees to work is broadly supported in law and policy, access to formal employment is difficult, and self-employment also hindered by lack of recognition of qualifications issued in the country of origin.

Refugees in Uganda also reported being unable to meet costs of education for their children as well as pay for food – even though there are no tuition fees for primary education, there are other costs, including uniform and parent-teacher association dues. While there are health centres in the settlements, the cost of medicines was a challenge, as well as transportation of emergency medical cases to the health centres and hospitals. The lack of economic security also leads families to split up, as fathers have abandoned families that they cannot support. The elderly, child-headed households, and those with special needs are particularly vulnerable. Some refugees engage in the sale or exchange of sex or petty crime as a consequence. Personal security and security of property were both compromised, whether through generalised criminality, or in relation to reprisals from former enemies in the country of origin (especially in case of South Sudan). Conflict between farmers and livestock herders has been a problem in Nakivale, although there have been successful efforts to mediate such disputes before they escalate.

### Preferred solutions

Unsurprisingly, when asked about preferred solutions for their legal status, most refugees expressed the desire for resettlement in North America or Europe. Nonetheless, 45 percent overall expressed the desire to remain in the country of asylum whether as a refugee (22 percent), as a citizen (12 percent), or with a permanent residence status (12 percent). Reflecting the much greater sense of connection to the country of asylum, only 7.5 percent expressed the wish to return to the country of origin.

In relation to the desire to acquire citizenship, this option was most popular in DRC, where 23 percent of those interviewed expressed a preference for citizenship of the country of asylum, and another 20 percent would prefer a permanent residence status. The percentages were much lower in the other two countries: in Uganda 6 percent would prefer citizenship, and another 10 percent permanent residence; in Rwanda, only 1 percent among those surveyed stated that they would prefer citizenship and another 1 percent a permanent residence status.



However, it should be noted that refugee intentions can change over time, according to the different options that appear to be available. A significant number of Congolese refugees in Rwanda have been targeted for resettlement in the past decade, and this trend is expected to continue in the coming couple of years. In total, 33,750 refugees, the majority of whom are Congolese, had been targeted for resettlement between 2012 and 2021; as of 31 December 2021, 17,308 Congolese refugees had departed on resettlement. In 2023, UNHCR is planning to submit 6,000 refugees for resettlement, the majority of whom are Congolese.<sup>83</sup> In this context, it is likely that, in responding to a survey of this type, there would be a desire not to compromise the possibility of access to resettlement by expressing any other view.

In the context of a survey questionnaire, it was not possible to delve deeper into these preferences; and in particular the concept of permanent residence as a half-way status between refugee and citizen may have been differently interpreted by different respondents – although it was explained as being a status that gave most rights of citizens except the ability to vote and stand for public office. The desire for ongoing refugee status may also reflect an acknowledgement of the assistance – albeit limited – available to refugees that is not available to nationals of the country of asylum. It is – again, unsurprisingly – clear that most long-term refugees have no understanding of the specific legal provisions in each country – including the potential routes to acquisition of nationality or permanent residence status in the country of asylum set out in this report (see above, Gaps in national laws creating risks of statelessness, and Annex 4).

The focus groups provided some more insights into the wishes of refugees.

#### *DRC*

None of those participating in focus groups wished for voluntary repatriation to Rwanda, calling either for local integration in DRC as citizens, with the same rights of citizens especially to own land, or for resettlement. Although many had information about their ancestry in Rwanda, they had not visited since their flight in the mid-1990s, and considered their lives to be in Congo. Inter-marriage with Congolese is common. Young people in particular have no or little attachment to Rwanda as a place of origin (and many would be eligible for Congolese nationality under existing provisions of the law). Some older refugees were concerned that they might be suspected of association with the crimes committed during the Rwandan genocide if they were to return. The insecurity in DRC, however, especially for refugees, meant that resettlement in another country was for most the desired solution - but in practice is not available.

#### *Rwanda*

The great majority of long-term Congolese refugees in Rwanda participating in focus groups wanted to retain their refugee status in Rwanda over the long term, if they could not be resettled. They thought that the children of refugees born in Rwanda should be resettled. They did not wish to be granted Rwandan nationality; at the same time, there was no view that individuals should not acquire Rwandan nationality if they wished (for example, those who had done so through marriage), so long as they could also retain their original nationality.

#### *Uganda*

In Uganda, too, resettlement was kept as the best option for a majority of those surveyed. If resettlement was not possible, most said they would prefer to remain as refugees. The reasons for this preference appear complex. A few hoped for peace and stability to come to their countries of origin, so that they could return; this was true especially for those from South Sudan. A few were undecided or needed more time to evaluate these options, saying they had not enough knowledge to express a preference. For others, the sense of identity as nationals of their country of origin – whether South Sudan or DRC – was sufficiently strong that the idea of changing nationality almost did not make sense. In addition, refugee status is perceived as effectively a permanent legal residence status, that additionally attracts some

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<sup>83</sup> 'Projected Global Resettlement Needs 2023', UNHCR, 21 June 2022 <https://reliefweb.int/report/world/unhcr-projected-global-resettlement-needs-2023>.

(limited) humanitarian assistance and the right to access a plot of land – benefits that would not be available after acquiring another status in the country. Despite the material progress of some long-term refugees, there was also a collective sense that they would always be seen as refugees by Ugandans, and thus local integration was not really possible. Although there was a recognition that children born in Uganda have limited knowledge of their parents' place of birth, the parents felt they should keep their identity as Congolese or South Sudanese.

It should be noted that the focus groups were conducted in the rural camps for refugees. The responses are quite likely to be different for the minority of refugees who live in urban areas and are less dependent on UNHCR assistance or access to land.

## Views of host communities

Focus group discussions were held among the communities hosting refugee camps in Uganda. It was not possible to conduct focus groups with host communities in Rwanda or DRC during the timeframe of the study.

### Uganda

Focus groups conducted with host communities at the refugee settlements visited in Uganda (all except Kiryandongo) indicated that there was broad acceptance of the idea of granting citizenship to long-term refugees. There was recognition that some refugees were more connected to Uganda than their country of origin, knew local languages and had no desire to return – especially those born in Uganda. Refugee children and host community children school together and play together without problems. The focus groups also indicate that intermarriage is accepted – although cultural differences (for example over dowry payments) and the aspirations of some refugees to retain refugee status and seek resettlement could sometimes put strain on these relationships.

This acceptance of refugee acquisition integration and acquisition of citizenship is reflected by a survey conducted by Afrobarometer in Uganda in 2011, in which almost two-thirds of those surveyed indicated that they thought that a child born in the country of two non-citizen parents should be entitled to Ugandan citizenship; in addition, 60 percent of respondents thought living and working in the country should provide such rights.<sup>84</sup> The findings of this research suggest that this openness to acquisition of nationality extends to refugees and their children born in Uganda.

New refugee arrivals, however, disturb existing agreements among refugee and host community leadership institutions, and create greater pressure on available land, leading to conflict over resources and straining established relationships. New arrivals from South Sudan spoke no common language with the local population – unlike those from eastern DRC, who speak Swahili – making communication difficult. Relations among the new arrivals themselves were also sometimes conflictual, especially among those from South Sudan, continuing the patterns of violence in South Sudan itself.

The small plots of land now being allocated to refugees, and the inadequacy of food rations, mean that refugees move into host community areas seeking to rent land to cultivate, increasing prices for land, while depressing wages. In some places, the district authorities have successfully assisted in resolving refugee-host community conflicts (for example, between refugee farmers and Ugandan herders in Nakivale). For these reasons, it was argued that grant of citizenship to long-term refugees should be accompanied by allocation of plots of land that are clearly demarcated and do not encroach on host community land.

In Kyaka II settlement host community, focus group participants reported that a number of refugees had obtained national ID cards during the 2014-15 registration exercise, but also retained refugee IDs. This

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<sup>84</sup> Afrobarometer, 'Online Data Analysis Tool, Round 5 (Questions on Citizenship and Identity)', 2013, <https://www.afrobarometer.org/online-data-analysis/> (questions: right to be citizen: born in country with two non-citizen parents; right to be citizen: lived and worked in country). 34 countries surveyed, not including DRC or Rwanda.

enabled them to hold plots of settlement land as refugees, while also buying land as nationals – a practice that led to resentment. In Adjumani also, the hosts noted that some refugees have national IDs. UNHCR is only aware of this practice through anecdotal reports; however, NIRA cancels these national ID cards if it is discovered that the holder is a refugee

In some places, such as Nakivale in particular, access to birth registration appeared to be easier for host communities than for refugees, thanks in part to greater awareness of the procedures. However, host communities generally complained about costs, including costs of transport and delays, as well as the fee for birth certificates – which is waived for refugees. It was reported to be much harder to register older children who had not been registered at birth. Ugandans displaced by floods and mudslides in Bududa and living in Kiryandongo also reported difficulty accessing birth registration and certificates, and even birth notifications from the health centres.

## 4. Conclusion: Risks of statelessness and durable solutions

The risks of statelessness for long-term refugees are obvious, even more so for their descendants born in the country of asylum. The vast majority of long-term refugees surveyed for this report hold no identity documents issued by the country of origin. Most of those born in the country of asylum, or who arrived as children, have lost or never had any meaningful connection to the country of origin of their parents, speak national languages in the country of asylum, and regard that country as their home. If they had to seek recognition of the nationality of the country of origin, they might struggle to do so.

If the national laws of the countries where refugee children are born provide no rights to nationality based on birth in the country in any circumstances, then it is certain that some of these children born in the country of asylum will be stateless. This is the case in Uganda for those who are not members of one of the “indigenous communities” listed in the constitution. The laws of DRC and Rwanda provide the possibility for those born in the country of foreign parents to acquire nationality, with facilitated access for those who would otherwise be stateless. However, in DRC it appears highly unlikely that these procedures have ever been accessed, given the practical barriers to doing so; while in Rwanda, it is not yet clear how the provisions of the 2021 nationality code will be applied.

In addition to rights based on birth in the territory, access to naturalisation based on long-term residence is also important, if statelessness is to be avoided, and for durable solutions to be available to long-term refugees. Yet naturalisation is rare in all three countries considered for this report. In DRC naturalisation is generally inaccessible. In Rwanda, fewer than 100 people a year on average were naturalised under the previous nationality code, among whom UNHCR is aware that there have been only a handful of refugees. In Uganda it is especially difficult for refugees to acquire citizenship, and naturalisation can only be applied for from the age of 38; that is, based on 20 years’ residence after attaining majority. Ugandan citizenship acquired by registration (an easier process not accessible by refugees, unless married to a Ugandan citizen) or naturalisation is not acquired by the minor children of those registering or naturalising as part of that process, nor transmitted to children born after the parent has acquired citizenship. The conditions applied for dual nationality require a refugee applying for registration or naturalisation to renounce a former nationality. As a consequence, the children of refugees who naturalise in Uganda would be very likely to be stateless.

If naturalisation or other forms of acquisition of nationality on the basis of long-term residence and/or birth in the country are not immediately available, the possibility of facilitating the access of refugees to a permanent residence status of the country of asylum, including as an interim step towards acquisition of nationality could be explored further. The procedures to grant permanent residence status under the national laws are not intended for or accessible to refugees in their current formulation. The research for this report did not indicate that many long-term refugees seek such a status; they hold on to the possibility of resettlement, and to the benefits – however limited – that they receive as refugees. Refugee status itself is viewed as providing for indefinite legal residence rights (unless the cessation clauses under the Refugee Convention are invoked). However, when refugee documents are hard to renew within the required time frames, refugees may face challenges – for example around freedom of movement and risks of refoulement – if they do not have a currently valid identity document. The possibility of a permanent residence status that removed or reduced renewal requirements and provided wider socio-economic rights could therefore be considered as a route to legal integration – provided that those with this status could acquire nationality of the host country in due course. In some countries, children born in the country of parents who have a permanent residence status are automatically attributed citizenship at birth, or have facilitated access to citizenship.<sup>85</sup>

National legal frameworks make birth registration the foundational document for the recognition of nationality in practice, whether the law provides for nationality to be transmitted from a parent to a child

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<sup>85</sup> For example, in South Africa. See Bronwen Manby, *Citizenship and Statelessness in the Member States of the Southern African Development Community*, UNHCR 2020 <https://www.refworld.org/docid/6012a0d44.html>.

or recognised on the basis of place of birth. Yet until recent years, birth registration rates were very low in all three countries covered by this report. Lack of birth registration means that neither the place of birth nor the legal connection between parent and child is legally recognised, as required by national laws and procedures to establish entitlement to nationality, whether based on birth in the country or on descent. In the DRC, these procedures must be completed before reaching majority. While birth registration rates of refugees have greatly improved, there has been no effort to establish late birth registration for those born many years ago in Uganda or DRC; in Rwanda, however, UNHCR has been working with partners and respective government ministries to issue or reissue birth certificates to all refugees born in the country irrespective of their age.

Even if the births of all children are registered, however, this is not sufficient to end statelessness. The laws of the country of origin of the parent may not automatically attribute nationality to a child born in another country. It is therefore problematic if birth certificates record the nationality of a child based on assumptions about the operation of the law of the country of nationality of one or both parents – especially, but not only, without sight of identity documents confirming nationality of the relevant parent. Civil status officials of the country of birth are not equipped with the knowledge and authority to determine the nationality of children born to foreign parents. For example, some national laws require that, for nationality to be acquired by a child, a foreign birth certificate must be formally transcribed into the civil registry of the country of origin through consular registration or other process. In case of the DRC, this must be done before a child attains majority. There is a lack of official guidance or common good practice on what information related to nationality should be recorded in the birth register and certificate in the case of the children of migrants or of refugees.

Although the laws of all three countries provide for acquisition of nationality by children who are adopted by a national, formal adoption is rare among long-term refugees. Only Rwanda has procedures to establish legal recognition of a status less than adoption, where a child is being looked after by other families than their birth family. In other cases, the only recognition of such a relationship might be potential inclusion as part of a UNHCR registration document or other refugee registration “group”. The lack of legally recognised connection can create problems in any rights or benefits based on membership of a family, including (but not restricted to) recognition or acquisition of nationality, resettlement, or repatriation.

In practice, it is likely that in event of voluntary repatriation to a country of origin other forms of evidence would be accepted than those strictly required by the law, including testimony of traditional leaders or other community members. This type of evidence is already relied upon for the enrolment of individuals into national population registers. It is, however, by no means guaranteed that all registered refugees would be recognised through such procedures. In West Africa, several hundreds of former Liberian refugees and their descendants, registered as Liberian with UNHCR and government authorities of the country of asylum, were not recognised by the Liberian authorities as Liberian citizens when their refugee status was ended, leaving them stateless.<sup>86</sup> The risk of non-recognition is obviously higher for those children born in exile who do not have direct knowledge of the country of origin, especially if they grew up separated from their biological parents, or their parents are now dead.

The risks of statelessness are possibly highest, among the groups considered here, in relation to Kinyarwanda-speaking refugees who fled from DRC, whose status in DRC has been long contested, and some of who may well have been unrecognised as Congolese nationals even before they fled. The same would apply to members of some minority South Sudanese ethnic groups, especially those from border regions. These risks are disguised by the ongoing recognition of refugee status. But refugee status is precarious, since it is intended to be temporary, and may be ceased on various grounds. At the same time, however, formal recognition of stateless person status (through a statelessness determination

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<sup>86</sup> See discussion of the ‘red-coded’ Liberians in Bronwen Manby, ‘Migration, Nationality and Statelessness in West Africa’ (Geneva: UNHCR and IOM, 2015), <https://www.refworld.org/docid/55b886154.html>.

procedure<sup>87</sup>) would likely have all the same problems, and would not provide any additional protection to those recognised as refugees that they do not already receive, nor facilitate their long-term integration.

For durable solutions to the situation of long-term refugees, there is accordingly a need both to make procedures for naturalisation accessible to long-term refugees and their children, and to provide minimum rights to nationality for those born in the country.

Measures to enable acquisition of nationality by long-term refugees would include reducing onerous conditions in relation to production of passports and other identity documents issued by the country of origin, reduction of fees, support in submitting an application, and raising awareness of the possibility among the refugees. Naturalisation procedures should automatically include children who were minors at the time of application, and a process should be established for the legal recognition and inclusion of children who are not biologically related or formally adopted, but are factually part of a family. Children born after a parent has naturalised should acquire nationality automatically at birth.

The minimum rights based on birth in the territory established by Article 6 of the African Charter on the Rights and Welfare of the Child (as well as the 1961 Convention on the Reduction of Statelessness), are that children should acquire the nationality of the state of birth if not granted nationality at birth by the laws of any other state. In its General Comment on Article 6, the African Committee of Experts on the Rights and Welfare of the Child noted the difficulty of proving that a child born in the territory has not acquired another nationality, meaning that intended safeguards do not in fact prevent statelessness. The Committee therefore recommended that states provide more general rights to acquire nationality, for example, based on birth in the territory and residence until majority. Such provisions already exist in DRC and Rwanda, and the possibility of access by the children of refugees born in the country should be explored.

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<sup>87</sup> For guidance on such procedures and the circumstances in which they may be appropriate, see: “Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons”, UNHCR, July 2020, <https://www.refworld.org/docid/5f203d0e4.html>.

## 5. Recommendations

Recommendations relating to the avoidance of statelessness among all groups in DRC, Rwanda and Uganda were included in two reports on statelessness among the member states of the East African Community and the Southern African Development Community published by UNHCR in 2018 and 2020.<sup>88</sup> The recommendations here relate specifically to the situation of long-term refugees and their descendants.

### ICGLR Secretariat and all ICGLR member states

The ICGLR Consolidated Plan of Action on the eradication of statelessness acknowledges the particular risks of statelessness for refugees and especially their children born in the country of asylum, and the importance of proof of legal identity, including birth registration, to reduce these risks.<sup>89</sup> In the Outcome Document adopted on 7 March 2019 at Munyonyo, Uganda, ministers of ICGLR Member States in charge of refugees also “encouraged Member States who are willing and able to do so, to facilitate, with the support of partners, the naturalisation of refugees as a durable solution”, and “acknowledged that access to legal identity documentation, particularly birth registration, is critical to prevent and reduce statelessness”.

In line with these commitments, ICGLR Member States should:

#### Assessing and recording risks of statelessness

- In consultation with UNHCR, adapt Government and UNHCR refugee registration (and, where relevant, refugee status determination) procedures to ensure that risks of statelessness are assessed and recorded, so that appropriate additional referral and protection measures can be put in place, according to national context. For example:
  - Data collected about unaccompanied and separated children for other child protection purposes could also be used to flag the risk of statelessness.
  - Statistics on statelessness, and planning to address statelessness, could be improved by recording information about refugees that are also stateless or of undetermined nationality.

#### Facilitating acquisition of nationality

- Make acquisition of nationality based on residence more accessible to long-term refugees and their descendants, in line with the provisions of the UN Convention relating to the Status of Refugees (Article 34). These measures could include:
  - clarifying and publicising the conditions and processes for application;
  - adjusting fees so that they are reasonable for refugees;
  - reducing the requirements for supporting documents, taking into account the difficulties of refugees in supplying such documents;
  - ensuring that decisions are taken within reasonable time and notified to the applicant, with reasons in case of rejection and possibility of appeal.
- Consult with representatives of refugees and of host communities, as well as relevant civil society and local government, on the potential for refugees to access nationality, and on the resolution of any concerns that may be raised at local level around allocation of resources.

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<sup>88</sup> Manby, ‘Citizenship and Statelessness in the East African Community’; Manby, ‘Citizenship and Statelessness in SADC Member States’.

<sup>89</sup> Consolidated Action Plan of the ICGLR on the eradication of statelessness in the Great Lakes (2017-2024), strategic objective 4 <https://www.refworld.org/docid/60e70b3f4.html>.

- Facilitate access by refugees who were born in the country of asylum with derivative refugee status to those provisions in national law that already would permit acquisition of nationality based on their birth in the territory (for example, at the age of majority).
- Provide in law for the minimum protections against statelessness that are set out in the African Charter on the Rights and Welfare of the Child and the 1961 Convention on the Reduction of Statelessness, especially for children born in the territory who do not acquire nationality from a parent, and establish operational procedures to implement them in practice, including for refugees.
- Establish procedures to implement these protections against statelessness in practice, including referral mechanisms among the institutions responsible for refugees, civil registration, nationality and immigration, and train civil registry and other relevant officials on these procedures.

#### Civil registration and identification documents

- Continue efforts to ensure that all refugees have currently valid identity documents, including by increasing the validity period and enabling timely renewal of expired documents.
- Continue efforts to achieve universal birth registration, including late registration of the adult refugee population born in the country of asylum, allowing for alternative forms of evidence if birth notifications from health facilities or other usually required documents are not available.
- In parallel with efforts to improve birth registration, also seek to improve rates of marriage registration, especially among refugees and between refugees and host country nationals.
- Facilitate access to the existing provisions of national law that allow the issue to refugees of civil registration certificates in relation to civil status events that took place in the country of origin (or another country) but cannot be accessed, whether because the person is a refugee or because the events were not registered at the time – in line with Article 25 of the 1951 UN Refugee Convention. Consider explicitly incorporating these provisions into the national refugee or civil registration law.
- Consult with UNHCR, UNICEF and other UN agencies, as well as relevant AU agencies, and other experts to adopt a common position to provide guidance on the information to be recorded in birth registers and certificates as regards the nationality of refugee parents, in order to provide the greatest protection against statelessness for their children.
- Consult on the establishment of procedures for children who are looked after within families that are not their birth families, in order to ensure that a legal status as a member of that family is formally recorded, and that formal adoption procedures can be accessed if desired.

