

ZIMBABWE

<p>In third place is Zimbabwe, also mainly for the fact that they have ratified one of the UN Statelessness Conventions and other relevant treaties. They have one of the only and most progressive founding provisions in the region. Like the other countries, they lose points for lack of due process and special measures to resolve statelessness.</p> <p>TOTAL SCORE: 28.5</p>	<p>LAST UPDATED: NOV 2022</p> <p>ADDITIONAL RESOURCES Country survey data 2022</p> <p>ASSESSMENT KEY POSITIVE SOMEWHAT POSITIVE SOMEWHAT NEGATIVE NEGATIVE</p> <p>ADDITIONAL INFO</p>
<p>INFORMATION BY INDICATOR</p> <p><u>1.</u> Ratification of International Instruments</p> <p>This section measures the state's progress in terms of the extent to which it has signed and ratified the most relevant international and regional legal instruments which provide for the right to nationality, the prevention or reduction of statelessness, and the protection of stateless persons.</p> <p>SCORE AVAILABLE: 15.5</p> <p>_____</p> <p>POSITIVE</p> <p>Zimbabwe scores 12 out of 15,5 having signed most of the relevant treaties. It is not party to the 1961 Convention on the Reduction of Statelessness. It could score an extra point if it signed the AU Protocol on Free Movement of persons.</p> <p><u>2.</u> Access to birth registration</p>	

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Birth registration is the most authoritative evidence of the key facts which establish a person's nationality. Lack of access to birth registration and a birth certificate, issued as proof of such registration, is a cause of statelessness and a barrier to recognition of citizenship. This indicator records the relevant information on the rates of birth registration in the country, as well as the legal provisions regulating birth registration, including late registration, the issue of birth certificate, and any discrimination in law based on the parents' immigration status, sex or marital status. It also considers the law on access to consular registration.

SCORE AVAILABLE: **15**

SOMEWHAT NEGATIVE

For access to birth registration Zimbabwe scores **5 out of 15**.

The birth registration rate is low in Zimbabwe at 49%, scoring them no points. The rate of birth certificates issued is more than 10% lower at 33%, for which the country loses a point.

The processes for late registration requires payment of a fee and there is no provision for the registration of orphaned or abandoned children. Points are lost for these gaps.

3. Prevention of statelessness at birth

African and other international law establishes minimum legal provisions for the prevention of statelessness at birth. These standards include the presumption of nationality for children of unknown parents found in the territory, and the grant of nationality to children born in the territory who do not acquire another nationality at birth. The African Committee of Experts on the Rights and Welfare of the Child in its General Comment No.2, on Article 6 of the African Children's Charter, and the African Commission on Human and Peoples' Rights in its study on the right to a nationality and in its resolution 234 of 2013. The draft 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 endorses many of these recommendations. This indicator measures the relevant state's performance in providing legal effective safeguards against statelessness at birth.

SCORE AVAILABLE: 15

SOMEWHAT