#### Promoting durable solutions

- Organise round table discussions with civil society, and representatives of both host communities and refugees at national, regional and local levels, with a view to hearing their views and building consensus on the long-term opportunities for comprehensive durable solutions for refugees.

## DRC

#### Accession to treaties

- Accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness (in line with existing pledges) and bring national law into line with these treaties.

#### Legal reform and interpretation

- Review the procedures implementing the provisions of the nationality code for acquisition of nationality by children born in the territory to ensure that this possibility is accessible in practice.
- Review the procedures for naturalisation based on residence in the territory in order to reduce the onerous conditions for production of existing documents and other procedural barriers for refugees.



- Confirm the nationality of those children born of one refugee and one Congolese parent.
- Implement the pledge made at the 2019 Global Refugee Forum on the provision of long-stay residence permits for refugees of Rwandan origin.

#### Civil registration and identity documents

- Ensure that all government officials and members of the security forces receive training on the protection due to refugees and on the validity of refugee documents for freedom of movement.
- Carry out a renewed effort to ensure that all refugees are registered and have currently valid identity documents, including those refugees living in remote rural areas. This could, for example, be carried out in parallel with the national voter registration and identification process that is planned, or combined with the deployment of mobile units to carry out late registration of births. Extend the validity of refugee identity documents to at least five years.
- Facilitate late registration of births for those children and descendants of refugees born in DRC who have not been registered within the legally established time limits.

## Rwanda

#### Legal reform and interpretation

- Publish guidance on the following questions relating to interpretation of the 2021 Nationality Law in order to clarify for all those seeking to understand the law:
  - The legal implications of the “application for nationality by origin” in relation to those born either in or outside of Rwanda of one Rwandan parent, and the circumstances in which a formal application is required.
  - The requirements to demonstrate that a person is of “Rwandan origin” or “Rwandan ancestry”, especially for those born outside Rwanda without a parent who has previously been recognized as a Rwandan national.
- Review the provisions on presumption of nationality for foundlings, to ensure that they are given the status of nationality by origin rather than nationality by acquisition.
- Reconsider the distinction between nationality “of origin” and “by acquisition”, so that the child of a naturalised parent acquires the same status of nationality as the child of parents of Rwandan ancestry.
- Review articles 9 and 19 of the law, providing for acquisition of nationality based on birth in Rwanda or on grounds of statelessness, to ensure that they are aligned with Rwanda’s obligations to grant nationality to children who would otherwise be stateless under the Convention on the Reduction of Statelessness and the African Charter on the Rights and Welfare of the Child.

#### Civil registration and identity documents

- Review the new practice of recording the nationality of the child on the birth certificate, especially in case of refugees, in consultation with UNHCR.

## Uganda

#### Accession to treaties

- Accede to the 1961 Convention on the Reduction of Statelessness (in line with pledges made in 2019) and bring national law into line with these treaties.

#### Legal reform and interpretation

- Implement the existing constitutional and legislative provisions on naturalisation, and facilitate individual applications by long-term refugees.
- Include within any review of constitutional and legislative provisions on citizenship the following reforms:

- inclusion within the qualifying period of residence for naturalisation a period of time resident in Uganda as a refugee.
  - automatic transmission of citizenship to the child of registered or naturalised citizens born after the parent acquired citizenship.
  - simultaneous acquisition of citizenship of minor children born before a parent has registered or naturalised when the parent is granted citizenship.
  - grant of citizenship to those born on the territory who are not granted any other citizenship at birth, including the children of those who are not members of the ethnic groups listed in the constitution, in line with the provisions of the ACRWC and the Children Act and as pledged in 2019.
  - inclusion of refugees within the categories of applicant eligible to acquire citizenship by registration.
- Adopt regulations to clarify that the presumption of citizenship for foundlings applies to older children and adults found on the territory whose parents are unknown, if they appeared to be five years or under at the date found (according to inquiry) and not only at the date the person comes to the attention of the authorities in line with UNHCR Guidelines on Statelessness No.4.
  - Publish statistics on acquisition of Ugandan citizenship by registration and naturalisation, including a breakdown for refugees and former refugees.
  - Review the provisions on permanent residency, with a view of making permanent residency status accessible to long-term refugees, if they desire, giving them more stable rights in the country of asylum and facilitated access to citizenship.
  - Amend the Citizenship Regulations to provide for the immediate registration as citizens of foreign children adopted by Ugandan citizens. Amend the law to provide that adopted children have the status of citizens by birth (and therefore could transmit citizenship to their own children, under the current legal regime).

#### Civil registration and identity documents

- Step up efforts to ensure that refugees have up to date identity documents, extend the validity period for refugee identity documents, and ensure that police and other government officials, including in urban areas, are aware that refugee identity documents constitute valid proof of identity.
- Provide for the return of original identity documents to refugees who were required to surrender them when asylum applications were lodged, instead arranging for copies of these documents to be kept by the authorities.

## UNHCR

#### Civil registration and civil registry documentation

- Develop operational guidance for birth registration for prevention of statelessness, including standards on best practices for the information recorded in birth certificates for children of refugees born in a country of asylum, and referral mechanisms in case of undetermined nationality to ensure that statelessness is identified and addressed.
- Measure progress on access to birth registration and certification for all those (irrespective of their age) born to refugee parents in the country of asylum and ensure this is recorded in the refugee/asylum registration database, together with a copy of the birth certificate, and reflected in registration standard operating procedures.
- Establish birth registration and certification of all refugees and asylum seekers and their children, irrespective of age, as an indicator for the prevention of statelessness.
- Include standard and tailored questions about civil registration, identity, and nationality documents within “intention solutions” surveys for refugees.
- Develop legal interpretative guidance on state obligations to provide administrative assistance in relation to a refugee's personal and civil status, in accordance with Article 12 in conjunction with

Article 25 of the 1951 Convention, in particular for civil status events that occurred in the country of origin.

- Research and publish a guide to best practices on mutual recognition of civil registration documents for refugees in the context of comprehensive durable solutions particularly for Voluntary Repatriation to country of origin and Resettlement to a third country.

#### Registration and refugee status determination

- Review refugee registration and status determination procedures and develop guidance to include the possibility of flagging a refugee as of unknown nationality, with a view to :
  - establishing referral pathways to assess whether a person is stateless or at risk of statelessness;
  - taking steps to preserve nationality (for example, through legal recognition of the connection to a parent, in the absence of birth registration in the country of origin) or providing other appropriate support; and
  - generating data about risks of statelessness among refugee populations.
- Clarify UNHCR's position on the refugee status and operational responsibilities vis-a-vis a child of one refugee parent who is entitled to or has the nationality of the country of asylum.

#### Local integration including facilitated access to nationality or other durable solutions

- Document and publicise good practices on legal pathways and procedures for acquisition of nationality of a country of asylum by refugees and their descendants born in that country.
- Develop interpretative guidance on the obligations of states to facilitate the integration and naturalisation of refugees in their country of asylum under Article 34 of the 1951 Convention.
- Review state practices in providing alternative legal status options, in addition to refugee status, which grant long-term residence, an entitlement to work, and a pathway to nationality and develop recommendations for additional “durable solutions” based on the review.
- Include questions in the regular surveys on refugee intentions about access to nationality of the country of asylum as a durable solution, permanent residence status (providing broader rights than refugee status and as a potential step towards local integration), and identity documentation, as well as commission surveys on the attitudes of host communities on the local integration of refugees.
- Support the ICGLR Secretariat in the development of a comprehensive strategy for durable solutions for refugees, stateless persons and other forcibly displaced people in the Great Lakes region, informed by the finding and recommendations of this study and the additional information collected in refugee intention surveys, in consultation with the regional advisory group.

#### Data collection

- Improve collection of data on the number of long-term refugees (including the descendants of refugees born in the country of asylum) in the ICGLR region, their circumstances and needs, and their risks of statelessness. For this purpose:
  - Adopt a definition of “long-term refugee” for operational and statistical purposes;
  - Review the ProGres database in ICGLR host countries in order to estimate the “inactive” refugee population for which none of durable solutions proposed by UNHCR has been implemented, but who are likely to remain in the host country.

## Annex 1: Methodology

The research consisted of a law and policy review, a survey of a representative and randomly chosen sample of long-term refugees in each country, focus groups with long-term refugees and host communities, and key informant interviews. The approach thus blended qualitative and quantitative methodologies. National consultants worked together with UNHCR staff in each country to conduct the research.

Law and policy review: A desktop study – see further annexes to this report -- established the international and regional standards in relation to statelessness and the right to a nationality, and law and policy frameworks at national level. This review formed the basis for development of other research tools.

Survey: A survey questionnaire was developed, and a sample of adult refugees were surveyed for their views across the three countries. In addition to the main population groups indicated above, those surveyed included some long-term Burundian refugees in Rwanda and DRC, and Congolese refugees in Uganda.

A total of 1,431 refugees were surveyed: 622 in DRC (mainly from Rwanda and a few from Burundi), 415 in Uganda (mainly from South Sudan and a few from DRC), and 394 in Rwanda (mainly from DRC and a few from Burundi). Among those surveyed, 17 percent had been born in the country of asylum. Of those born in the country of origin, 80 percent had been in the country of asylum for more than 20 years, and 17 percent had been born in the country; only four individuals had been in the country of asylum less than 10 years. The vast majority of refugees interviewed had a single “country of origin”: 88 percent reported that both parents and all four grand parents had been born in the same country.

To aggregate quantitative data on the representative sample, the research team used an anonymised standard questionnaire that was made available through the Kobo Toolbox.

The sampling frame was established from the registered refugees in the ProGres databases managed by UNHCR and the country of asylum. The sample sizes were arrived at with a confidence level of 95% and a margin of error 5%.

Focus groups: UNHCR worked with national consultants or national NGOs to conduct a series of focus group discussions with refugees in all three countries, based on a shared discussion template.

Five focus groups were conducted in the DRC; 9 in Rwanda; and 32 in Uganda. Focus group discussions were also held with host communities close to refugee settlements in Uganda.

The researchers followed ethical guidance in line with national laws and international best practice. The researchers made every effort to explain the purposes for which the information was being gathered, obtained the consent of the data subjects before collection, and anonymised all the data collected in the field surveys to guarantee that there would be no opportunity for finding any personally identifying information linking the long-term refugee to the data gathered and vice-versa.

Key informant interviews were also requested with government officials, civil society, and others.

The research tools and data are available on request.

### Refugee populations considered in the study

#### Rwandan refugees in the Democratic Republic of Congo

As of June 2021, DRC hosted more than half a million registered refugees, of whom 40 percent originated from Rwanda.<sup>90</sup> The Rwandan refugees fleeing the genocide of 1994 and subsequent conflict had first

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<sup>90</sup> République démocratique du Congo : Réfugiés et demandeurs d'asile en RDC (Statistiques au 31 mai 2021), UNHCR, 28 Jun 2021 <https://reliefweb.int/map/democratic-republic-congo/r-publique-d-mocratique-du-congo-r-fugi-s-et-demandeurs-dasile-en-16>.

been accommodated in camps, but the camps were forcibly dismantled in 1996, and the refugees dispersed both to urban areas and to very remote rural districts. Socio-economic conditions for these refugees are very poor; with the precariousness of refugee status added to conflict-related poverty endemic in eastern Congo. In practice, it can be difficult to distinguish between Rwandan refugees and speakers of Kinyarwanda living in eastern Congo who are in principle Congolese nationals.

In 2009, UNHCR launched a Comprehensive Solutions Strategy (CSS) for Rwandan refugees (in DRC or other countries) who had fled Rwanda between 1959 and 31 December 1998. The strategy had four main components: voluntary repatriation, local integration, refugee status determination (exemption) for those still in need of international protection, and the cessation of refugee status. In 2011, UNHCR formally recommended that the ceased circumstances clause of the UN refugee convention be applied to Rwandan refugees with effect from the end of June 2013.<sup>91</sup> The deadline for the cessation of refugee status was 31 December 2017. However, a number of countries within the ICGLR have decided not to apply the ceased circumstances clause to Rwandan refugees, and maintain their registration as refugees.<sup>92</sup>

Following the announcement of the CSS in 2009, UNHCR and the governments of Rwanda and the DRC negotiated and signed tripartite agreements in February 2010 for the voluntary repatriation of refugees from Rwanda and from Congo to their countries of origin.<sup>93</sup> In 2019, the government pledged to provide a ten-year residence permit to 200,000 Rwandan refugees who have stayed in DRC.<sup>94</sup> However, the DRC has not invoked the ceased circumstances cessation clause for Rwandan refugees, considering it first require a full re-registration of Rwandan refugees present in the country.

In 2014, the National Commission for Refugees (*Commission nationale pour les réfugiés*, CNR) reported that there were 215,942 refugees of Rwandan origin in DRC. A biometric registration exercise was undertaken jointly by the CNR and UNHCR to verify the figures, and 76,076 refugees of Rwandan origin were registered in the period 2015-2018. The process was, however, challenged by the insecurity in North and South Kivu provinces, meaning that some districts of North Kivu could not be reached. Among those registered in this process, two-thirds had been born in the DRC (more than 99 percent of the children and almost 30 percent of the adults), and around half had been present for more than 20 years in DRC.<sup>95</sup>

In DRC, focus groups were conducted in South Kivu with refugees in the town of Bukavu, the provincial capital, and in the district of Kalehe. In North Kivu, they were conducted in the mining area of Rubaya, in Masisi, and in Nyiragongo. The survey sample was 353.

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<sup>91</sup> "Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR's recommendations on the Applicability of the 'ceased circumstances' Cessation Clauses", UNHCR, 31 December 2011. <https://www.refworld.org/docid/4f33a1642.html>

<sup>92</sup> 'Operational Update: Rwanda' UNHCR, 1 January 2018 <https://www.unhcr.org/rw/wp-content/uploads/sites/4/2018/01/UNHCR-Rwanda-Monthly-Factsheet-December-2017.pdf>.

<sup>93</sup> 'Democratic Republic of the Congo', UNHCR Global Report 2010, June 2011, <https://www.refworld.org/docid/4e5237951f.html>.

<sup>94</sup> Pledges made at the Global Refugee Forum; see Excel spreadsheet available at <https://globalcompactrefugees.org/channel/pledges-contributions> ("La RDC offre aux 200.000 réfugiés rwandais qui ont opté de demeurer en RDC après la clause de cessation de leur statut, un permis de séjours d'une validité de 10 ans").

<sup>95</sup> Final Report on the 2018 Registration Operation for Rwandan Refugees: The Kivus, Democratic Republic of the Congo, UNHCR, March 2019 <https://data.unhcr.org/en/documents/details/68487> ; see also Democratic Republic of the Congo: Rwandan Refugees in DRC - Refugees Biometrically Registered as of 31 May 2021, UNHCR, 28 June 2021 <https://reliefweb.int/map/democratic-republic-congo/democratic-republic-congo-rwandan-refugees-drc-refugees-biometrically>.

### Congolese refugees in Rwanda

As of end of May 2021, Rwanda hosted a total of 127,557 registered refugees, of whom 77,887 (61 percent) were from the Democratic Republic of Congo, and almost all the remainder from Burundi. The Congolese refugees are largely speakers of Kinyarwanda who fled the violence that erupted in North Kivu province in the aftermath of the genocide against the Rwandan Tutsi, especially in 1995–97.<sup>96</sup> There was an additional influx from North Kivu during renewed violent clashes in 2012 – 2014 between rebels and Congolese government forces. Just under 12,000 of the Congolese refugees arrived in Rwanda more than 20 years ago; an additional 34,000 refugees have spent between 10-25 years in Rwanda.<sup>97</sup>

Refugees in Rwanda are hosted in five refugee camps. About 9 percent of the total refugee population is not hosted in camps, including around 1,500 Congolese registered in urban areas. With the exception of the small number of urban families, the vast majority of Congolese refugees in Rwanda have spent their lives in camps where they are almost entirely dependent upon humanitarian assistance.

The Comprehensive Refugee Response Framework adopted by Rwanda and UNHCR in February 2018 envisages access by Congolese refugees to all durable solutions—voluntary return, resettlement, and local integration (including plans to promote economic integration). In accordance with the CRRF, the UNHCR Rwanda office in 2018 jointly conducted with the Government a verification exercise for all refugees in the country, in order to enable the Government to issue all refugees over age 16 with a refugee identity card. UNHCR and the government of Rwanda have since further addressed the issue of documentation, through biometric capture/verification missions and are working on a possible integration between national systems and UNHCR database to close the remaining gap in issuance of identity documents and related issues.

There have in the past been efforts to repatriate Congolese refugees in Rwanda to DRC, including by the tripartite agreement signed in early 2010 between UNHCR and the governments of DRC and Rwanda. However, UNHCR no longer promotes repatriation, due to ongoing tensions in DRC about the identification of those who should be able to return, and continued insecurity in North and South Kivu.<sup>98</sup>

Since 2020 UNHCR, through the Ministry in Charge of Emergency Management (MINEMA), has received around 660 applications for voluntary cessation of refugee status in Rwanda. Lack of coordination in this process could create risks of statelessness, if nationality is not confirmed or Rwandan nationality not granted.

In Rwanda, the long-term refugees researched for this study were all camp-based, from a total population of 6,500 refugee households in Kiziba and Mahama refugee camps in the latter, refugees relocated from Gihembe camp were interviewed. A sample of 377 households were surveyed, 201 in Kiziba camp and 176 in Mahama, and in each case the head of the household was interviewed. More than 90 percent of the refugees interviewed had arrived in Rwanda before 2000, just under two percent had arrived between 2001 and 2005, and 7 percent had been born in Rwanda.

Focus group discussions were carried out in each case with refugee camp leaders, women representatives born in DRC and born in Rwanda, youth representatives born in DRC and born in Rwanda, and the host communities (18 in total).

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<sup>96</sup> For further background on Congolese refugees see 'Congolese refugees: A protracted situation', UNHCR 2014, <https://www.unhcr.org/afr/558c0e039.pdf>.

<sup>97</sup> According to UNHCR surveys.

<sup>98</sup> International Crisis Group, *Five Priorities for a Peacebuilding Strategy*, Africa Report No. 150, 11 May 2009 <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/congo-five-priorities-peacebuilding-strategy> ; *Eastern Congo: Why Stabilisation Failed*, Africa Briefing No. 91, 4 October 2012 <https://www.crisisgroup.org/africa/central-africa/democratic-republic-congo/eastern-congo-why-stabilisation-failed> ; International Refugee Rights Initiative, *Shadows of Return: The Dilemmas of Congolese Refugees in Rwanda*, July 2011 <http://www.refugee-rights.org/wp-content/uploads/2019/02/Shadows-of-Return.pdf>.

Key informant interviews were also carried out with representatives of the Ministry for Emergency Management (MINEMA), the National Commission for Human Rights, and the Directorate General for Immigration and Emigration.

### South Sudanese and Congolese refugees in Uganda

As of February 2022, Uganda was host to 1,595,405 refugees and asylum seekers<sup>99</sup> making it the country with the third largest refugee population globally, according to UNHCR statistics.<sup>100</sup> They live in 13 refugee settlements in addition to urban centres. More than 60 percent of these refugees are from South Sudan and just over 30 percent from DRC.<sup>101</sup>

Many of these refugees are relatively recent arrivals, but some have been resident in Uganda for many decades. Of the Congolese refugees, just over 3,000 have lived in Uganda for over 20 years; among the South Sudanese refugees, 5,015 had been living in Uganda for more than 20 years. In both cases, the majority have lived in Uganda for over 40 years (or been born there), and some are the descendants of people who arrived even before Ugandan independence.

The Uganda research effort targeted long-term refugees of DRC and South Sudan origin residing in refugee settlements in the Southwest, West, Midwest, and Northwest regions of Uganda: Nakivale (Isingiro), Kyaka II (Kyegegwa), Kyangwali (Hoima), Kiryandongo (Kiryandongo), and the Mungula and Olijji (Adjumani) settlements. Surveys and focus groups were carried out in all these settlements; and focus groups were carried out with all host communities except Kiryandongo.

The field survey focused on refugees that have lived in Uganda for 20 years and more in all settlements except Nakivale, where the qualitative study accommodated refugees resident for 15 years or more. The total qualifying number by that criterion was 7,238 individuals of which, the representative sample was capped at 365 individuals. The sample was divided to represent the DRC caseload (sample size 136) and the RSS caseload (sample size 229). It will be observed that the relevant data was aggregated from a total of 414 refugees, thus the research team exceeded the target sample size of 365. The target size for qualitative study was 1500 (300 refugees per hosting district) inclusive of the representative sample.

The team also conducted key informant interviews (KIIs) with officers and representatives of organisations and institutions in academia (Makerere University, Faculty of Law), the government (Office of the Prime Minister, and Justice and Law and Order Sector), Civil Registration Authorities (National Identification and Registration Authority (NIRA)), UNHCR Field Operations, Relief Organisations (Oxfam, Norwegian Refugee Council (NRC), Refugee Law Project (RLP), Centre for Community Development & Peaceful Co-existence (CECODEP), and legal professionals.

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<sup>99</sup> "Uganda Refugees and Asylum Seekers as of 31<sup>st</sup> December 2021." Government of Uganda: Office of the Prime Minister – Department of Refugees (OPM).

<sup>100</sup> See statistics reported at: <https://www.unhcr.org/refugee-statistics> (February 2022)

<sup>101</sup> Uganda Comprehensive Refugee Response Portal, <https://ugandarefugees.org/en/country/uga>.

## Annex 2: Terminology

The most important terms used in this report are defined below. For other terms not included here, see the UNHCR Master Glossary of Terms available at <https://www.unhcr.org/glossary/>.

### Asylum-seeker

“A general term for any person who is seeking international protection. In some countries, it is used as a legal term referring to a person who has applied for refugee status or a complementary international protection status and has not yet received a final decision on their claim. It can also refer to a person who has not yet submitted an application but may intend to do so, or may be in need of international protection. Not every asylum-seeker will ultimately be recognized as a refugee, but every refugee is initially an asylum seeker. However, an asylum-seeker may not be sent back to their country of origin until their asylum claim has been examined in a fair procedure, and is entitled to certain minimum standards of treatment pending determination of their status.”<sup>102</sup>

### Cessation of refugee status

“An act by which an individual is formally determined to no longer be a refugee. Under Article 1C of the 1951 Convention, refugee status may cease either through the actions of the refugee, such as by re-establishment in his or her country of origin, or through fundamental changes in the objective circumstances in the country of origin upon which refugee status was based. Cessation operates to withdraw refugee status, and brings to an end related rights and benefits. It may be determined on an individual or group basis, and is subject to specific legal procedures and safeguards.”<sup>103</sup> “Cessation clauses” are legal provisions setting out the conditions under which refugee status comes to an end because it is no longer needed or justified. Cessation clauses are found in Article 1(C) of the 1951 Convention, and in Article 1(4) of the 1969 OAU Convention. See also the heading on the situation of former refugees in Annex 3.

### Citizenship/Nationality

In international law, nationality and citizenship are now used as synonyms, to describe a particular legal relationship between the state and the individual; the terms can be used interchangeably in English, though “nationality” is more commonly used in international treaties and “citizenship” in national laws. In civil law countries in Africa, the term “nationality” (*nationalité*) is used at both national and international level. Neither term has any connotation of ethnic or racial content, but is simply the status that gives a person certain rights and obligations in relation to a particular state.

This study uses citizenship and nationality according to the terms used in the national context, and (in general) nationality at the international level.

### Civil registration

“Civil registration is defined as the continuous, permanent, compulsory and universal recording of the occurrence and characteristics of vital events pertaining to the population, as provided through decree

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<sup>102</sup> Source: <https://www.unhcr.org/glossary/>.

<sup>103</sup> Source: <https://www.unhcr.org/glossary/>. See also UNHCR Standing Committee, Note on the Cessation Clauses, EC/47/SC/CRP.30, 30 May 1997, <https://www.unhcr.org/excom/standcom/3ae68cf610/note-cessation-clauses.html>; and UNHCR, Guidelines on International Protection: Cessation of Refugee Status under Article 1C(5) and (6) of the 1951 Convention relating to the Status of Refugees (the “Ceased Circumstances” Clauses), 10 February 2003, <https://www.unhcr.org/3e637a202.pdf>



or regulation in accordance with the legal requirements in each country. Civil registration is carried out primarily for the purpose of establishing the documents provided for by law.”<sup>104</sup>

## Durable solutions

UNHCR considers that there are three “durable solutions”, by which the situation of persons of concern to UNHCR can be satisfactorily and permanently resolved through ensuring national protection for their civil, cultural, economic, political and social rights. In the refugee context a durable solution generally involves voluntary repatriation, local integration or resettlement. For stateless persons durable solutions are linked to the grant or recognition of nationality.<sup>105</sup>

## Local integration

“Broadly speaking, integration can be understood as the gradual inclusion of refugees, asylum seekers, and other refugee related groups in their host country. This entails the progressive enjoyment of rights, increasing access to national services and social and cultural networks, and an absence of discrimination. Ideally, this process results in full integration, which occurs when refugees and other persons of concern enjoy the same rights and access to national services and systems as nationals and non-refugee permanent residents. They are not discriminated against on the basis of their legal status or country of origin, and they enjoy peaceful co-existence with the local population and participate in the social and cultural life of the wider host community. Full local integration is enjoyed when persons of concern enjoy inclusion across legal, economic, social, cultural, and political spheres.”<sup>106</sup>

## Long-term refugee

Long-term refugee is not a term that has an official definition, but is employed in this report to refer to a person who has been living outside his or her country of origin as a refugee for more than 20 years, including any children born in exile who hold derivative refugee status. The term is used to provide greater clarity on the populations of concern for this study, which focuses on those who have held refugee status for much longer than the five-year period employed by UNHCR for statistical purposes in reporting on “protracted refugee situations” (see entry below).

## Protracted refugee situations

There is no definition of protracted refugee situations in international law. UNHCR’s Executive Committee (ExCom) adopted a conclusion in 2009 that defined a protracted refugee situation as a situation where refugees have been in exile “for five or more years after their initial displacement, without immediate prospects for implementation of durable solutions”.<sup>107</sup> For statistical purposes, UNHCR reports on

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<sup>104</sup> See definition at: <https://unstats.un.org/legal-identity-agenda/>, based on Principles and Recommendations for a Vital Statistics System, Revision 3, UN Department of Economic and Social Affairs, 2014, para 279. <https://www.un.org/development/desa/cdpmo/tools/2020/principles-and-recommendations-vital-statistics-system-revision-3>.

<sup>105</sup> Adapted from: <https://www.unhcr.org/glossary/>.

<sup>106</sup> Source: International Recommendations on Refugee Statistics (IRRS), Expert Group on Refugee and Internally Displaced Persons Statistics, United Nations and European Union, March 2018 [https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles\\_and\\_Recommendations/International-Migration/2018\\_1746\\_EN\\_08-E.pdf](https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Principles_and_Recommendations/International-Migration/2018_1746_EN_08-E.pdf)

<sup>107</sup> ‘Conclusion on Protracted Refugee Situations, No. 109 (LXI) – 2009’, UNHCR Executive Committee, 61st session, Extraordinary Meeting, 8 December 2009 available with other resources on protracted refugee situations collected at <https://www.unhcr.org/research/eval/4a1d43986/protracted-refugee-situations.html>. See also discussion in James Milner, ‘Protracted Refugee Situations’, in *The Oxford Handbook of Refugee and Forced Migration Studies*,

protracted refugee situations where 25,000 or more refugees originating from the same country have sought refuge in another country for at least five consecutive years.<sup>108</sup> The 25,000 figure was first employed in a report to the UNHCR ExCom in 2004; the same report proposed that in general, “a protracted refugee situation is one in which refugees find themselves in a long-lasting and intractable state of limbo”.<sup>109</sup>

To avoid confusion, “protracted refugee situation” will be used in this report in line with the definition in the 2009 ExCom conclusion, without a numerical limit for the number of people affected: that is, a situation in which refugees are trapped, for five or more years after their initial displacement, without immediate prospects for implementation of durable solutions. This study focuses, however, on the situation of people who have held refugee status for a much longer period than five years: see entry on “long-term refugee”.

## Refugee

The term “refugee” is defined in article 1 of the 1951 Convention as a person “who, owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group, or political opinion, is outside the country of his nationality, and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country”.

The definition of refugee in article 1 of the OAU Convention Governing the Specific Aspects of Refugee Problems in Africa replicates the refugee definition found in the 1951 Convention, but also includes a person compelled to leave his or her country because of “external aggression, occupation, foreign domination or events seriously disturbing public order in either part or the whole of his [or her] country of origin or nationality”.

The definition of a refugee provided in both the UN Refugee Convention and the OAU Convention covers persons who, “not having a nationality”, are outside the country of former habitual residence. That is, the term “refugee” includes stateless refugees. In some cases, lack of recognition of nationality may also be among the reasons for the person’s flight or expulsion and for the difficulty of return. Although a refugee may (and in principle should) be additionally recorded as stateless if that is the case, this is often not done, in part because states lack dedicated statelessness determination procedures. The number of stateless persons included among refugee populations is therefore often hidden.

In principle, the term “refugee” covers those who fulfil the relevant definition, whether or not they are formally recognised and registered as such by the host country: the refugee status determination procedure is declaratory, not constitutive. In national laws, a person who is not yet recognised as a refugee but has applied for refugee status is often referred to as an asylum seeker (see definition above).

## Stateless person

The 1954 Convention relating to the Status of Stateless Persons provides the international definition of “stateless person”: “a person who is not considered as a national by any state under the operation of its law” (Article 1(1)). UNHCR notes that determining whether a person is stateless is a “mixed question of fact and law”,<sup>110</sup> and thus a person may be stateless even if apparently entitled to citizenship, because

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ed. Elena Fiddian-Qasbiyeh et al. (Oxford; New York: Oxford University Press, 2014), <https://doi.org/10.1093/oxfordhb/9780199652433.013.0038>.

<sup>108</sup> UNHCR, ‘Global Trends: Forced Displacement in 2018’ (Geneva: United Nations, 2019), chap. 2: Refugees; Focus on: protracted refugee situations, <https://www.unhcr.org/globaltrends2018/>.

<sup>109</sup> ‘Protracted Refugee Situations’, EC/54/SC/CRP.14, UNHCR Executive Committee (ExCom), 10 June 2004. See also UNHCR Master Glossary <https://www.unhcr.org/glossary/#p>.

<sup>110</sup> UNHCR, ‘Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons’ (Geneva: United Nations, 2014), para. 23, <https://www.refworld.org/docid/53b676aa4.html>.

they cannot prove the relevant facts. UNHCR thus recommends establishing statelessness determination procedures to identify stateless persons and establish the appropriate protections for their status.<sup>111</sup> In its discussions around the development of a protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa, the African Commission on Human and Peoples' Rights proposed clarifying this definition to confirm that the definition includes a person who is unable to establish a nationality in practice. Although refugees may also be stateless, and statelessness may be a cause of displacement, most stateless persons are not refugees.

### Undetermined nationality

In 2006, the UNHCR Executive Committee urged the agency to “continue to work with interested Governments to engage in or to renew efforts to identify stateless populations and populations with undetermined nationality”.<sup>112</sup> There is no legal definition of “undetermined nationality”. However, UNHCR proposes that undetermined nationality should refer to those who have not been recognised as stateless, but who lack proof of nationality where they live and have ties, real or perceived, to one or more other countries.<sup>113</sup> That is, UNHCR has applied the term to exclude those who lack documents but whose nationality of the state of residence is not in any doubt.

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<sup>111</sup> See ‘Good Practices Paper – Action 6: Establishing Statelessness Determination Procedures to Protect Stateless Persons’, UNHCR, July 2020, <https://www.refworld.org/docid/5f203d0e4.html>.

<sup>112</sup> ‘Conclusion on Identification, Prevention and Reduction of Statelessness and Protection of Stateless Persons’, No. 106 (LVII), UNHCR ExCom 56th session, 6 October 2006, Annex to UN doc. A/AC.96/1035 <https://www.unhcr.org/excom/exconc/453497302/conclusion-identification-prevention-reduction-statelessness-protection.html>.

<sup>113</sup> Quick Guides: Researching Statelessness, UNHCR, March 2021 <https://www.refworld.org/docid/6054c9ca4.html>.

## Annex 3: International standards on proof of legal identity and access to nationality

### Recognition of refugee (or stateless person) status and issue of identity documents

The UN Convention relating to the Status of Refugees and the UN Convention relating to the Status of Stateless Persons were adopted in 1951 and 1954 (respectively) in recognition of the need to provide protection to those people who are unable to access the protection of the state whose nationality they hold or (in the case of a stateless person) where they had been a habitual resident. The status of refugee or stateless person is intended to be a temporary one, since the conventions assume that a person is provided protection with this status until such time as he or she can go home, is entitled to acquire nationality in the country of refuge, or is resettled in a third country where naturalisation is available.

In recognition of the fact that access to identity documentation is often critical for a person to access rights, both the UN and OAU refugee conventions require countries of asylum to issue identity and travel documents to refugees; the 1954 Convention relating to the Status of Stateless Persons has similar provisions for stateless persons.<sup>114</sup> The 2004 Dar es Salaam Declaration that established the ICGLR committed states to “provide refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights.”<sup>115</sup>

In practice, although the institutional structures vary, registered refugees may receive both a UNHCR document and a document issued by a national refugee agency recognising their refugee status, or a single combined document. These record the country of origin or nationality (and in principle should also indicate that the person is stateless, if that is the case, although this is rarely done in practice). Identity documents are also critical to enable registration of the birth of a child; in some contexts, lack of currently valid documents may mean that birth registration is not possible.<sup>116</sup>

A national of the host country may not be admitted into registration procedures as an asylum seeker or refugee. An exception to this rule may arise where a registered individual forms a family with a national of the country of asylum. While an individual may never be an “asylum-seeker” or “refugee” in his or her own country, he or she may be registered by UNHCR as “other person of concern” on the basis of a related refugee’s right to family unity. If the child may have acquired the nationality of the host country through one parent then this should be verified with the relevant authorities of the country of asylum; if the child

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<sup>114</sup> Articles 27 and 28 of the UN Convention relating to the Status of Refugees, 1951, and the UN Convention relating to the Status of Stateless Persons, 1954. Article 27 of both conventions states: “The Contracting States shall issue identity papers to any [refugee / stateless person] in their territory who does not possess a valid travel document.” Article 28 of both conventions states: “The Contracting States shall issue to [refugees / stateless persons] lawfully staying in their territory travel documents for the purpose of travel outside their territory, unless compelling reasons of national security or public order otherwise require....”. See also “Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection Under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees”, UNHCR, April 2019, HCR/1P/4/ENG/REV. 4 <https://www.refworld.org/docid/5cb474b27.html>; “Identity Documents for Refugees”, EC/SCP/33, UNHCR, 20 July 1984 <https://www.unhcr.org/excom/scip/3ae68cce4/identity-documents-refugees.html>

<sup>115</sup> Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, ICGLR, adopted by the First Summit of Heads of State and Government, Dar-es-Salaam, 19-20 November 2004, paragraph 68, available at: [http://www.icglr.org/images/Dar\\_Es\\_Salaam\\_Declaration\\_on\\_Peace\\_Security\\_Democracy\\_and\\_Development.pdf](http://www.icglr.org/images/Dar_Es_Salaam_Declaration_on_Peace_Security_Democracy_and_Development.pdf)

<sup>116</sup> Bronwen Manby, ‘Preventing Statelessness among Migrants and Refugees: Birth Registration and Consular Assistance in Egypt and Morocco’, Paper Series (London: LSE Middle East Centre, June 2019), <http://eprints.lse.ac.uk/101091/>.

has not, or not yet, received formal proof of nationality, he or she should be registered with the status and nationality of the asylum seeker / refugee parent.<sup>117</sup>

UNHCR's guidance on registration and identity management note that the issuance of identity documents for refugees is the primary responsibility of the government of the host state, and UNHCR advocates for documents to be issued by the national identification registration authority with the same design and specifications applied to identity documentation issued to nationals.<sup>118</sup>

All countries in the Great Lakes region have refugee determination procedures; none, however, has a stateless person determination procedure. Rwanda has recently made the first move in this direction: the 2021 nationality law and ministerial order adopted in 2022 provided for the first time for acquisition of nationality by stateless persons (see Annex 4). For this reason, there are no current holders of stateless person identity or travel documents issued by states in the region. In general, UNHCR recommends that the status of stateless person should only be considered for a person who is in a situation similar to that of a refugee – that is, who has left the country of birth – rather than for individuals born in the country, for whom facilitated access to nationality of the country of birth is more appropriate.<sup>119</sup> Where a person already has refugee status, however, there is likely to be no immediate additional benefit to undertaking a stateless person status determination procedure, since no additional rights would be granted. However, it may be important to record within the refugee registration that a person may additionally be stateless, in case this becomes relevant for later for finding and providing legal support for the most adequate durable solutions (whether voluntary repatriation, local integration, or resettlement procedures).

### Birth registration and civil registration generally

Birth registration is in all countries an important foundation for the protection of children and their access to public services.<sup>120</sup> In addition, birth registration is critical to establishing in legal terms the place of birth and parental affiliation, which in turn underpins the right to attribution or acquisition of the parents' nationality or the nationality of the state where the child is born.

The importance of birth registration for the right to acquire a nationality is recognised by the inclusion of both rights within the same article of both the UN Convention on the Rights of the Child (CRC) and the African Charter on the Rights and Welfare of the Child (ACRWC), as well as the International Covenant on Civil and Political Rights, the Convention on the Rights of All Migrant Workers and Members of their Families, and the Convention on the Rights of Persons with Disabilities.<sup>121</sup> This significance has been reaffirmed by numerous statements from the UN treaty bodies<sup>122</sup>, and by the African Committee of

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<sup>117</sup> Refugee Status Determination Procedural Standards – Processing Claims Based on the Right to Family Unity, UNHCR, 2016, available at: <http://www.refworld.org/docid/577e17944.html>.

<sup>118</sup> 'Guidance on Registration and Identity Management', Chapter 5.3: Documentation, UNHCR, 2020 <https://www.unhcr.org/registration-guidance/chapter5/documentation/>

<sup>119</sup> "Handbook on Protection of Stateless Persons under the 1954 Convention Relating to the Status of Stateless Persons" UNHCR, 2014 <https://www.refworld.org/docid/53b676aa4.html>; "Good Practice Paper: Action 6 Establishing Statelessness Determination Procedures for the Protection of Stateless Persons" UNHCR July 2020 <https://www.refworld.org/docid/5f203d0e4.html>.

<sup>120</sup> UNICEF, 'A Passport to Protection: A Guide to Birth Registration Programming' (Geneva: United Nations, December 2013), <https://www.refworld.org/docid/52b2e2bd4.html>. See also 'Under the Radar and Under Protected: The Urgent Need to Address Stateless Children's Rights', UNHCR and Plan International, June 2012 <https://www.refworld.org/docid/514acd3e2.html>.

<sup>121</sup> Convention on the Rights of the Child, Article 7; African Charter on the Rights and Welfare of the Child, Article 6.

<sup>122</sup> In the migration context, see in particular: UN Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families, 'General Comment No. 2: The Rights of Migrant Workers in an Irregular Situation and Members of Their Families', 28 August 2013, CMW/C/GC/2; UN Committee on the Protection of the Rights of

Experts on the Rights and Welfare of the Child.<sup>123</sup> At the same time, birth registration in itself is not sufficient to resolve statelessness, without additional attention to legal protections, given the very complex rules of private international law relating to recognition of documents and interpretation of the laws of other countries – especially, but not only, when the nationality of parents is not documented.<sup>124</sup>

The Declaration on the Eradication of Statelessness adopted by Heads of State and Government of the ICGLR in 2017 committed Member States to the strengthening of civil registration systems.<sup>125</sup> The Regional Action Plan accompanying the Declaration, updated in 2020, includes the objective to strengthen civil registration systems and ensure universal birth registration, as well as to issue nationality documentation to those entitled to it.<sup>126</sup> The Global Compact on Refugees, adopted in December 2018, also calls on states to provide “access ... to civil and birth registration and documentation” to refugees and stateless persons.<sup>127</sup> Supplementing these commitments on the importance of birth registration and civil registration generally, Target 16.9 of the Sustainable Development Goals is for states to “provide legal identity to all, including birth registration”.<sup>128</sup>

It is often a requirement for a person registering a birth to have to produce an identity document. An identity document issued to a refugee or asylum seeker will usually serve as sufficient proof of identity for this purpose. UNHCR also seeks to facilitate birth registration for the children of asylum seekers and refugees, but it is the host government that must carry this out.<sup>129</sup> Difficulties are commonly reported.<sup>130</sup> In the absence of birth registration, the children and other dependents of recognised refugees born in the country may be included in a refugee “family book” issued by UNHCR or host country authorities. This record is not, however, formal legal proof of the connection between parent and child.

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All Migrant Workers and Members of Their Families and UN Committee on the Rights of the Child, ‘Joint General Comment No. 4 and No.23: State Obligations Regarding the Human Rights of Children in the Context of International Migration in Countries of Origin, Transit, Destination and Return’, 16 November 2017, CMW/C/GC/4-CRC/C/GC/23.

<sup>123</sup> African Committee of Experts on the Rights and Welfare of the Child, “General Comment No. 2: Right to a Name, Birth Registration and a Nationality (Art. 6)”, 2014, <https://www.acerwc.africa/general-comments/>.

<sup>124</sup> Bronwen Manby, “‘Legal Identity for All’ and Statelessness: Opportunity and Threat at the Junction of Public and Private International Law”, *Statelessness & Citizenship Review* 2, no. 2 (2020): 248–71. See further below on acquisition of nationality by refugees.

<sup>125</sup> Declaration of the International Conference on the Great Lakes Region (ICGLR) Member States on the Eradication of Statelessness, Regional Conference on Statelessness, Kinshasa, June 2017, para 7 <https://data2.unhcr.org/en/documents/details/86210> endorsed by the 7<sup>th</sup> Summit of ICGLR Heads of State and Government, Brazzaville, 19 October 2017 (press release available here <http://citizenshiprightsafrika.org/7th-ordinary-summit-of-icglr-heads-of-state-and-government/>);

<sup>126</sup> Consolidated Action Plan of the ICGLR on the eradication of statelessness in the Great Lakes (2017-2024), objectives 4.1 and 4.2 <https://www.refworld.org/docid/60e70b3f4.html>.

<sup>127</sup> Global Compact on Refugees, adopted by the UN General Assembly on 17 December 2018, UN Doc A/RES/73/151), section 2.8 (paragraph 82: “States and relevant stakeholders will contribute resources and expertise to strengthen the capacity of national civil registries to facilitate timely access by refugees and stateless persons, as appropriate, to civil and birth registration and documentation....”

<sup>128</sup> See operational definition and other resources at <https://unstats.un.org/legal-identity-agenda/>.

<sup>129</sup> UNHCR Executive Committee, ‘Conclusion on Civil Registration No. 111 (LXIV) - 2013’ (Geneva: United Nations, 17 October 2013), <https://www.refworld.org/docid/525f8ba64.html>.

<sup>130</sup> Katelyn A. Horne, ‘Navigating Nationality: The Rights to Birth Registration and Nationality in Refugee Magnet States’, *Columbia Journal of Transnational Law* 53 (2014): 114–57; UNICEF, ‘Birth Registration and Armed Conflict’ (Geneva: UNICEF Innocenti Research Centre, 2007), [http://www.unicef.org/protection/birth\\_registration\\_and\\_armed\\_conflict%281%29.pdf](http://www.unicef.org/protection/birth_registration_and_armed_conflict%281%29.pdf) ; UNHCR, ‘Child Protection Issue Brief: Birth Registration’ (Geneva: United Nations, 2013).

In some cases, a person seeking to register a birth may be required by civil registration authorities to provide other documents (such as a marriage certificate, or the death certificate of the other spouse, if relevant). Certificates of birth, adoption, marriage, divorce, or death may be important for the assertion of rights, including rights within the family as well as nationality. In some cases where a person seeks documents from a consulate, the host country may consider that the refugee “voluntarily re-availed himself of the protection of the country of nationality” and therefore, though UNHCR urges otherwise, that refugee protection ceases to apply.<sup>131</sup>

For this reason, there are provisions in the 1951 Refugee Convention intended to govern the recognition of personal status (Article 12) or recognition or substitution of personal status events or documents issued in another country (Article 25), including delivery of “such documents or certifications as would normally be delivered to aliens by or through their national authorities” (Article 25(2)).<sup>132</sup> There is, however, little guidance on the practical steps required to fulfil these obligations.<sup>133</sup>

The UN Statistics Division published an updated set of guidelines on a legislative framework for civil registration, vital statistics, and identity management in January 2019, adopted by the Statistical Commission in 2020. The guidelines include a focus on the reduction of statelessness and on the registration of births to nationals occurring abroad.<sup>134</sup>

There is a lack of official guidance on what information related to nationality of the parents and child should be recorded in the birth registration and certificates of the children of migrants or of refugees, especially if the parents have no documents from the country of origin or are of different nationalities of origin. However, the interpretation of the law of another country in relation to attribution of nationality to a child born abroad is a complex question, especially in case of refugees, and it is not advisable to give this task to district-level civil registration officials. In addition, it must be recognised that a determination by the country of a child’s birth that a child has another nationality does not in itself bind the authorities of that state. Most national laws establish procedures for birth certificates issued by another country to be transcribed into national records, whether by consular registration or another route. Recognition of civil status documents may thus become an issue of concern if voluntary repatriation is possible. UNHCR’s recommended template for tripartite agreement on repatriation, between the agency and the countries

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<sup>131</sup> Article 1 C of the 1951 Refugee Convention provides that: ‘This Convention shall cease to apply to any person falling under the terms of section A if: (1) He has voluntarily re -availed himself of the protection of the country of his nationality;...’. For commentary, see UNHCR, ‘Handbook on Procedures and Criteria for Determining Refugee Status and Guidelines on International Protection under the 1951 Convention and the 1967 Protocol Relating to the Status of Refugees (Reissued)’ (Geneva: United Nations, February 2019), para. 121.

<sup>132</sup> Similar provisions are included within articles 12 and 25 of the 1954 Convention relating to the Status of Stateless Persons.

<sup>133</sup> For commentary, see James C. Hathaway, *The Rights of Refugees under International Law* (Cambridge: Cambridge University Press, 2005), chap. 3.2.4 & 4.10; ‘The Refugee Convention, 1951: The Travaux préparatoires analysed with a Commentary by Dr. Paul Weis’, UNHCR 1990 <https://www.refworld.org/docid/53e1dd114.html>. Article 25 is also considered in ‘Summary Conclusions on the Right to Family Life and Family Unity in the Context of Family Reunification of Refugees and Other Persons in Need of International Protection’ UNHCR, 2017 <https://www.refworld.org/docid/5b18f5774.html> ; Frances Nicholson, ‘The “Essential Right” to Family Unity of Refugees and Others in Need of International Protection in the Context of Family Reunification’, UNHCR, 2018, <https://www.unhcr.org/protection/globalconsult/5a8c413a7/36-essential-right-family-unity-refugees-others-need-international-protection.html>.

<sup>134</sup> UN Statistics Division, ‘Guidelines on the Legislative Framework for Civil Registration, Vital Statistics and Identity Management; Second Draft’ (New York: United Nations, January 2019), paras 3, 162, 304–305, [https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS\\_GOLF\\_Final\\_Draft-E.pdf](https://unstats.un.org/unsd/demographic-social/Standards-and-Methods/files/Handbooks/crvs/CRVS_GOLF_Final_Draft-E.pdf).

of origin and asylum, proposes a clause that the country of origin shall recognise civil status documents issued by the country of asylum.<sup>135</sup>

Because of the complications around the application of national laws, UNHCR thus advises in general that that birth certificates should not record the nationality of children, but that if a field for child's nationality exists on a birth certificate, it should be left blank where nationality is unclear.<sup>136</sup> If this is the case, there should be a procedure to determine what the nationality of the child is, or what nationality may be acquired, or if the child may be stateless. (See further below, acquisition of nationality by the children of refugees born in the territory of the country of asylum.)

## Documentation of nationality

Action 8 of the UNHCR Global Action Plan to End Statelessness is for states to issue nationality documentation to those with entitlement to it. The goal is that no States have populations which are entitled to nationality under law but which cannot acquire documentary proof of nationality.<sup>137</sup>

A number of international instruments are relevant to this action, including those relating to due process and burden of proof. In the case of *Anudo v. Tanzania*, for example, the African Court on Human and Peoples' Rights has affirmed that if a person has ever been issued official identity documents confirming nationality, the burden of proof is on the state to disprove their validity.<sup>138</sup>

In recognition of the fact that there are many hundreds of thousands of people in the Great Lakes region who do not have documentary proof of nationality, the ICGLR Consolidated Regional Action Plan on the eradication of statelessness, as expanded in 2019, includes the following actions:

- Develop a regional strategy and policy guidelines on accessing nationality documentation (including but not limited to nationality certificates, national identity cards or passports).
- Promote practical measures to enable citizens living abroad to access civil registration services (where applicable, the transcription of civil status records established abroad) and nationality documentation through consular and administrative assistance.
- With the preliminary agreement of the States concerned, establish bilateral or multilateral commissions to confirm nationality where it is in doubt, including among border populations and those in a migratory or nomadic situation, and to provide access to nationality documentation.<sup>139</sup>

## Permanent residence and other forms of long-term immigration status

Even if it is not possible for refugees and their children to acquire citizenship, other forms of secure legal status are sometimes provided to refugees in protracted situations, in particular an immigration status of permanent resident (or similar title) – with rights equivalent to those of citizens, except for the political rights to vote or stand for public office.

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<sup>135</sup> Handbook on Voluntary Repatriation: International Protection, UNHCR 1996, clause 11 of sample agreement <https://www.refworld.org/docid/3ae6b3510.html>.

<sup>136</sup> 'UNHCR, Child protection Issue Brief : Birth Registration', August 2013 <https://www.refworld.org/docid/523fe9214.html>.

<sup>137</sup> Global Action Plan to End Statelessness: 2014 – 2024 <https://www.unhcr.org/ibelong/global-action-plan-2014-2024/>.

<sup>138</sup> *Anudo Ochieng Anudo v. United Republic of Tanzania*, No. 012/2015 (African Court on Human and Peoples' Rights 22 March 2018); Manby, 'Case Study: Anudo v Tanzania'.

<sup>139</sup> Consolidated Action Plan of the ICGLR on the eradication of statelessness in the Great Lakes (2017-2024), objectives 4.2.1, 4.2.2 and 4.2.3 <https://www.refworld.org/docid/60e70b3f4.html>.



As UNHCR notes, “Host countries sometimes adopt an incremental approach to local integration by granting permits to stay that gradually lead to a wider range of rights and entitlements over time.”<sup>140</sup> Thus, in some protracted refugee situations, a form of permanent residence status has been provided to refugees as a step towards eventual naturalisation (if that is desired). This has been the approach in Zambia, for example, among Member States of the ICGLR.<sup>141</sup>

There are no established standards in international or regional law on the provision of permanent residence status to refugees or others. However, the obligation to end statelessness requires that an interim status should be transitional, and in particular that children born in the territory should not inherit such a status but should rather have the right to acquire the nationality of that country if they do not acquire the nationality of either parent (see next heading).

### Acquisition of nationality by refugees

The Dar es Salaam Declaration of the ICGLR committed states to adopt a common approach for the ratification and implementation of the UN Conventions on Statelessness, and to harmonise related national laws and standards.<sup>142</sup> In 2017, ICGLR Member States strengthened these commitments by adopting a Declaration and Regional Action Plan on the Eradication of Statelessness.<sup>143</sup> The Declaration and Plan of Action commit ICGLR Member States to ratification of the UN conventions on statelessness, reform of nationality laws to bring them into line with international standards on nationality and statelessness, adoption of national action plans to end statelessness, and nomination of government focal points on statelessness.

#### Facilitated naturalisation

The 1951 UN Convention Relating to the Status of Refugees provides that states parties “shall as far as possible facilitate the assimilation and naturalisation of refugees”, by such measures as expediting proceedings and reducing the costs of naturalisation (Article 34); a similar clause is included in the Convention relating to the Status of Stateless Persons (Article 32). The 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa requires countries of asylum to use their best endeavours to “secure the settlement” of refugees who are unable to return home (Article II.1). The Committee of Ministers of the Council of Europe has adopted a recommendation that provides more detail on what facilitated naturalisation may require in the European context, including relaxation of conditions and fees in certain circumstances.<sup>144</sup>

Only a minority of African states provide for facilitated naturalisation for refugees in law. However, there have been a number of recent efforts to provide naturalisation for very long-term refugees and migrants,

<sup>140</sup> UNHCR’s *10-Point Plan of Action on Refugee Protection and Mixed Movements*, Chapter 7: ‘Solutions for Refugees’, p.186.

<sup>141</sup> For details, see ‘Strategic Framework for the Local Integration of Former Refugees in Zambia’, Ministry of Home Affairs, Republic of Zambia, January 2014 <https://solutionsalliance.org/system/files/resources/STRATEGIC-FRAMEWORK-FOR-THE-LOCAL-INTEGRATION-OF-FORMER-REFUGEES-IN-ZAMBIA.pdf>; ‘Field evaluation of local integration of former refugees in Zambia’, U.S. Department of State, April 2014 <https://2009-2017.state.gov/documents/organization/235057.pdf>.

<sup>142</sup> Dar-es-Salaam Declaration on Peace, Security, Democracy and Development in the Great Lakes Region, ICGLR, adopted by the First Summit of Heads of State and Government, Dar-es-Salaam, 19-20 November 2004, paragraph 68, available at: [http://www.icglr.org/images/Dar\\_Es\\_Salaam\\_Declaration\\_on\\_Peace\\_Security\\_Democracy\\_and\\_Development.pdf](http://www.icglr.org/images/Dar_Es_Salaam_Declaration_on_Peace_Security_Democracy_and_Development.pdf)

<sup>143</sup> Declaration on the Eradication of Statelessness, adopted by Ministers of Foreign Affairs of ICGLR Member States, June 2017, available at: <http://www.refworld.org/docid/59e9cb8c4.html>; Consolidated Action Plan of the ICGLR on the Eradication of Statelessness 2017-2024, available at: <https://www.refworld.org/docid/60e70b3f4.html>.

<sup>144</sup> Council of Europe Committee of Ministers Recommendation No.R(99)18 on the avoidance and reduction of statelessness, 15 September 1999.

including in Guinea Bissau, Liberia, and Sierra Leone, and for Burundian refugees resident in Tanzania since the 1970s.<sup>145</sup>

#### Children of refugees born in the territory of the country of asylum

The UN Convention on the Rights of the Child provides that every child shall have the right to acquire a nationality (Article 7). This right is also contained in the International Covenant on Civil and Political Rights, the Convention on the Rights of all Migrant Workers and Members of their Families, and the Convention on the Rights of Persons with Disabilities. The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits discrimination based on sex in the transmission of nationality to children (and spouses); while the Convention on the Elimination of All Forms of Racial Discrimination (CERD) also contains provisions that restrict discrimination on racial or ethnic grounds in grant of nationality.<sup>146</sup>

Within the African human rights system, Article 6(4) of the African Charter on the Rights and Welfare of the Child requires states to provide in law that :

*A child shall acquire the nationality of the State in the territory of which he [sic] has been born if, at the time of the child's birth, he is not granted nationality by any other State in accordance with its laws.*

This protection is long-established in international law, dating back to The Hague convention on nationality of 1930.<sup>147</sup> A similar provision is included in Article 1 of the 1961 Convention on the Reduction of Statelessness in relation to a child born in the territory who is otherwise stateless. The 1961 Convention provides that a child may be required to fulfil a period of up to five years' habitual residence in the territory of the state of birth in order to acquire that state's nationality.<sup>148</sup>

Protections in international law for the right to nationality for children of unknown parents found on the territory, known as "foundlings", are also amongst the longest standing requirements of international law on nationality.<sup>149</sup> UNHCR recommends that provisions on foundlings should "apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth."<sup>150</sup> The presumption that such a child acquires the nationality of the state where he or she is found applies equally to children believed to belong to a refugee community, but whose parents are not known.

The 1961 Convention on the Reduction of Statelessness also provides that a state shall grant nationality to a child born outside its territory to parents who are nationals, if the child would otherwise be stateless

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<sup>145</sup> Bronwen Manby, 'Naturalisation in African States: Its Past and Potential Future', *Citizenship Studies* 25, no. 4 (2021): 514–42, <https://doi.org/10.1080/13621025.2021.1926098>; for Tanzania, see the discussion in Manby, 'Citizenship and Statelessness in the East African Community'.

<sup>146</sup> On the interpretation of the provisions in CERD, see Michelle Foster and Timnah Rachel Baker, 'Racial Discrimination in Nationality Laws', *Columbia Journal of Race and Law* 11, no. 1 (2021): 83–146, <https://doi.org/10.7916/CJRL.V11I1.8018>; as well as UN Committee on the Elimination of Racial Discrimination (CERD), 'General Recommendation XXX: Discrimination against Non-Citizens' (Geneva: United Nations, 5 August 2004), <https://www.refworld.org/docid/45139e084.html>.

<sup>147</sup> The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930, Article 15.

<sup>148</sup> 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' (Geneva: United Nations, December 2012), para. 40, <https://www.refworld.org/docid/50d460c72.html>.

<sup>149</sup> The Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930, Article 14.

<sup>150</sup> UNHCR, 'Guidelines on Statelessness No. 4', para. 58.

(that is, does not acquire the nationality of the state of birth).<sup>151</sup> It does not, however, include specific provisions governing the situation of the children of refugees.

The laws of many countries establish procedural requirements for the nationality of children born abroad to be recognised: in particular, that the births are registered not only in the country of birth but also that this registration is then transcribed into the population register of the country of origin. If these procedures are not completed (before majority in some cases), the child does not legally acquire nationality. But refugees cannot generally approach the authorities of their country of origin, since to do so would put their refugee status at risk, or (even if not officially recognised as refugees) they may be afraid of the consequences. These difficulties mean that the nationality of refugee children born outside their parents' state of nationality remains uncertain. This uncertainty is multiplied with each succeeding generation.<sup>152</sup>

UNHCR Guidelines on the interpretation of the provisions of the 1961 Convention on the Reduction of Statelessness note that "Where the nationality of the parents can be acquired through a registration or other procedure, this will be impossible owing to the very nature of refugee status which precludes refugee parents from contacting their consular authorities. In such circumstances where the child of a refugee would otherwise be stateless, the safeguard in Article 1 will apply." However, "where the child of a refugee has acquired the nationality of the State of origin of the parents at birth, it is not desirable for host countries to provide for an automatic grant of nationality under Article 1(1) of the 1961 Convention at birth, especially in cases where dual nationality is not allowed in one or both States. Rather, States are advised that refugee children and their parents be given the possibility to decide for themselves, whether or not these children acquire the nationality of the State of birth, taking into account any plans they may have for future durable solutions (e.g. voluntary repatriation to the State of origin)."<sup>153</sup>

As noted above (heading on birth registration and civil registration generally) these complications about the application of the laws of other countries mean that it is not generally advisable that the nationality of a child be recorded in birth certificates. UNHCR advises that in general birth certificates should not record the nationality of the child, but that if a field for child's nationality exists on a birth certificate, it should be left blank where nationality is unclear.<sup>154</sup> This is especially likely to be the case if the parents are long-term refugees who have no nationality documents from the country of origin. An inquiry should then be undertaken to determine the child's current nationality status, or right to acquire nationality under the laws of any relevant state, including the state of birth if the child is stateless. In resolving these cases, the best interests of the child should be the overriding consideration.<sup>155</sup>

### Dual nationality

The historical principle established by international law was that dual or multiple nationality should be avoided. While it would be too soon to say that an international legal norm to permit dual nationality has developed, the 1997 European Convention on Nationality requires states to allow multiple nationality at least for children or in case of automatic acquisition through marriage.<sup>156</sup> The trend of practice among

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<sup>151</sup> Convention on the Reduction of Statelessness, art.4.

<sup>152</sup> Gábor Gyulai, 'The Long-Overlooked Mystery of Refugee Children's Nationality', in *The World's Stateless: Children* (Tilburg, NL: Institute on Statelessness and Inclusion, 2017), 242–47, <https://children.worldsstateless.org/3/migration-displacement-and-childhood-statelessness/the-long-overlooked-mystery-of-refugee-childrens-nationality.html>; Manby, "Legal Identity for All" and Statelessness'.

<sup>153</sup> UNHCR, 'Guidelines on Statelessness No. 4', paras 27–28.

<sup>154</sup> UNHCR, Child protection Issue Brief : Birth Registration, August 2013 <https://www.refworld.org/docid/523fe9214.html>.

<sup>155</sup> African Charter on the Rights and Welfare of the Child, Article 4; Convention on the Rights of the Child, Article 3. See also ACERWC General Comment on Article 6.

<sup>156</sup> European Convention on Nationality, 1997, Preamble and Articles 14–16.

states has been increasingly to permit dual nationality, especially for children.<sup>157</sup> A clear majority of states within Africa now permit dual nationality at least in some circumstances.<sup>158</sup>

It is often those people who might have a claim to two or more nationalities, but have no documents proving connection to any country, who are most at risk of statelessness. Each country where the person has a connection considers the person to have the other nationality, and thus not to be entitled to the nationality of that country. This may be the interpretation even where dual nationality is legally permitted, but is a particular risk where dual nationality is prohibited, or only allowed with explicit permission. Where many people have no documents, the difference between those who are at risk of statelessness and those who are not is often a perception that members of a particular group have closer connections to another country (even if these connections are many generations back, and there is no associated documentation of a person's origins).

National procedures should be adopted that verify that a person has as a matter of fact acquired another nationality before dual nationality is presumed.

### The situation of former refugees

The 1951 Refugee Convention provides for “cessation clauses” which set out the situations in which refugee status may properly come to an end.<sup>159</sup> One of these clauses refers to “ceased circumstances”, where the situation in the country of origin has changed sufficiently to make return possible. For this clause to be applicable, there must have been a change in the refugee's country of origin which is “fundamental, durable, and effective”. In such cases, UNHCR may issue a statement that, as a group, refugees from that country no longer have a well-founded fear of being persecuted (though individuals may rebut the presumption, so that the application of the clause should always be individually assessed). UNHCR will then typically enter into agreements with the countries of origin and refuge for voluntary repatriation or local integration of the refugees (resettlement in a third country is unlikely to be possible at this time). There is, however, no requirement on the host countries to follow the recommendation that the ceased circumstances clause should apply, and voluntary repatriation agreements are often entered into without formal reference to “ceased circumstances”.

A former refugee loses the right to be issued a refugee identity document, and the other rights of refugees. The tripartite agreements usually provide for the country of origin to provide identity documents recognising citizenship, whether the person returns to the country of origin or requires a passport or consular card to be able to regularise status in the country of residence. If the former refugee does not return, he or she becomes a migrant like other migrants, and legal status in the country will depend on possession of an identity document confirming nationality of the country of origin, and a visa or residence permit issued by the country of residence. The Global Compact for Safe, Orderly and Regular Migration, adopted December 2018, calls for states to provide “proof of nationality and relevant documentation” to all nationals, and to ensure that migrants are issued “adequate documentation and civil registry documents”.<sup>160</sup> Those who cannot confirm nationality of a country of origin are therefore

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<sup>157</sup> Thomas Faist and Peter Kivisto, eds., *Dual Citizenship in Global Perspective: From Unitary to Multiple Citizenship* (Basingstoke: Palgrave Macmillan, 2007).

<sup>158</sup> Bronwen Manby, *Citizenship Law in Africa: A Comparative Study*, 3rd ed. (New York: Open Society Foundations, 2016), <https://www.opensocietyfoundations.org/publications/citizenship-law-in-africa-a-comparative-study>.

<sup>159</sup> UNHCR ExCom Conclusion No. 69 (XLIII), Cessation of Status, 1992; *The Cessation Clauses: Guidelines on their Application*, UNHCR, Geneva, April 1999; UNHCR, Note on the Cessation Clauses, EC/47/SC/CRP.30, 30 May 1997, <http://www.unhcr.org/3ae68cf610.html>.

<sup>160</sup> Global Compact for Safe, Orderly and Regular Migration, adopted by the UN General Assembly on 19 December 2018, UN Doc A/RES/73/195, Objective 4 (paragraph 20): “We commit to fulfil the right of all individuals to a legal identity by providing all our nationals with proof of nationality and relevant documentation, allowing national and local authorities to ascertain a migrant's legal identity upon entry, during stay and for return, as well as to ensure

unable to regularise their status in a country of residence, unless a procedure exists to determine statelessness and grant the person nationality or the (temporary) status of stateless person, and a route to acquire nationality in due course.

Since 2000, the invocation of the ceased circumstances clause has been recommended by UNHCR in Africa for refugees from Sierra Leone (2008), Angola and Liberia (2012) and Rwanda (2013). The status of former Angolan and Rwandan refugees is of most concern in Central Africa. However, a majority of countries within the ICGLR have decided not to apply the ceased circumstances clause to Rwandan refugees.<sup>161</sup>

Some long-term former refugees and their children born in exile have faced difficulties in being recognised as citizens when the “ceased circumstances” clause in the UN Refugee Convention has been invoked. This was the case for several hundred Liberians born in exile – or resident outside Liberia since children -- across West Africa, who were denied recognition of citizenship by the Liberian authorities during registration procedures for issue of passports to enable continued residence in the country of refuge or voluntary repatriation to Liberia.<sup>162</sup>

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effective migration procedures, efficient service provision and improved public safety. We further commit to ensure, through appropriate measures, that migrants are issued adequate documentation and civil registry documents, such as birth, marriage and death certificates, at all stages of migration, as a means to empower migrants to effectively exercise their human rights.” Further detail is provided on civil registration, access to consular assistance etc. See <https://www.iom.int/resources/global-compact-safe-orderly-and-regular-migration/res/73/195>.

<sup>161</sup> “Implementation of the Comprehensive Strategy for the Rwandan Refugee Situation, including UNHCR’s recommendations on the Applicability of the ‘ceased circumstances’ Cessation Clauses”, UNHCR, 31 December 2011. The recommendation for Rwanda applied only to those who left the country from 1959 to 1998, while it is open to any refugee to apply on an individual basis for continuing protection. See also “No consensus on implementation of cessation clause for Rwandan refugees”, IRIN, 12 July 2013.

<sup>162</sup> Manby, ‘Migration, Nationality and Statelessness in West Africa’.

## Accession to international treaties

### UN statelessness conventions

Dates of ratification/accession available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx>

COUNTRY	Convention relating to the Status of Stateless Persons 1954	Convention on the Reduction of Statelessness 1961
<b>DRC</b>	Pledge to accede	Pledge to accede
<b>Rwanda</b>	Acceded 4 Oct 2006	Acceded 4 Oct 2006
<b>Uganda</b>	Acceded 15 Apr 1965	Pledge to accede

### UN conventions providing for the right to a nationality

Dates of ratification/accession available at: <https://treaties.un.org/Pages/ParticipationStatus.aspx>

Country	CERD	CCPR	CEDAW	CRC	CMW	CRPD
<b>DRC</b>	17 Oct 1986	21 Apr 1976	1 Nov 1976	27 Sep 1990	--	30 Sep 2015
<b>Rwanda</b>	16 Apr 1975	16 Apr 1975	2 Mar 1981	24 Jan 1991	15 Dec 2008	15 Dec 2008
<b>Uganda</b>	21 Nov 1980	21 Jun 1995	22 Jul 1985	17 Aug 1990	14 Nov 1995	25 Sep 2008

CERD: Convention on the Elimination of all forms of Racial Discrimination, 1965

CCPR: International Covenant on Civil and Political Rights, 1966

CEDAW: Convention on the Elimination of all forms of Discrimination Against Women, 1979

CRC: Convention on the Rights of the Child, 1989

CMW: Convention on the Rights of All Migrant Workers and Members of their Families, 1990

CRPD: Convention on the Rights of Persons with Disabilities, 2006

### AU treaties

Date of ratification/accession available at: <http://www.au.int/en/treaties>

Country	ACHPR	Protocol on the Rights of Women in Africa	ACRWC
<b>DRC</b>	22 July 1987	9 Jun 2008	8 Dec 2020
<b>Rwanda</b>	15 Jul 1983	25 Jun 2004	11 May 2001
<b>Uganda</b>	10 May 1986	22 Jul 2010	17 Aug 1994

## Annex 4: National legal frameworks

This annex provides a more detailed account than set out in chapter 3 of the report of the legal frameworks relating to refugee status, documentation of legal status, and nationality in each country, including the laws on:

- Recognition of refugee or stateless status, issue of identity and travel documents
- Registration of civil status: births, deaths, adoptions, marriages, divorces, legal parentage, etc
- Immigration: policies on permanent residence & other long-term status
- Citizenship / nationality and prevention of statelessness
  - o Country of asylum
  - o Country of origin

There are many other factors that impact the degree to which refugees can be integrated where they live, including in particular access to land, as well as employment or self-employment. These issues are covered in country studies under the refugee policy review framework, which are cross-referenced in the country headings below.<sup>163</sup> They are important context for the current study, but not its primary focus.

### Democratic Republic of Congo (DRC)

For other rights of refugees, including access to the labour market and land, see Refugee Policy Review Framework.<sup>164</sup> On policies for local integration see the Brief on the Management of Forced Displacement, by the Regional Durable Solutions Secretariat for the Great Lakes.<sup>165</sup>

#### International instruments

DRC is a party to the UN and OAU refugee conventions. It is not a party to the UN conventions on statelessness.

The DRC is also a party to CERD, ICCPR, CEDAW, CRC and CRPD.

DRC has been a party to the ACHPR since 1987, and the Protocol on the Rights of Women in Africa since 2008. In December 2020, it acceded to the African Charter on the Rights and Welfare of the Child.

#### Pledges

In 2011, at a Ministerial Intergovernmental Event to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness, the DRC government pledged to support the legal, social and economic integration of Angolan refugees (specifically), including by facilitating access to agricultural land, employment opportunities, education and/or long-term residency status. More generally, it pledged to take initiatives such as identifying cases of statelessness on its national territory; preventing statelessness by setting up national mechanisms in compliance with its national legislation and through registering children by the Registrar of Civil Status, encouraging civil marriage, and applying the provisions of the nationality code for acquisition of nationality.<sup>166</sup>

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<sup>163</sup> Refugee Policy Review Framework, country summaries published March 2022, for [DRC](#), [Rwanda](#), and [Uganda](#).

<sup>164</sup> Democratic Republic of the Congo: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/democratic-republic-congo/democratic-republic-congo-refugee-policy-review-framework-country>.

<sup>165</sup> The Democratic Republic of Congo: Brief on the Management of Forced Displacement, Regional Durable Solutions Secretariat for the Great Lakes, March 2022 <https://www.redssgreatlakes.org/>.

<sup>166</sup> 'PLEDGES 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons', UNHCR ministerial meeting to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the

At the ‘High Level Segment on Statelessness’ held at UNHCR’s October 2019 Executive Committee Meeting in Geneva, DRC pledged to accede to the two statelessness conventions and harmonise its national law with their requirements. It also pledged to reform its civil registration and vital statistics system, to collect data on stateless persons and those at risk of statelessness, and to prevent statelessness through increased civil registration and issue of national identity documents.<sup>167</sup>

At the Global Refugee Forum held two months later in Geneva, the Government of DRC pledged again to accede to the statelessness conventions and improve access to civil registration, especially for children of refugees from Rwanda and Angola born in DRC. In addition, the government pledged to provide a ten-year residence permit to 200,000 Rwandan refugees who have opted to stay in DRC.<sup>168</sup> The DRC has not, however, invoked the cessation clause in relation to Rwandan refugees, who therefore retain their previous status.

### Refugee status and identity documents

Applicable law: Loi n°021–2002 du 16 octobre 2002, and Décret n° 03/014 du 5 août 2003 portant organisation et fonctionnement de la Commission nationale pour les réfugiés et de la Commission des Recours.

The Commission Nationale pour les Réfugiés (CNR) conducts first instance refugee status determination (RSD), and appeals are adjudicated by the Commission de Recours (Appeals Commission). In addition, there is in principle also a possibility for a rejected asylum-seekers to challenge a decision taken by the CNR in the courts. There is no procedure for determining statelessness in DRC. Indeed, there are no cases of statelessness that have submitted asylum applications and if cases arrive according to the National Commission for refugee, they will be registered as "stateless" refugees.

Articles 27 and 28 of law no.21 of 2002 provide for the issue to recognised refugees of identity documents, and travel documents if requested from the National Refugee Commission through UNHCR. The Refugee identity card (*Carte d'identité pour réfugié*) functions as a residence permit, valid for two years and renewable.

As of mid-2020, it was reported that 100 per cent of registered asylum-seekers were in possession of attestation documents but only 16 per cent of recognized refugees were in possession of refugee ID cards.<sup>169</sup> The low percentage with identity documents reflecting problems in the requirement for regular renewal.<sup>170</sup>

### Access to civil registration

Applicable law: Loi n° 87-010 du 1er aout 1987 portant Code de la famille, as most recently amended by Loi N° 16/008 du 15 juillet 2016.

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50th anniversary of the 1961 Convention on the Reduction of Statelessness (Geneva, Palais des Nations, 7-8 December 2011) available with other resources at <https://www.unhcr.org/ministerial-meeting.html>

<sup>167</sup> ‘Results of the High-Level Segment on Statelessness’, High-Level Segment on Statelessness, Geneva, October 2019 <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

<sup>168</sup> Pledges made at the Global Refugee Forum; see Excel spreadsheet available at <https://globalcompactrefugees.org/channel/pledges-contributions> (“La RDC offre aux 200.000 réfugiés rwandais qui ont opté de demeurer en RDC après la clause de cessation de leur statut, un permis de séjours d'une validité de 10 ans”).

<sup>169</sup> Democratic Republic of the Congo: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/democratic-republic-congo/democratic-republic-congo-refugee-policy-review-framework-country>. Presumably the percentages relate to *issue* of attestation documents and ID cards to asylum seekers and refugees, since current possession could not be assumed.

<sup>170</sup> Final Report on the 2018 Registration Operation for Rwandan Refugees: The Kivus, Democratic Republic of the Congo, UNHCR, March 2019 <https://data.unhcr.org/en/documents/details/68487>.



The rules on civil registration are established by the family code (Book II, Title I, Chapter II). Birth registration is compulsory and free.<sup>171</sup> Article 34 of Law No.21 of 2002 provides that a recognised refugee can obtain certificates of birth, death, marriage or any other civil status on the same conditions as nationals. Unless there are particular exceptions provided by law, the civil status of citizens can only be proved by the relevant certificates (*actes de l'état civil*).<sup>172</sup>

Initial registration of civil status events should take place within 90 days; late registration is punishable by a fine. In case a birth or other event has not been registered in time, there are procedures for late registration via a court judgement (*jugement supplétif*) or for the issue of a certificate recognising of the event based on recognition of facts in common knowledge (*acte de notoriété*).<sup>173</sup>

Diplomatic and consular missions function as civil status offices, and they are required to send records of their registrations each year to the ministry of justice and relevant tribunal in DR Congo.<sup>174</sup>

The birth registration rate had been declining, from an estimated 34 percent of children under five in 2001 to 25 percent in 2014.<sup>175</sup> This rate had recovered to 40 percent in a 2017 survey – although at least 5 percent of those registered did not hold a birth certificate; improved rates were particularly striking in North and South Kivu, with birth registration rates of 60 and 70 percent of children under five (respectively). The report warned, however, that the estimates must be treated with caution, since they were so much higher than expected.<sup>176</sup> Indeed, UNHCR reported in December 2019 that 95% of children aged 0 to 4 being accommodated in UNHCR-coordinated sites for internally displaced people in eastern DR Congo did not have birth certificates.<sup>177</sup>

#### Permanent residence or other long-term immigration status

Applicable law: There is no general law on migration. A legal framework adopted in the 1980s<sup>178</sup> defines the status of foreigner (*étranger*) and the rules governing entry and residence in DR Congo.

Article 1 of Ordonnance-loi n°83–033 defines a foreigner as any individual who does not have Congolese nationality, whether the person has a foreign nationality or no nationality.

The laws make reference to the role of several institutions that have never existed or no longer exist. In practice, visas are issued by the Directorate General of Migration (Direction générale des migrations, DGM), attached to the Presidency and working with the Ministry of the Interior.<sup>179</sup>

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<sup>171</sup> Family code, art. 116.

<sup>172</sup> Family code, art. 72.

<sup>173</sup> Family code, arts. 116, 105 – 109, 114, & 153 – 159.

<sup>174</sup> Family code, arts. 76 & 87.

<sup>175</sup> “Enquête nationale sur la situation des enfants et des femmes”, MICS Survey 2001, chapter 9.3 <https://mics.unicef.org/surveys>; Democratic Republic of Congo Demographic and Health Survey 2013-14 chapter 19.1.1 <https://www.dhsprogram.com/pubs/pdf/FR300/FR300.pdf>.

<sup>176</sup> INS, Enquête par grappes à indicateurs multiples (Multiple Indicator Cluster Survey, MICS), 2017-2018, Rapport Final, République Démocratique du Congo, December 2019, Chapter 9.1 <https://mics.unicef.org/surveys>.

<sup>177</sup> UNHCR: Weekly Emergency Update: Ituri and North Kivu Provinces, Democratic Republic of the Congo, 2-8 December 2019, <https://reliefweb.int/report/democratic-republic-congo/unhcr-weekly-emergency-update-ituri-and-north-kivu-provinces-11>.

<sup>178</sup> Ordonnance-loi n°83–033 du 12 septembre 1983, modified by Ordonnance-loi n°87–033 du 8 août 1987; regulated by Ordonnance n°87–281 du 13 août 1987, as amended by Ordonnance n°88–060 du 18 avril 1988. Also Décret n°03–027 du 16 septembre 2003.

<sup>179</sup> Germain Ngoie et David Lelu, “Migration en République Démocratique du Congo: Profil national 2009”, IOM, pp.47, 79-83 [https://publications.iom.int/system/files/pdf/drc\\_profile\\_2009.pdf](https://publications.iom.int/system/files/pdf/drc_profile_2009.pdf).

In addition to other types of visitors' and residents' visas, there is a "visa d'établissement permanent" with indeterminate validity, exempting the holder from obtaining a visa at each entry. The visa requires residence in DRC for at least 15 years, to be carrying out agricultural, commercial or industrial activities or exercise a liberal profession, and to have paid taxes. The fee is USD 1,500.<sup>180</sup>

In order to obtain any one of these visas, an applicant would have to produce a passport of the country of origin. While there have been discussions between UNHCR and the government of DRC on the simplification of such procedures where a passport from the country of origin is not possible to provide, including for long-term refugees from Angola and Rwanda, no specific procedure has been formalised. In 2019, DRC pledged to provide a ten-year residence permit to long-term Rwandan refugees.<sup>181</sup>

### Access to Congolese nationality

Applicable law: Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolais (incorporated into Loi n° 87-010 du 1er août 1987 portant Code de la famille, as most recently amended by Loi N° 16/008 du 15 juillet 2016).<sup>182</sup> The procedures for acquisition of nationality after birth are established by Arrêté ministériel n° 261/CAB/MIN/J/2006 du 04 juillet 2006.

The Constitution of the DRC adopted in 2006 and currently in force contains one article relating to nationality, which provides that:

*Congolese nationality is single and exclusive. It cannot be held concurrently with another.*

*Congolese nationality is either of origin or by individual acquisition.*

*Is Congolese of origin every person belonging to the ethnic groups of which the people and the territory constituted what became Congo (currently the Democratic Republic of Congo) at independence.*<sup>183</sup>

The constitution authorises parliament to provide other details by law. The nationality code adopted in 2004 remains in force.<sup>184</sup> It is considered part of the family code, which was last amended in 2016, but without changing the provisions (or article numbers) relating to nationality.<sup>185</sup>

The Ministry of Justice is the competent ministry for all questions related to nationality. Congolese nationality – of origin or by acquisition – is proved by a nationality certificate issued by the minister, which records the basis on which nationality was acquired, or the documents which have permitted the person to establish nationality of origin.<sup>186</sup>

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<sup>180</sup> Direction Générale de Migration, <http://www.dgm.cd/visas.html>.

<sup>181</sup> See DRC Pledge GRF-00871 listed in the database of Pledges & Contributions, Global Compact on Refugees, available to download at <https://globalcompactrefugees.org/pledges-contributions>.

<sup>182</sup> The amended family code, incorporating the nationality code, is available at <https://www.leganet.cd/Legislation/Code%20de%20la%20famille/CDF.2017.pdf>. The article numbers remain the same as the 2004 law in relation to nationality.

<sup>183</sup> Constitution of the Democratic Republic of Congo, 2006, Article 10 : "La nationalité congolaise est une et exclusive. Elle ne peut être détenue concurremment avec aucune autre. La nationalité congolaise est soit d'origine, soit d'acquisition individuelle. Est Congolais d'origine, toute personne appartenant aux groupes ethniques dont les personnes et le territoire constituaient ce qui est devenu le Congo (présentement la République Démocratique du Congo) à l'indépendance."

<sup>184</sup> Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolaise.

<sup>185</sup> Loi n° 87-010 du 1er août 1987 portant Code de la famille, as most recently amended by Loi N° 16/008 du 15 juillet 2016. The amended family code, incorporating the nationality code, is available at: <https://www.leganet.cd/Legislation/Code%20de%20la%20famille/CDF.2017.pdf>.

<sup>186</sup> Ibid. art. 42.

*Attribution of nationality to children*

Article 6 of the nationality code is almost identical to Article 10 of the constitution, although it includes the “nationalities” as well as “ethnic groups” making up the Congo within nationality of origin.<sup>187</sup>

Article 7 of the nationality code provides for nationality to be attributed at birth if either the mother or the father is Congolese at the time of the child’s birth.<sup>188</sup> However, the parentage of the child has no effect on nationality unless it is established during the child’s minority in accordance with Congolese law.<sup>189</sup> In addition, the family code provides that a person born on Congolese territory is identified as a foreigner through the birth certificate, and in accordance with the provisions of his or her national law.<sup>190</sup> In practice, the birth certificate records the nationality of the parents and not of the child.

A newborn child found in the territory of unknown parents is presumed to be Congolese, unless a foreign nationality is established before the child becomes an adult.<sup>191</sup>

A child born in Congo of parents “with the status of stateless person”<sup>192</sup> is Congolese, as are those who cannot acquire nationality of their parents because their law recognises only *jus soli* attribution, or discriminates on the basis of birth in or out of wedlock.<sup>193</sup>

A child adopted by a Congolese national can acquire nationality by option whether born in Congo or abroad.<sup>194</sup> A separate article, however, provides that if an adopted child acquires nationality automatically by the adoption.<sup>195</sup>

*Right to acquire based on birth and residence until majority*

A person born in Congo can acquire nationality at majority if he or she is permanently resident in Congo and expresses the desire to do so in writing.<sup>196</sup> The procedures do so require a formal election of domicile

<sup>187</sup> Nationality code, art. 6 : “Est Congolais d’origine, toute personne appartenant aux groupes ethniques et nationalités dont les personnes et le territoire constituaient ce qui est devenu le Congo (présentement la République Démocratique du Congo) à l’indépendance.”

<sup>188</sup> The law makes a linguistic distinction in relation to attribution of nationality: Article 6 provides that a person is “*Congolais d’origine*” if he or she belongs to one of the ethnic groups making up the Congo; whereas Article 7 provides that a person is “*Congolais dès la naissance*” (Congolese from birth) if the father or mother is Congolese.

<sup>189</sup> Nationality code, art. 7 : “Est Congolais dès la naissance, l’enfant dont l’un des parents – le père ou la mère – est Congolais. La filiation de l’enfant n’a d’effet sur la nationalité de celui-ci que si elle est établie durant sa minorité conformément à la législation congolaise.”

<sup>190</sup> Family code, art. 71: “L’identification d’un étranger né sur le territoire congolais se fait dans l’acte de naissance conformément aux dispositions de son droit national.”

<sup>191</sup> Nationality code, art. 8 : “Est Congolais par présomption de la loi, l’enfant nouveau-né trouvé en République Démocratique du Congo dont les parents sont inconnus. Toutefois, il sera réputé n’avoir jamais été Congolais si, au cours de sa minorité, sa filiation est établie à l’égard d’un étranger et s’il a, conformément à la loi nationale de son parent, la nationalité de celui-ci.”

<sup>192</sup> There is no process to grant the “status of stateless person” in Congolese law. However, the definition section of the Nationality code (art 5) defines “apatride” in accordance with the definition in the 1954 Convention relating to the Status of Stateless Persons (“a person who is not considered as a national by any other state under the operation of its law”).

<sup>193</sup> Nationality code, art.9: “Est également congolais par présomption de la loi : 1. l’enfant né en République Démocratique du Congo de parents ayant le statut d’apatride ; 2. l’enfant né en République Démocratique du Congo de parents étrangers dont la nationalité ne se transmet pas à l’enfant du fait de la législation de l’Etat d’origine qui ne reconnaît que le *jus soli* ou ne reconnaît pas d’effet sur la nationalité à la filiation naturelle.”

<sup>194</sup> Nationality code, art.13.

<sup>195</sup> Nationality code, art.17. See also Loi no 87-010 du 1er août 1987 portant Code de la famille, modifié 2016, Titre III: De l’adoption, arts 650 et seq.

<sup>196</sup> Nationality code, art.21.

in Congo, a birth certificate (*or jugement supplétif*), an attestation of permanent residence in Congo, as well as the declaration that the person wishes to acquire Congolese nationality.<sup>197</sup>

#### *Marriage*

Marriage provides no right to nationality in itself: an application for acquisition of nationality based on marriage must be approved by decree of the Council of Ministers and considered by the National Assembly.<sup>198</sup>

#### *Naturalisation based on long residence*

Naturalisation can be granted to any foreigner resident for seven years who has rendered “eminent services” to Congo, or if naturalisation provides a “real interest with visible impact” for the country.<sup>199</sup> Naturalisation is by decree of the Council of Ministers, but does not enter into effect until voted on by the National Assembly.<sup>200</sup> There are no provisions on naturalisation in the refugee law; in principle refugees would, however, be eligible for naturalisation on the same terms as other foreigners – as noted below, however, naturalisation is in practice not accessible.

The minor child of a person who has naturalised becomes Congolese by operation of law, without the need for a separate application.<sup>201</sup>

#### *Common conditions for acquisition of nationality*

All forms of nationality by acquisition (adoption, option, marriage, naturalisation) are subject to the same conditions, including seven years “permanent residence”, knowledge of one of the Congolese languages, good character and a clean criminal record in relation to a set of listed serious offences, as well as not having “engaged for the benefit of a foreign state, in acts incompatible with the status of Congolese or prejudicial to the interests of the DRC”.<sup>202</sup>

In addition to these conditions, the law establishes onerous procedural requirements for the declarations and applications for nationality based on birth and residence until majority, or by naturalisation based on seven years’ residence, including a birth certificate (issued in DRC or the country of birth, as relevant), a certificate electing domicile in the DRC, and other documents proving language competence, habitual residence, good conduct etc.<sup>203</sup>

In the case of naturalisation based on residence in DRC, the full list of documents required to submit an application is: formal election of domicile, birth certificate, proof of ability to speak a Congolese language, statements by the competent authorities that the person has been habitually resident in Congo for seven years, and has had the centre of his or her interests in Congo for that period and has sufficient means, a certificate of good conduct, a formal criminal record check, a medical certificate, a report that the person has not conducted acts against the interests of the state, a supporting letter from an employer (if relevant), a certificate stating that the laws of the person’s country of origin provide for the loss of

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<sup>197</sup> Arrêté ministériel n° 261/CAB/MIN/J/2006 du 04 juillet 2006 portant certaines mesures d’exécution de la Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise, art.6

<sup>198</sup> Nationality code, art.19.

<sup>199</sup> Nationality code, arts. 11 and 12.

<sup>200</sup> Nationality code, arts. 36 and 38.

<sup>201</sup> Nationality code, art. 25 : “L’enfant âgé de moins de 18 ans dont l’un des parents acquiert la nationalité congolaise devient Congolais de plein droit.”

<sup>202</sup> Nationality code, art.22.

<sup>203</sup> Nationality code, arts.34–39; Arrêté ministériel n° 261/CAB/MIN/J/2006 du 04 juillet 2006 portant certaines mesures d’exécution de la Loi n° 04/024 du 12 novembre 2004 relative à la nationalité congolaise.

nationality on acquisition of another nationality, and a statement by the minister of justice that the person has rendered important services to the republic and naturalisation is in the interests of the state.<sup>204</sup>

Unsurprisingly, naturalisation is very rarely granted. Only 230 applications for naturalisation have been formally accepted since 1984, of which only 22 were granted.<sup>205</sup>

#### *Dual nationality*

In DRC, the constitution prohibits dual nationality.<sup>206</sup> In addition, the nationality law provides for automatic loss of nationality by any person acquiring a foreign nationality, whether adult or child.<sup>207</sup>

#### *Proof of nationality*

Congolese nationality – of origin or by acquisition – is proved by a nationality certificate issued by the Minister of Justice, and it must record the basis on which nationality was acquired, or the documents which have permitted the person to establish nationality of origin.<sup>208</sup>

According to the family code, unless there are particular exceptions provided by law, the civil status (*état civil*) of individuals – the collection of characteristics identifying a person, including name, date and place of birth, links to parents, and marital status – can only be proved by the relevant certificates (*actes de l'état civil*).<sup>209</sup> For the establishment of nationality, the most important civil status certificate is the birth certificate: as noted above, the fact that a child has Congolese parents has no effect on nationality unless it their identity is established during the child's minority in accordance with Congolese law (that is by birth registration).<sup>210</sup> Acquisition of nationality by option, based on birth and residence until majority also depends on birth registration.

In case the identity of a person's parents is in doubt, the family code also sets out rules for the legal recognition of parentage, or *filiation*.<sup>211</sup> Maternal filiation is established by the fact of birth, and is established by the birth certificate, or by voluntary declaration of the mother, or by a court order.<sup>212</sup> Paternal filiation is presumed if the child is born in wedlock, or may be established by declaration or court order.<sup>213</sup> In practice, most marriages not registered, whether of Congolese nationals or of refugees.

<sup>204</sup> Arrêté ministériel n° 261/CAB/MIN/J/2006, art. 1.

<sup>205</sup> Information provided by the Ministry of Justice to the UNHCR Kinshasa office, May 2020, reported in Manby, 'Citizenship and Statelessness in SADC Member States'.

<sup>206</sup> Constitution 2006, art.10; Loi No 04-024, art. 1: "La nationalité congolaise est une et exclusive. Elle ne peut être détenue concurremment avec aucune autre."

<sup>207</sup> Nationality code, arts 1 & 26.

<sup>208</sup> Nationality code, art. 42: "La preuve de la nationalité congolaise d'origine ou d'acquisition s'établit en produisant un certificat de nationalité régulièrement délivré par le Ministre ayant la nationalité dans ses attributions. Le certificat comporte les mentions et références prescrites par le Décret portant mesures d'exécution de la présente Loi, notamment les références précises du registre d'enregistrement, la date, la nature de l'acte en vertu duquel l'intéressé a la nationalité congolaise ainsi que les documents qui ont permis de l'établir. Le certificat de nationalité fait foi jusqu'à preuve du contraire."

<sup>209</sup> Family code, Article 72: "Sauf dispositions spéciales prévues par la loi, l'état civil des citoyens n'est établi et ne peut être prouvé que par les actes de l'état civil."

<sup>210</sup> Nationality code, art. 7: "Est Congolais dès la naissance, l'enfant dont l'un des parents – le père ou la mère – est Congolais. La filiation de l'enfant n'a d'effet sur la nationalité de celui-ci que si elle est établie durant sa minorité conformément à la législation congolaise."

<sup>211</sup> Family code, Book III, Title II.

<sup>212</sup> Family code, art. 595: "La filiation maternelle résulte du seul fait de naissance. Elle s'établit soit par l'acte de naissance, soit par une déclaration volontaire de maternité, soit par une action en recherche de maternité."

<sup>213</sup> Family code, art. 601: "La filiation paternelle s'établit par la présomption légale en cas de mariage ou par une déclaration ou par une action en recherche de paternité."

### Access to Rwandan nationality

Applicable law: Organic Law N° 002/2021.OL of 16/07/2021 governing Rwandan Nationality, supplemented by Ministerial Order N° 007/01 of 23/03/2022 relating to Rwandan Nationality.

The 2021 Rwandan nationality code provides that a person is eligible for nationality “of origin”<sup>214</sup> if he or she has at least one parent “who is a Rwandan not through acquisition but by virtue of Rwandan ancestry”, supported by corroborating testimony and evidence.<sup>215</sup> Nationality is not attributed in any case by operation of law, but must be applied for. No specific additional conditions are applied to those born outside of Rwanda.

The Rwandan family code provides that a civil status document issued by a foreign country “is authoritative in Rwanda except in the case where other documents or data held from abroad or elements drawn from the record itself establish that the record is irregular, falsified or that the facts declared in it do not correspond to reality.” In case of doubt, a court will rule on the validity of the record.<sup>216</sup>

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<sup>214</sup> In the usual civil law terminology in francophone states *nationalité d’origine* means nationality attributed at birth (or later) by operation of law, distinguished from nationality that is acquired based on an application. It does not have any connotation of ethnic origin.

<sup>215</sup> Law N° 002/2021.OL, art. 6.

<sup>216</sup> Law No. 32/2016 of 28/08/2016 Governing Persons and the Family, as amended, art. 98.

## Rwanda

For other rights of refugees, including access to the labour market and land, see Refugee Policy Review Framework.<sup>217</sup> On policies for local integration see Rwanda: Brief on the Management of Forced Displacement, by the Regional Durable Solutions Secretariat for the Great Lakes.<sup>218</sup>

### International instruments

Rwanda is a party to the 1951 Convention Relating to the Status of Refugees, the 1969 OAU Convention Governing the Specific Aspects of Refugee Problems in Africa, the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness.

Rwanda is a party to CERD, ICCPR, CEDAW, CRC, CMW and CRPD.

Rwanda is also a party to the ACHPR, the Protocol on the Rights of Women in Africa, and the ACRWC, and pledged in 2019 to contribute to the adoption and subsequent ratification of the Protocol to the African Charter on Human and Peoples' Rights on Specific Aspects of the Right to Nationality and Eradication of Statelessness in Africa.

### Pledges

At the 2011 ministerial meeting to mark the 60th anniversary of the 1951 Refugee Convention and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness Rwanda pledged, among other things, to review its nationality laws and procedures relating to the acquisition of nationality in line with the 1961 Convention on the Reduction of Statelessness and to take all measures necessary to ensure birth registration for all children of refugees, asylum-seekers and stateless persons.<sup>219</sup>

Rwanda committed during the 2016 New York Leader's Summit on Refugees to ensuring that 100 per cent of refugees on its territory would be in possession of valid refugee identity cards, as well as other measures to ensure economic inclusion and access to services.<sup>220</sup>

These commitments were expanded in October 2019 at the High-Level Segment on Statelessness held at the UNHCR Executive Committee meeting<sup>221</sup>, and subsequently at the Global Refugee Forum held in December 2019.<sup>222</sup> The pledges made in 2019 were:

- To establish a national taskforce on statelessness and adopt a national plan of action to eradicate statelessness.
- To improve data on stateless persons by include the question of statelessness in the next national population and housing census.
- To amend the nationality law to facilitate the naturalisation of stateless persons.

<sup>217</sup> Rwanda: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/rwanda/rwanda-refugee-policy-review-framework-country-summary-30-june-2020-march-2022>.

<sup>218</sup> Rwanda: Brief on the Management of Forced Displacement, Regional Durable Solutions Secretariat for the Great Lakes, March 2022 <https://www.redssgreatlakes.org/>.

<sup>219</sup> 'PLEDGES 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons', UNHCR ministerial meeting to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness (Geneva, Palais des Nations, 7-8 December 2011) available with other resources at <https://www.unhcr.org/ministerial-meeting.html>

<sup>220</sup> Commitments of Rwanda at the Leaders' Summit on Refugees, UNHCR, 20 September 2016 <https://www.unhcr.org/rw/12219-commitments-rwanda-leaders-summit-refugees.html>.

<sup>221</sup> Complete list on UNHCR website: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>

<sup>222</sup> Pledges made at the Global Refugee Forum (Pledge ID GRF-00917 and GRF-00914; see Excel spreadsheet available at <https://globalcompactrefugees.org/channel/pledges-contributions>.

- To improve access to late birth registration for refugees.
- To ensure the issue of nationality documents to former Rwandan refugees living in other countries, whose refugee status was ceased by the respective asylum authority, who opted for local integration where they live, and who are entitled and willing to obtain Rwandan nationality documents.
- To grant or confirm Rwandan nationality of all stateless persons and their descendants living on Rwanda territory, following amendment of the nationality law and getting the number and the establishment of the profile of stateless persons in Rwanda.

In line with the pledges made at the High-Level Segment and Global Refugee Forum, the Rwandan government created a National Statelessness Taskforce and developed a National Action Plan to end statelessness.<sup>223</sup>

#### Refugee status and identity documents

Applicable law: Law N° 12/2014 of 09/05/2014 Relating to Refugees, the Prime Minister's Order No 112/03 of 2015 determining the Organisation and Functioning of the National Refugee Status Determination Committee (NRSDC) and Benefits granted to its Members, and Ministerial Instruction No. 02-2016 of 1 06 2016 determining the management of refugees and refugee camps.

The definition of refugees and protection against refoulement taken from the 1951 Refugee Convention. Under the law, the state is responsible for refugee status determination, and the process and timeline are clearly set out. Refugees in Rwanda are registered jointly by UNHCR and the Government. There is no process to register refugees as also stateless.

All registered refugees on Rwandan territory receive a “proof of registration”, issued by UNHCR and the Ministry in Charge of Emergency Management (MINEMA), which enables them to access most services. Registered asylum-seekers hold a temporary residence permit with a validity of three months. Recognised refugees above 16 years old are also entitled to a refugee ID, issued by NIDA, in the same format as the ID card for nationals. The refugee identity card provides authorization to work.

These cards are issued at a low cost of RWF 500 (approximately \$0.50cents), which is covered by UNHCR. The cost of renewal is the same as for initial applications and the replacement cost in the event of loss is 1,500 RWF, or approximately \$1.50, also covered by UNHCR. The ID card is valid for a period of five years and can be renewed as long as the person holding it remains a refugee in Rwanda. Around 80 percent per cent of refugees had been issued with refugee ID cards by 2022, and the Government was planning to issue documents to the 20 per cent of eligible refugees who did not yet have them.<sup>224</sup> Refugees are entitled to travel documents if required.<sup>225</sup>

#### Permanent residence or other long-term immigration status

Applicable law: Law n°57/2018 of 13/08/2018 on immigration and emigration in Rwanda, supplemented by Ministerial Order N°06/01 of 29/05/2019 relating to Immigration and Emigration.

The Directorate-General of Immigration and Emigration (DGIE) is the government agency competent for all matters related to legal residence and citizenship.

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<sup>223</sup> Eugene Sibomana and Johanna Seidl, “Ending Statelessness in 2024: Rwanda establishes a clear pathway toward this goal”, UNHCR 11 Nov 2020 <https://www.unhcr.org/rw/15761-ending-statelessness-in-2024-rwanda-establishes-a-clear-pathway-toward-this-goal.html>.

<sup>224</sup> Rwanda: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/rwanda/rwanda-refugee-policy-review-framework-country-summary-30-june-2020-march-2022>, and figures updated by UNHCR.

<sup>225</sup> Law No 57/2018 on immigration and emigration, art.23; Ministerial Order N° 02/01 of 31/05/2011 Establishing Regulations and Procedures Implementing Immigration and Emigration Law, art.34.



The law on immigration and emigration provides for temporary and permanent residence permits to be issued to foreigners in Rwanda.<sup>226</sup> The detail on the classes of permits to be issued is provided in the ministerial order, including a permanent residence permit issued to a foreigner who has been legally residing in Rwanda for an aggregate of ten years, and his or her spouse or children, as well as a permit “issued on humanitarian grounds to a foreigner in need of protection due to his or her personal circumstances or circumstances beyond his or her control”.<sup>227</sup> Residents who are not refugees are issued identity documents and may also be issued travel documents if they are unable to acquire a travel document from the country of origin, or are stateless.<sup>228</sup>

Permanent residence status could potentially be issued to refugees, but there is no known case of a refugee obtaining a permanent residence permit. Some refugees obtain short-term permits to work outside the camps.

### Civil registration

Applicable law: Law No. 32/2016 of 28/08/2016 governing persons and the family, as amended in 2020 by Law N° 001/2020 of 02/02/2020.<sup>229</sup>

The 2016 law on persons and the family repealed and replaced Loi No. 42/1988 and created a consolidated legal framework for civil registration for the first time. Amendments to the family code in 2020 updated the law to provide for digital registration, linking birth registration directly to health facilities and local government administration.

The 2016 law increased the initial deadline to register a birth from 15 to 30 days (cultural norms require at least eight days before a child is named); the law also removed the requirement for more onerous procedures for late registration (though a fee may apply). Any person who finds an abandoned new-born child is also bound to register its birth within thirty days. The 2020 amendments provide for birth registration to be carried out immediately after birth if the birth took place at a health facility.<sup>230</sup> While over 94 percent of births occur at health facilities, those who are born in the community are registered at cell level.

Foreign civil status documents are authoritative; and in case of doubt a court will rule on the validity of the record.<sup>231</sup> In addition, Rwandan law provides for the civil registry and courts to be able to substitute civil status records where they are absent – whether the event occurred in Rwanda or abroad. In case of an individual applicant, the person submits “all possible evidence proving the existence or non-existence of that record” and the competent court may order further investigations if considered necessary, and order restoration or registration of data.<sup>232</sup> This procedure could potentially be of use for refugees (and others) not born in Rwanda whose birth has not been registered in their country of birth or who may have fled without their birth certificate in their possession – in line with the provision in Article 25 of the Refugee Convention that such administrative assistance should be provided to refugees.

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<sup>226</sup> Law No 57/2018 on immigration and emigration, art.8

<sup>227</sup> Ministerial Order N° 02/01 of 31/05/2011 Establishing Regulations and Procedures Implementing Immigration and Emigration Law, art.20.

<sup>228</sup> Ministerial Order N° 02/01 of 31/05/2011, arts. 23 & 33.

<sup>229</sup> See also Presidential order no 092/01 of 21/09/2020 determining responsibilities of the executive secretary of cell; Ministerial order n° 001/07.01 of 27/07/2020 determining the officer of the health facility with powers of civil registrar; Ministerial Order No 002/07.01 of 27/07/2020 determining the number, type, format and use of civil status registers.

<sup>230</sup> Law No. 32/2016 of 28/08/2016 Governing Persons and the Family, as amended by Law N° 001/2020 of 02/02/2020, arts. 100–102.

<sup>231</sup> Law No. 32/2016 of 28/08/2016 Governing Persons and the Family, as amended, arts. 86 & 98.

<sup>232</sup> Articles 86-91 of Law n° 32/2016, as amended.

Birth registration rates improved dramatically over the past decades increasing from 4 percent in 2000/01 to 21 percent in 2006, and 63 percent in 2010, although the rate fell again to 56 percent of children under five from 2010 to 2015.<sup>233</sup> The updating and digitalisation of the civil registration system under the new legal frameworks increased the birth registration rate to 67% in 2017 and 89% in 2020.<sup>234</sup> According to the preliminary results of the 2022 National Population and Housing Census, birth registration rates for children 0-17 years were 94.3%, while birth registration rate for refugees born in Rwanda irrespective of age was 91% as of June 2023.<sup>235</sup>

Refugees have access to civil registration services to register birth, marriages, divorces, and deaths occurring in Rwanda and to obtain corresponding civil documentation. Birth registration records the nationality of the parents as well as the nationality of the child. In case of a child born to two foreign parents/refugee if from different nationalities, the parents decide on the nationality of the child recorded in the register.<sup>236</sup>

### Access to Rwandan nationality

Applicable law: Organic Law N° 002/2021.OL of 16/07/2021 governing Rwandan Nationality, implemented by Ministerial Order N° 007/01 of 23/03/2022.

The Rwandan constitution as revised in 2015 provides that “every Rwandan has the right to Rwandan nationality”,<sup>237</sup> rewording a previous general right to a nationality.<sup>238</sup> In 2021 Rwanda adopted a new law on nationality that reformulated the previous nationality regime. The new law does not explicitly state that those who were nationals under the law in effect at the time of its adoption retain their previous status. The implication is that the 2021 nationality code is retroactive.

Rwandan nationality is proved by an identity card, passport, birth certificate or “any other official document”.<sup>239</sup> In addition, a certificate of Rwandan nationality of origin or by acquisition is issued by the organ in charge of Rwandan nationality following grant of nationality.<sup>240</sup>

### *Nationality “of origin”*

Article 25 of the Rwandan Constitution, as revised 2015, provides that “All persons of Rwandan origin and their descendants are, upon request, entitled to Rwandan nationality.” The original version of the constitution adopted in 2003 stated that acquisition of nationality was automatic on return to Rwanda<sup>241</sup>; a new nationality code was adopted the following year, and refugees who returned to Rwanda while the 2004 nationality was in force were regarded as having automatically reacquired Rwandan nationality. Those returning to Rwanda after the nationality code of 2008 was adopted have had to go through an

<sup>233</sup> Identification for development (ID4D) country diagnostic : Rwanda. Washington, D.C. : World Bank, 2016. <http://documents.worldbank.org/curated/en/257581546882856591/Identification-for-development-ID4D-country-diagnostic-Rwanda>; Rwanda Demographic and Health Survey 2014-15, <https://www.dhsprogram.com/pubs/pdf/FR316/FR316.pdf>, chapter 2.6.

<sup>234</sup> “One UN Country Annual Results: Report 2019-2020”, UN Rwanda Country Office, 6 April 2021. <https://rwanda.un.org/en/124042-one-un-country-annual-results-report-2019-2020>

<sup>235</sup> Information supplied by the Rwandan authorities in comments on a draft of this report, June 2023.

<sup>236</sup> Information supplied by the Rwandan authorities in comments on a draft of this report, June 2023.

<sup>237</sup> Rwanda Constitution 2003, revised 2015, art. 25.

<sup>238</sup> Art. 7 of the 2003 version of the Constitution provided that: “Every person has a right to nationality.”

<sup>239</sup> Law No. 002/2021, art.4.

<sup>240</sup> Law No. 002/2021, arts.22 & 27.

<sup>241</sup> Article 7 of the 2003 Constitution of Rwanda stated that “Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31 December 1994 by reason of acquisition of foreign nationalities automatically reacquire Rwandan nationality if they return to settle in Rwanda.” See discussion in Dusabe, ‘Report on Citizenship Law: Rwanda’.

application procedure for recovery of nationality. To assert this right, a person has had to supply evidence of genealogical connections and historical residence in Rwanda itself, or of integration in Rwandan culture, through witness testimony and other means.<sup>242</sup>

Under the 2008 Nationality Code, a person was Rwandan by “parental descent” if one of the parents was Rwandan, wherever the person was born, if descent was proved according to the laws in force in Rwanda.<sup>243</sup> The law made no distinction in transmission of nationality to children among those whose parents had always been Rwandan, had recovered Rwandan nationality, or had naturalised. In practice, however, distinctions were made.<sup>244</sup> In addition, it was provided that nationality was acquired by a child born in Rwanda who could not acquire the nationality of one of his or her parents (whether because they were unknown or stateless, or the child was unable to acquire their nationality), while a child born in the territory of non-national parents could apply for nationality at majority.<sup>245</sup>

The 2021 Nationality Code creates a generalised distinction between those with nationality “of origin”<sup>246</sup> and those who have acquired nationality. This distinction is important because no person with nationality of origin may be deprived of nationality, while certain high level official positions (including the presidency) are restricted to those who have nationality of origin.<sup>247</sup>

The 2021 Code does not provide for automatic attribution of nationality to any person at birth by operation of law, instead requiring every individual to apply for nationality.<sup>248</sup> Those eligible to apply for nationality “of origin” are those who are of “Rwandan origin”, defined “as a relationship linking a person to Rwanda as a result of having one parent of Rwandan origin”, such that at least one parent “is a Rwandan not through acquisition but by virtue of Rwandan ancestry.”<sup>249</sup> The child of a person who has nationality “by acquisition” acquires nationality at birth, but also holds the status of nationality by acquisition.<sup>250</sup>

The ministerial order implementing the law states that a person applying for nationality of origin must submit:

- 1) proof that the person was born to a Rwandan parent who is a Rwandan national not through acquisition but by virtue of Rwandan ancestry;

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<sup>242</sup> Presidential Order No. 21/01 of 27 May 2009, art. 18: “Originating in Rwanda shall be proven by the parents of the concerned person through his/her genealogy, their former residence or through testimonies of persons who knew him/her very well. The Rwandan origin may also be proven by the degree of his/her integration in the Rwandan culture. However, these conditions may be ignored if there are other elements proving his/her Rwandan origin.”

<sup>243</sup> Law No. 30 of 2008, arts. 6 & 7.

<sup>244</sup> Dusabe, ‘Report on Citizenship Law: Rwanda’.

<sup>245</sup> Law No.30 of 2008, arts. 8 & 9.

<sup>246</sup> In the usual civil law terminology in francophone states *nationalité d’origine* means nationality attributed by operation of law, usually at birth; distinguished from nationality that is acquired based on an application. It does not have any connotation of ethnic origin.

<sup>247</sup> Rwanda Constitution 2003, revised 2015, arts. 25, 66, 99, & 153.

<sup>248</sup> Chapter II of Law No. 002/2021.OL, ‘Applying for and granting Rwandan Nationality’, includes the provisions on both nationality of origin and by acquisition.

<sup>249</sup> Law No. 002/2021.OL, arts. 1(2), 5 & 6.

<sup>250</sup> Article 20 of Law No. 002/2021.OL: “A child meeting the following requirements becomes automatically Rwandan like his or her parents: 1<sup>o</sup> having born to a parent having been granted Rwandan nationality by acquisition, or having been adopted by a parent having been granted Rwandan nationality by acquisition; 2<sup>o</sup> be under age of majority.” The apparent implication is that the child of a parent who is a national “by acquisition” is attributed nationality automatically at birth, which would then be the only category of person to acquire nationality at birth by operation of law, without an application.

- 2) indication of a foreign country where the person was born and that he or she has never been legally recognised as a Rwandan;
- 3) written testimony of the person or of another person corroborated with evidence proving the relationship linking him or her with Rwanda, or the proof of a relative who is Rwandan national by origin;
- 4) proof of payment of application fee.<sup>251</sup>

These provisions of the law and the order are not entirely clear on the meaning of “Rwandan origin” or “Rwandan ancestry”. In particular, it is not specified if a person must demonstrate family connections linking to a place within the borders of the current state of Rwanda, or if a broader definition based on linguistic and cultural identity could be used, including those without any proof of such a geographical connection.

It is also not clear if the application procedure for nationality on the basis of “Rwandan origin” refers only to those born outside of the country – as seems to be implied by the second paragraph of the Article 3 of the 2022 ministerial order, and would be in line with previous provisions on facilitated acquisition for those outside the country of Rwandan origin. The 2021 law, however, does not establish a distinction between those born inside or outside of the country, and so the application procedure appears to apply to all. In practice, it seems that a child born in Rwanda with at least one parent who holds a Rwandan national identity card and whose birth is registered will be recognised as Rwandan as part of the birth registration process. The birth register is in turn linked to the National Population Registry, so the process of recognition as a Rwandan in these circumstances would not require a separate application. However, the wording of the new law referring to an application for Rwandan nationality of origin creates potential confusion in its current form, seeming to blur the situation of those born in the country of Rwandan parents (whether or not of “Rwandan origin”) and those born outside who wish to acquire Rwandan nationality on the basis of an ancestral connection to the country.

In comments received on a draft of this report, the Rwandan authorities stated:

*A child born to at least one parent, who possess Rwandan nationality at the time of the child’s birth, is automatically attributed Rwandan nationality irrespective of place of birth. No application, but only registration is required.*

*A person born in Rwanda, born to at least one parent of Rwandan origin (irrespective of the current nationality/documentation of the individual and the parents), is automatically attributed Rwandan nationality.*

*A person is eligible to apply for Rwandan nationality by origin, if he/she is born outside of Rwanda to at least one parent, who has origins in Rwanda, but whose parents have never been legally recognized as Rwandans.*

Nonetheless this ambiguity should be clarified in a public statement, since the implications of non-registration of birth still appear to be that nationality is not acquired automatically at birth.

The application fee for Rwandan nationality of origin is 5,000 Rwandan francs (approximately US\$5).<sup>252</sup>

*Nationality “by acquisition”*

Any person not of “Rwandan origin” can only be granted nationality “by acquisition”. Detailed requirements are established for eleven separate grounds to acquire nationality, which are: birth on the territory of Rwanda; foundlings; marriage; adoption; national interest; special skills or talent; substantial sustainable investments or activities; residence in Rwanda; honour; being an immigrant; statelessness.<sup>253</sup> Any person granted nationality by acquisition must swear an oath of allegiance and all grants of

<sup>251</sup> Ministerial Order No. 007/01, art. 3.

<sup>252</sup> Ministerial Order No. 007/01, art. 31.

<sup>253</sup> Law No. 002/2021.OL, art. 8.

nationality by acquisition must be published in the official gazette.<sup>254</sup> A holder of Rwandan nationality by acquisition has the same rights and obligations as a Rwandan national by origin “unless otherwise provided for by Law”.<sup>255</sup> The minor child of a person who acquires nationality also acquires nationality automatically through that process.<sup>256</sup> The child of a person who has acquired nationality is automatically attributed nationality at birth, but also with the status of “nationality by acquisition”. This status restricts the political rights of those who are not of “Rwandan origin”.

A person who was born in Rwanda of parents who were legally resident at the time of birth may apply for nationality at the age of majority, subject to conditions including good conduct, social integration, sufficient means, and not posing a threat to national security.<sup>257</sup> There is no stated exclusion for the children of refugees, although the provision does not appear to be accessed in practice. An applicant must submit a birth certificate and application letter, as well as proof of payment of the application fee.<sup>258</sup>

Acquisition based on marriage requires five years of a legally registered marriage, and is subject to similar conditions.<sup>259</sup> Acquisition of nationality based on long residence (“on grounds of being an immigrant”) is significantly restricted by comparison to the 2008 nationality code, requiring 15 years’ residence instead of five, and is subject to similar conditions as for birth and residence in Rwanda or based on marriage.<sup>260</sup> However, requirements to produce birth and marriage certificates are waived in case of refugees, where those events took place outside of Rwanda.

In line with the general scheme of the 2021 nationality law, and by contrast to the 2008 law,<sup>261</sup> an application is required for a child of unknown parents found in the territory to acquire Rwandan nationality.<sup>262</sup> An application for nationality by acquisition as a foundling requires only that the person be found in the territory of Rwanda, without any restriction relating to the age at which the person is found. The only requirements are an application letter on behalf of the child and a written summary on circumstances and place where the foundling was found.<sup>263</sup> An application on the grounds of statelessness requires that the person is a stateless person resident on the territory of Rwanda on the date of application and does not pose a threat to national security.<sup>264</sup> There is no requirement that the person be born in the territory.

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<sup>254</sup> Law No. 002/2021.OL, arts.25 & 26.

<sup>255</sup> Law No. 002/2021.OL, art.29.

<sup>256</sup> Law No. 002/2021.OL, art.20.

<sup>257</sup> Law No. 002/2021.OL, art. 9.

<sup>258</sup> Ministerial Order N° 007/01 of 23/03/2022 relating to Rwandan Nationality, art. 4.

<sup>259</sup> Law N° 002/2021.OL, art. 11; Ministerial Order N° 007/01, art. 7. Art. 11 of the previous nationality code (Organic Law No. 30/2008) had rather stated that acquisition based on marriage could not be “guaranteed” if the marriage is not registered.

<sup>260</sup> Law N° 002/2021.OL, art. 18; Ministerial Order N° 007/01, art. 5.

<sup>261</sup> The 2008 nationality code (Law No. 30 of 2008, art.9) stated simply that “Any child born in Rwanda from unknown or stateless parents or who cannot acquire the nationality of one of his or her parents shall be Rwandan”, implying that Rwandan nationality was automatically attributed by operation of law.

<sup>262</sup> Especially in the case of the presumption of nationality for foundlings and otherwise stateless children, the distinction between automatic attribution and an application can seem artificial, since in all countries the authorities will need to conduct an investigation and make a determination of the child’s status. However, the legal principle of automatic attribution is important, since it only requires the person concerned to prove the facts for acquisition of nationality to be a legal entitlement.

<sup>263</sup> Law N° 002/2021.OL, art. 10; Ministerial Order N° 007/01, art. 8.

<sup>264</sup> Law N° 002/2021.OL, art. 19; Ministerial Order N° 007/01, art. 9.

The grant of Rwandan nationality on grounds of adoption is subject to the condition that the adoptee is not a threat to national security.<sup>265</sup> The family code provides for a distinction between “full” and “simple” adoption. A “simple adoption” which is either with the consent of the parents, or, if the parents cannot consent (because they are missing or dead), consent may be given by a Family Council or by a person vested with the child’s custody. However, in case of simple adoption, a child continues to belong to his/her family of origin, and thus would not acquire rights to nationality.<sup>266</sup>

Any applicant for Rwandan nationality by acquisition pays a fee of ten thousand Rwandan francs (approximately US\$10). In addition, there is a “processing fee” of 100,000 RWF (approximately US\$100), which is waived in case of acquisition on the grounds that the person is a foundling or stateless.<sup>267</sup>

Between 2009 (when the presidential order was adopted providing modalities for implementing the 2008 nationality code) and 2020, 935 people were granted Rwandan nationality.<sup>268</sup> Refugees are in principle eligible for naturalisation; and although statistics are not in possession of UNHCR, UNHCR is aware that there are cases of refugees who have applied for nationality and who have been naturalized.

#### *Dual nationality*

Dual nationality has been allowed under the law in most circumstances in Rwanda since 2003. The constitution (as amended 2015) provides that dual nationality is permitted.<sup>269</sup> The 2021 nationality law does not provide for nationality to be lost on acquisition of another, nor require renunciation of another nationality in order to naturalise. However, a person with dual nationality must declare that status within three months of acquiring another nationality.<sup>270</sup> There is no provision specifically relating to those born with two nationalities.

#### Access to Congolese nationality

Congolese nationality is attributed at birth based on a person's membership of one of the “ethnic groups of which the people and the territory constituted what became Congo (currently the Democratic Republic of Congo) at independence”.<sup>271</sup> In addition, the Congolese nationality code provides for nationality to be attributed at birth if either the mother or the father is Congolese at the time of the child’s birth. However, the parentage of the child has no effect on nationality unless it is established during the child’s minority in accordance with Congolese law.<sup>272</sup>

The Congolese status of the Banyarwanda – their status as one of the ethnic groups of which the people and the territory constituted what became DRC -- has been contested since independence of the two countries from Belgium. Even those who have never left DRC face difficulties. There is no doubt that it would be very difficult for any member of the Banyarwanda Congolese refugee population in Rwanda to establish Congolese nationality should they ever return to Congo.

The only exception might be for a person who could prove that one parent was Congolese – that is, the parent held a passport or other document that provided evidence that would be accepted by the Congolese authorities as proof of Congolese nationality. In addition, the child’s birth would have to have been registered (to prove descent from that parent), and the birth registration in the country of birth

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<sup>265</sup> Law No. 002/2021.OL, art. 12.

<sup>266</sup> Law n°32/2016 of 28/08/2016 governing Persons and Family, as amended 2020, Chapter IV, Adoption, arts. 289-291.

<sup>267</sup> Ministerial Order N° 007/01, arts. 31 & 32.

<sup>268</sup> “Over 900 Got Rwandan Nationality Since 2009”, The New Times (Kigali), 5 October 2020.

<sup>269</sup> Rwanda Constitution 2003, revised 2015, art. 25.

<sup>270</sup> Law N° 002/2021.OL, art. 46; Ministerial Order N° 007/01, arts. 36.

<sup>271</sup> Constitution of the Democratic Republic of Congo, 2006, Article 10; Nationality code, art. 6.

<sup>272</sup> DRC Nationality code, art. 7.

transcribed into the Congolese registers -- before the child turned 18. The probability of this being the case for any Congolese refugee in Rwanda is, however, very small.

## Uganda

For other rights of refugees, including access to the labour market and land, see Refugee Policy Review Framework.<sup>273</sup> On policies for local integration see Uganda: Brief on the Management of Forced Displacement, by the Regional Durable Solutions Secretariat for the Great Lakes.<sup>274</sup>

### International instruments

Uganda is a State Party to the 1951 Convention Relating to the Status of Refugees (albeit with reservations), and the 1969 OAU Convention Governing Specific Aspects of Refugee Problems in Africa. Uganda is also a party to the 1954 Convention relating to the Status of Stateless Persons.

Uganda is also a party to CERD, ICCPR, CEDAW, CRC, CMW, and CRPD; as well as to the ACHPR and its Protocol on the Rights of Women in Africa, and the ACRWC.

### Pledges

In 2011, Uganda stated that it had established an International Humanitarian Law Committee with the main objective of promoting ratification and domestication of the various treaties to enhance continued refugee protection in Uganda.<sup>275</sup>

The government of Uganda went further in making pledges relevant to the ending of statelessness at both the High-Level Segment on Statelessness in October 2019<sup>276</sup> and the Global Refugee Forum in December 2019.<sup>277</sup> These were:

- (i) accede to the 1961 Convention on the Reduction of Statelessness
- (ii) finalise and approve the National Action Plan to serve as the national strategy to eradicate statelessness in the country by 2024,
- (iii) ensure that communities present in Uganda since before 1926 are recognized as citizens (including the Maragoli, Benet, Ugandan-Asian and other unrecognised communities);
- (iv) insert a safeguard in its nationality law to grant nationality to children born on the territory who would otherwise be stateless;
- (v) introduce a law reform to prevent denial or attribution of nationality at birth on discriminatory grounds; and
- (vi) complete a legal study on statelessness and citizenship in order to better understand and address the factors leaving certain populations stateless or at risk of statelessness and to support comprehensive legal and constitutional reform.

### Refugee status and identity documents

Applicable law: Refugee Act 2006, supplemented by the Refugees Regulations, 2010.

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<sup>273</sup> Uganda: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/uganda/uganda-refugee-policy-review-framework-country-summary-30-june-2020-march-2022>

<sup>274</sup> Uganda: Brief on the Management of Forced Displacement, Regional Durable Solutions Secretariat for the Great Lakes, March 2022 <https://www.redssgreatlakes.org/>.

<sup>275</sup> 'PLEDGES 2011: Ministerial Intergovernmental Event on Refugees and Stateless Persons', UNHCR ministerial meeting to commemorate the 60th anniversary of the 1951 Convention relating to the Status of Refugees and the 50th anniversary of the 1961 Convention on the Reduction of Statelessness (Geneva, Palais des Nations, 7-8 December 2011) available with other resources at <https://www.unhcr.org/ministerial-meeting.html>

<sup>276</sup> Complete list on UNHCR website: <https://www.unhcr.org/ibelong/results-of-the-high-level-segment-on-statelessness/>.

<sup>277</sup> Pledges made at the Global Refugee Forum; see Excel spreadsheet available at <https://globalcompactrefugees.org/channel/pledges-contributions>.



The Minister of State for Relief, Disaster Preparedness and Refugees within the Office of the Prime Minister (OPM) is responsible for refugee affairs.

The Refugees Act 2006 and its 2010 Regulations provide for refugees to have the right to be issued identity and travel documents.<sup>278</sup> A refugee card is valid for five years, renewable, until refugee status ceases. Asylum-seekers are provided with an asylum-seeker certificate that is renewable every three months. The asylum-seeker certificate grants them the right to stay until such a time as their status has been determined. The Act provides that identification documents for children and unaccompanied minors shall be issued in accordance with the principles applicable to a recognised refugee.<sup>279</sup> There is no process to register refugees as also stateless, if that is the case.

Refugees have freedom of movement, and are not restricted to camps, but most live in refugee settlements, where humanitarian assistance is available. Only 6 per cent of the refugee population is registered in Kampala.

As of 30 June 2020, a total of 44 per cent of refugees had refugee IDs;<sup>280</sup> however, all refugees are issued with a refugee attestation on registration that also serves as identification and is mostly accepted by government and private sector institutions. A convention travel document may also be issued by the Ministry of Internal Affairs, in consultation with OPM, on payment of a fee.

### Civil registration

Applicable law: Registration of Persons Act No.4 of 2015

Uganda's constitution provides that "The State shall register every birth, marriage and death occurring in Uganda".<sup>281</sup>

The Registration of Persons Act 2015 merged civil registration and identification functions and transferred authority for registration of births and deaths to a new agency, the National Identification and Registration Authority (NIRA). The Act makes the registration of every birth within Uganda both free and compulsory, and for the first time permits birth certificates to be issued in all registration areas, and not only in Kampala.<sup>282</sup>

The legal framework is significantly less comprehensive than that provided in DRC or Rwanda. However, some gaps are filled by other legislation, including the Marriage Act and Children Act.<sup>283</sup> In addition, the Statutory Declaration Act establishes a process for the legal recognition of declared facts, if documents such as civil registration certificates are not available.<sup>284</sup>

Parents must register a birth "immediately" (no timeline specified); late registration of birth is possible, if "the registrar is satisfied of the truth of the particulars and is directed to register the birth by the executive

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<sup>278</sup> Refugee Act 2006, section 29(1)(a) and section 31; Refugees Regulations, 2010, regulations 42-48.

<sup>279</sup> Refugee Act 2006, section 32(3).

<sup>280</sup> Uganda: Refugee Policy Review Framework Country Summary as at 30 June 2020, UNHCR, March 2022 <https://reliefweb.int/report/uganda/uganda-refugee-policy-review-framework-country-summary-30-june-2020-march-2022>

<sup>281</sup> Constitution of Uganda 1995, as amended, Article 18.

<sup>282</sup> Registration of Persons Act, secs. 28, 39.

<sup>283</sup> Marriage Act, Chapter 251, Laws of Uganda (originally the Marriage Ordinance 1902), as amended 2014; Children Act, 1996, as amended 2016, Chapter 59, Laws of Uganda.

<sup>284</sup> Statutory Declarations Act 2000, Chapter 22, Laws of Uganda.

director”.<sup>285</sup> Although birth registration is free, a birth certificate costs US\$5,000 plus US\$2,500 in bank charges (approx. US\$2 in total); however, fees for birth certificates are waived for refugees.<sup>286</sup>

The Registration of Persons Act provides for the birth certificate to record the nationality of the child, and a “national” or “alien” identification number is issued to the child at the time of registration, as well as a record of the nationality and identification numbers of the parents.<sup>287</sup> It is not stated how the nationality of the child should be determined; yet this can be a question of complex legal analysis. In practice, birth certificates issued by NIRA record the nationality of the parents only.

To register an in-country birth, the refugee must present: (1) birth notification record from medical facility, (2) parents’ refugee ID or attestation document, and (3) completed online NIRA notice of birth (Form 3). A birth certificate issued to a child born to refugees may not indicate the parents’ country of origin, but clearly specifies that they are refugees (qualifying them for the fee waiver).<sup>288</sup>

Uganda was the first country in Africa to require registration of births and deaths for the African population of the territory, adopting legislation to this effect in 1904. Birth registration rates had reached 65 percent by 1948, declining to an estimated 35 percent by 1994.<sup>289</sup> The most recent survey data, published in 2016, showed Uganda’s birth registration rate for children under five was 32 percent, of whom 20 percent held birth certificates.<sup>290</sup> The limited resources and capacity of NIRA have created significant barriers to achieving universal birth registration, especially in remote areas. To improve the timeliness of birth registration services, the government is working to establish links between the medical databases of hospitals registering births and the national NIRA database system. Uganda is also developing a Civil Registration and Vital Statistics (CRVS) strategy.

#### Permanent residence or other long-term immigration status

Section 55 of the Citizenship and Immigration Control Act provides that a certificate of permanent residence may be issued to a person who has lived legally in Uganda for 10 years, or is married to a Ugandan and has been resident for three years. Although it does not appear that refugees are in principle excluded from this provision, permanent residence is subject to conditions that would likely place it out of reach -- including that the person has contributed to the socioeconomic or intellectual development of Uganda; is of good character and has no criminal record; has paid all required taxes; and is not a bankrupt or destitute.

#### Access to Ugandan citizenship

Applicable law: Constitution 1995, as amended 2005; supplemented by the Citizenship and Immigration Control Act 1999, as amended 2009, and the Citizenship Regulations 2009.

It is next to impossible for refugees to access citizenship in Uganda. The Constitution and Citizenship and Immigration Control Act restrict access to citizenship by birth in Uganda to members of “indigenous communities” listed in a schedule to the constitution. The children of refugees are specifically excluded from acquiring citizenship by birth; and refugees are also excluded from accessing citizenship by

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<sup>285</sup> Registration of Persons Act, sec.30.

<sup>286</sup> See information at NIRA website: <https://nira.go.ug/fees>.

<sup>287</sup> Registration of Persons Act, sec. 39.

<sup>288</sup> Interviews, NIRA, 2021.

<sup>289</sup> Van Der Straaten, Jaap, Victoria Esquivel Korsiak, and Luda Bujoreanu, Identification for Development (ID4D) Country Diagnostic: Uganda. Washington, D.C.: World Bank 2018, chapter 2.2.1. <http://documents.worldbank.org/curated/en/921761542144309171/Identification-for-Development-ID4D-Country-Diagnostic-Uganda>.

<sup>290</sup> As reported in the Uganda Demographic and Health Survey 2016 <https://dhsprogram.com/where-we-work/Country-Main.cfm>.

registration based on ten years' residence in Uganda, although not from the separate and more discretionary process of naturalisation based on 20 years' residence.<sup>291</sup>

*Attribution of citizenship to children*

The 1995 Constitution reformulated the principles on which Ugandan citizenship is based. It attributes citizenship from birth to every person born in or outside Uganda "one of whose parents or grandparents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda as at the first day of February, 1926".<sup>292</sup> The third schedule to the constitution lists these groups; this list was supplemented in amendments to the constitution in 2005.<sup>293</sup> In addition, citizenship is attributed to "every person born in or outside Uganda one of whose parents or grandparents was at the time of birth of that person a citizen of Uganda by birth" (thus excluding the children of registered or naturalised citizens).<sup>294</sup> Those who were already citizens of Uganda retained the same status.<sup>295</sup> In 2022, the Uganda High Court confirmed that members of the Ugandan Somali community (not listed in the constitution) who had been citizens under previous laws were eligible for citizenship under the current legal regime.<sup>296</sup> This legal framework creates recognised risks of statelessness, and there are proposals to expand the list of indigenous communities again to address these concerns.<sup>297</sup> However, there will always be individuals who are left stateless by a system that depends on such a list.<sup>298</sup>

Uganda's 1995 constitution and the Citizenship and Immigration Control Act create the presumption of citizenship for a child found in the territory up to the (apparent) age of five.<sup>299</sup> Before registering a foundling, NIRA requires a police letter that the child's parents are not known.<sup>300</sup>

The same articles provide for acquisition of citizenship by an adopted child on application.<sup>301</sup> The regulations, however, provide for the National Citizenship and Immigration Board to be "notified" of the adoption, and for an oath of allegiance to be taken from the age of 16; there is no procedure for the immediate formal registration of the child's citizenship.<sup>302</sup> Moreover, as a registered citizen, an adopted child would be unable to transmit Ugandan citizenship to his or her own child.

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<sup>291</sup> For a detailed discussion of the law and policy relating to acquisition of citizenship by refugees in Uganda, see Marshall Godfrey Alenyo, 'International Refugee Law and the Right to Nationality: Legal Responses to the Rwandan Refugee Crisis in Uganda' (LLM, University College Cork, 2014), <https://citizenshiprightsafrika.org/international-refugee-law-and-the-right-to-nationality-legal-responses-to-the-rwandan-refugee-crisis-in-uganda/>.

<sup>292</sup> Constitution of Uganda, 1995, as amended, art.10.

<sup>293</sup> Uganda Constitution 1995, schedule 3, as amended by the Uganda Constitution Amendment Act, No. 11 of 2005. The third schedule uses the term "ethnic communities" and lists 65, as amended in 2005 (in the 1995 version, there were 56).

<sup>294</sup> Constitution of Uganda, 1995, as amended, art.10.

<sup>295</sup> Constitution of Uganda, 1995, as amended, art. 9. The 1967 Constitution similarly preserved the status of those who acquired citizenship at independence.

<sup>296</sup> *Abdu Abucar Hussein and 7 others v. Attorney General*, Uganda High Court, Civil Suit No. 437 of 2019, Judgment of 18 March 2022.

<sup>297</sup> "House to consider Bill recognising indigenous communities" *The Independent* (Kampala), 11 November 2021 <https://www.independent.co.ug/house-to-consider-bill-recognising-indigenous-communities/>

<sup>298</sup> See discussion in Manby, 'Citizenship and Statelessness in the East African Community'.

<sup>299</sup> "A child of not more than five years of age found in Uganda, whose parents are not known, shall be presumed to be a citizen of Uganda by birth." Uganda Constitution 1995, Article 11(1); Uganda Citizenship & Immigration Control Act 1999, Section 13(1).

<sup>300</sup> Interviews, NIRA, 2021.

<sup>301</sup> Uganda Constitution 1995, Article 11(2); Citizenship and Immigration Control Act 1999, Section 13(2).

<sup>302</sup> Citizenship Regulations 2009, Section 4.

The Children Act as amended in 2016 provides for every child to have the right to a nationality.<sup>303</sup> The Refugee Act specifically provides that children are entitled to the rights contained in the African Charter on the Rights and Welfare of the Child and the UN Convention on the Rights of the Child.<sup>304</sup> The provisions of the ACRWC and the CRC in relation to the right to nationality are thus applicable.

#### *Marriage*

Either spouse shall be registered as a citizen on application, after five years of legal marriage.<sup>305</sup> Registration of marriages is governed by the Marriage Act.<sup>306</sup>

#### *Dual citizenship*

Dual citizenship has been permitted for Ugandan citizens since constitutional amendments in 2005, but only with the permission of the authorities and subject to quite complex conditions established by amendments to the law in 2009.<sup>307</sup> A person acquiring citizenship who wishes to retain another citizenship must, among other things, satisfy the Citizenship and Immigration Board that he or she is not a refugee.<sup>308</sup>

#### *Registration and naturalisation*

Ugandan law establishes two different procedures for acquisition of citizenship based on long-term residence: registration and naturalisation. The constitution sets out the rules for registration, the easier procedure, and delegates the rules on naturalisation to the law.<sup>309</sup>

The constitution provides that those eligible to be registered as a citizen, in addition to spouses, are: (i) those born in Uganda and resident since 1962, provided the parents were neither refugees nor diplomats; (ii) those who have “legally and voluntarily migrated to Uganda” and who have been living in Uganda for at least 10 years (or “such other period prescribed by Parliament”: between 1999 and 2009 the law provided for 20 years, the period was then reduced again to 10 years); and (iii) “every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years”.<sup>310</sup> In addition, the constitution provides that Parliament shall provide for the acquisition and loss of citizenship by naturalisation.<sup>311</sup>

The condition that migration be “voluntary” excludes refugees from acquisition of citizenship by registration. The Refugee Act specifically provides that “The Constitution and any other law in force in Uganda regulating naturalisation shall apply to the naturalisation of a recognised refugee.”<sup>312</sup> In 2015, the Constitutional Court confirmed that refugees were not eligible for the easier process of registration, though it stated (but for technical reasons did not give a formal declaration) that it considered they were eligible for naturalisation.<sup>313</sup> Since this judgment, application forms for naturalisation have been made available, whereas previously the only formal application forms were for registration.

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<sup>303</sup> Children Act 1997, section 4 as substituted by the Children (Amendment) Act, 9 of 2016.

<sup>304</sup> Refugee Act 2006, section 32(2).

<sup>305</sup> Uganda Constitution 1995, Article 12.

<sup>306</sup> Chapter 251 of the Laws of Uganda. See also information from the Uganda Registration Services Bureau <https://ursb.go.ug/civil-registration>.

<sup>307</sup> Citizenship and Immigration Control Act 1999, amended 2009, Section 15, 16, 19 & 19A-G.

<sup>308</sup> Citizenship and Immigration Control Act 1999, amended 2009, Section 19 B(f).

<sup>309</sup> The procedures and barriers to access for refugees are discussed in Walker, ‘From Refugee to Citizen’.

<sup>310</sup> Uganda Constitution 1995, Article 12.

<sup>311</sup> Uganda Constitution 1995, Article 13.

<sup>312</sup> Refugee Act, 2006, Article 45.

<sup>313</sup> *Centre for Public Interest Law Ltd and Salima Namusobya v. Attorney General*, Constitutional Petition No. 34 of 2010, Judgement of 6 October 2015. The Constitutional Court is mandated to interpret the Constitution, and thus stated that it did not have the mandate to interpret the act where the naturalisation provisions are included.

The Citizenship and Immigration Control Act of 1999 (amended most recently in 2009) establishes the conditions to naturalise, based on 20 years' residence and fulfilment of other conditions.<sup>314</sup> Article 25 of the Act provides that (with other exclusions) a period of residence as a dependant (ie a child) does not count towards a period of residence for registration or naturalisation. For the child of a refugee, this would mean that an application for naturalisation could only be made at the age of 38.<sup>315</sup>

Children of registered or naturalised parents do not acquire citizenship through that process; they are also not attributed citizenship at birth even if they are born after a parent has acquired citizenship but must apply for registration or naturalisation in their own right, after a ten- or twenty-year period of residence that only begins to run from the age of 18. This creates significant risks of statelessness. If a parent acquires Ugandan citizenship and permission to retain a previous citizenship, the child would be regarded as having acquired or retained the other citizenship. On the other hand, if the parent renounces or loses the other citizenship, a child born after that renunciation would not acquire either Ugandan or the other citizenship.

Registrations and naturalisations in Uganda are determined by the National Citizenship and Immigration Board appointed by the President, at their discretion and in camera, on the basis of files submitted by the Department of Immigration.<sup>316</sup> It costs USh 100,000 (approximately US\$ 30) to register as a citizen for a spouse, but US\$ 1,000 for registration in other circumstances; except that there is a reduced fee of USh 100,000 for "people who have lived all their lives in Uganda and consider themselves as Ugandans except for the citizenship papers." No fees are posted on the Immigration Department website for naturalisation.<sup>317</sup>

Between July 2014 and June 2018, Uganda had registered 1,460 people as citizens, and naturalised 452; in addition, 719 had recovered Ugandan citizenship under the provisions enabling dual citizenship.<sup>318</sup> The Directorate of Citizenship and Immigration Control (DCIC) has stated to civil society organisations that more than 60 long-term refugees have been granted citizenship.<sup>319</sup>

#### Access to the nationality of South Sudan or DRC

##### *South Sudan*

The Transitional Constitution of South Sudan, adopted in 2011 pending the appointment of a commission to draft a final constitution, did not include transitional provisions on the regulation of nationality on state succession. However, Article 45 echoed the wording of the 2005 constitution of Sudan that "Every person born to a South Sudanese mother or father shall have an inalienable right to enjoy South Sudanese citizenship and nationality", thus providing for a gender-neutral descent-based citizenship regime. It permitted dual nationality whether for an existing national acquiring another nationality or for a foreigner acquiring South Sudanese nationality.

Article 8 of the South Sudanese Nationality Act, adopted in June 2011 just before the secession of South Sudan, provides for very broad attribution of South Sudanese nationality, stating that "An individual will be considered a South Sudanese national if such person meets any of the following requirements: (a) Any

<sup>314</sup> Uganda Citizenship and Immigration Control Act 1999, amended 2009, Sections 16 and 25.

<sup>315</sup> The same article also excludes a period of residence under a "convention travel document" (ie a travel document issued under the 1951 Refugee Convention), which would appear to exclude a person granted refugee status in another country who then travels to and resides in Uganda.

<sup>316</sup> Uganda Constitution 1995, Article 16.

<sup>317</sup> Fees for Services Offered by the Directorate of Citizenship and Immigration Control Effective 1st July 2015, available at website of Directorate of Immigration Control, Uganda: <http://www.immigration.go.ug/about/fees-services-offered-directorate-citizenship-and-immigration-control-effective-1st-july-2015>.

<sup>318</sup> See Manby, 'Citizenship and Statelessness in the East African Community'.

<sup>319</sup> Interviews, Kampala, 2021.

parents, grandparents or great grandparents on the male or female line were born in South Sudan; (b) Such person belongs to one of the indigenous tribal communities of South Sudan...". Neither the Transitional Constitution of South Sudan nor the South Sudan Nationality Act provides a list of these groups (by contrast with Uganda), nor outlines the criteria to be deemed a member of one of those communities. Article 8, as drafted, appears to apply automatically whether the individual concerned was born in or outside of the territory of South Sudan, before or after the secession of South Sudan from Sudan.

The South Sudan Civil Registry Act of 2018 provides for the recognition of civil status events by foreign authorities, if they are also registered with the South Sudan consulate or sent within 30 days by "registered letter" to the civil registry. If this is not done, civil status events can only be registered with the agreement of a "civil registry committee" (which, however, is not established by the act).<sup>320</sup>

In practice, implementation of the nationality legislation has been slow and challenging, thanks to very low levels of existing documentation. There are reports that certain vulnerable groups, including returned refugees and members of some ethnic groups from Equatoria, on the border with Uganda (such as the Acholi or Kakwa), have faced difficulties accessing proof of citizenship when they have applied. Regulations adopted under the Nationality Law provide that "where documentary evidence is not available to support an application" witness testimony may be taken into account from a range of community or traditional leaders.<sup>321</sup>

#### *DRC*

Congolese nationality is attributed at birth based on a person's membership of one of the "ethnic groups of which the people and the territory constituted what became Congo (currently the Democratic Republic of Congo) at independence".<sup>322</sup> In addition, the Congolese nationality code provides for nationality to be attributed at birth if either the mother or the father is Congolese at the time of the child's birth. However, the parentage of the child has no effect on nationality unless it is established during the child's minority in accordance with Congolese law.<sup>323</sup> If this procedure has not happened in time, the law does not provide for a further late registration process. Without any family in DRC able to testify a person's origins there, or proof of Congolese nationality of an ancestor, it is very unlikely that any of the long-term Congolese refugees in Uganda would be able to establish Congolese nationality.

In addition, Congolese nationality is lost on voluntary acquisition of another nationality. A person acquiring Ugandan citizenship would therefore lose Congolese nationality.<sup>324</sup> Children born after a parent had acquired Ugandan citizenship would not be Congolese.

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<sup>320</sup> South Sudan Civil Registry Act No.1 of 2018, sec. 32.

<sup>321</sup> Manby, 'Citizenship and Statelessness in the East African Community'.

<sup>322</sup> Constitution of the Democratic Republic of Congo, 2006, Article 10 ; Nationality code, art. 6.

<sup>323</sup> DRC Nationality code, art. 7.

<sup>324</sup> DRC Nationality code, arts. 1 & 26.

## Tables on comparative nationality laws

DRC: Loi No. 04-024 du 12 novembre 2004 relative à la nationalité congolaise (as incorporated into Loi n° 87-010 du 1er août 1987 portant Code de la famille, modifié 2016)

Rwanda: Organic Law N° 002/2021.OL of 16/07/2021 governing Rwandan nationality

Uganda: Constitution of Uganda 1995, as amended 2005; Uganda Citizenship and Immigration Control Act, Act 3 of 1999, as amended 2009

**Table 1: Right to nationality based on birth in the territory**

COUNTRY	Birth in country	Birth and one parent also born	Birth and resident at majority	Child otherwise stateless (os)	Parents stateless (s) or unknown (u)	Abandoned infants	Relevant legal provision (most recent amendment in brackets)
DRC~			(JS)	os	s + u		L2004Arts8&9
Rwanda			(JS)	(os)	(s + u)	(x)	L2021 Arts9,10, 19
Uganda	JS~					x	C1995(2005) Arts10-11 L1999(2009) Secs12-14

JS *jus soli* attribution: a child born in the country is a citizen (with exclusions for children of diplomats and some other categories).

( ) an application is required

JS/2 double *jus soli* attribution: child born in country of one parent also born in the country is a citizen.

^ A person born in or outside of South Sudan is South Sudanese if any parent, grandparent or great-grandparent was born in South Sudan.

~ racial, ethnic or religious discrimination in law impacts on *jus soli* rights (in Uganda, the *jus soli* provision applies only to those who are members of an “indigenous community”).

**Table 2: Right to nationality based on descent**

COUNTRY	BORN IN COUNTRY				BORN ABROAD				Legal Provision	Date Gender equality achieved
	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national	In wedlock + Father (F) &/or Mother (M) is a national	Out of wedlock + Father (F) &/or Mother (M) is a national		
DRC~	R	R	R	R	R	R	R	R	C2005Art10 L2004Arts4,6,7	1981
Rwanda	C	C	C	C	C	C	C	C	L2021Art6	2004
Uganda ~	R^	R^	R^	R^	R^	R^	R^	R^	C1995(2005) Art10 L1999(2009) Sec12	1967

n/a not available.

R child is citizen from birth as of right.

C can claim citizenship following an administrative process (including compulsory birth registration, establishing parentage, or registration with consular authorities).

Rx1 child born outside country is citizen as of right only if one parent both a citizen and born in country.

^ Rights to citizenship from grandparents: if born in or outside the country and one grandparent is a citizen (Uganda) or one great-grandparent was born in South Sudan (South Sudan).

~ racial, religious or ethnic discrimination in citizenship law. In Uganda, a child is not a citizen if born in the country unless the parent is citizen by birth – requiring membership of one of the indigenous communities listed in the 3rd schedule to the constitution; in DRC, there is preferential access for those who are members of one of the communities making up DRC at independence (not listed).

Table 3: Right to nationality of an adopted child

COUNTRY	Auto	Opt.	Disc.	None	Comments	Relevant legal provision(s)
DRC		x				L2004Arts13(2)&17
Rwanda			x		Adoptee must not be a threat to national security.	L2021Art12
Uganda		x			Some ambiguity as to whether citizenship is acquired through the act of adoption or requires a separate application. Child must take an oath of allegiance.	C1995(2005) Art11(2) L1999(2009) Sec13(2)

Table 4: Right to transmit nationality to a spouse

COUNTRY	Nationality by marriage	Res. period (if any)*	Marriage period (if any)	Level of discretion	Relevant legal provision(s)	Year of equality
DRC	=		7yrs	Marriage has no effect as of right; acquisition authorised by decree adopted by National Assembly	L2004Arts18-20	2004
Rwanda	=		5 yrs	Subject to conditions including integrity and good conduct, respect for Rwandan culture and traditions & civic values, social integration, not a threat to national security	L2021Art11	2004
Uganda	=		5 yrs	On application shall be registered	C1995(2005) Art12(2)(a) L1999(2009) Sec14(2)(a)	1995

\* If residence period noted then residence is after marriage.

= Equal rights for men and women to pass citizenship.

w Only a foreign woman can acquire nationality on basis of marriage to a national man.

Table 5: Countries permitting and prohibiting dual nationality for adults

COUNTRY	Dual nationality permitted for adults?			Conditions; restrictions on public office	Relevant legal provisions
	Yes	With permission	No		
DRC			x (1964)		C2005Art10 L2004Art1, 22, 26, 51
Rwanda	x			The President, President of Senate, Speaker of the Chamber of Deputies, President of Supreme Court must not hold any other nationality. A person with dual nationality must declare it.	C2003(2015) Arts 25,66,99&153 L2021Art46
Uganda		x		A person with dual nationality must declare it, and other conditions apply, depending on whether acquiring Ugandan nationality or another nationality. List of posts for which cannot be dual national, including President, Vice-President, Prime Minister, Cabinet Ministers, heads of security services	C1995(2005) Art15 L1999(2009) Secs15-19,19A-G & Schedule 5



Table 6: Right to acquire nationality by naturalisation

COUNTRY	Res. period	Language / cultural requirements	Character	Renounce other nat.	Health / income	Other <sup>1</sup>	Minor children included?	Limits on rights for naturalised <sup>2</sup>	Legal provision
DRC	7 yrs	Speak one of the Congolese languages; must then maintain clear cultural, professional, economic, emotional or familial links with the DRC	Good conduct and morals; never convicted for treason, war crimes, genocide, terrorism, corruption or various other crimes.	Yes	-	Must have rendered distinguished service or naturalisation must be of real benefit to the country. Other conditions also apply in case of marriage.	Yes, automatic		C2006Art72 L2004Art11,18-25, 49
Rwanda	15 yrs	Knowledge and respect for Rwandan culture and traditions; knowledge of civic values; good social relations within the Rwandan society	Integrity and good conduct; not pose a threat to national security.	No	Sufficient means	Other grounds for grant of nationality include: national interest, special skills or talents, substantial investments, honour  Application also possible based on 25 years' factual residence even if cannot prove legal residence.	Yes, automatic	The President, President of Senate, Speaker of the Chamber of Deputies, President of Supreme Court must be of Rwandan nationality by origin	C2003(2015) Arts 25,66,99&153 L2021Art13-20
Uganda <sup>a</sup>	10 yrs Registration: if "legal and voluntary"	-	-	In some circumstances	-	Significant additional conditions apply if wishes to hold dual nationality.	No	President must be citizen by birth	C1995(2005) Art12(2)(b)&102 L1999(2009) Secs14(2)(b),15,19,19B &19C
	20 yrs Naturalisation: if not "legal and voluntary"	Adequate knowledge of "a prescribed vernacular language" or English	Good character	In some circumstances	-	May be refused if "immigration file contains substantial inconsistencies as to put his or her demeanour in issue".  Significant additional conditions apply if wishes to hold dual nationality.			C1995(2005) Art13 L1999(2009) Secs16&19,19A,19C

1. Most countries require the person to be adult; currently and legally resident, and to intend to remain so if they wish to naturalise; these provisions are not included here.

2. Provisions in the nationality law and constitution (not including electoral code).

<sup>a</sup> Uganda has particularly complex distinctions between registration and naturalisation which are hard to represent in table form; significant additional conditions apply if the person wishes to have dual citizenship. The 1995 Constitution provides for 10 years' residence to acquire citizenship by registration, "or such other period prescribed by Parliament"; since 2009 the legislation has also required 10 years' residence.

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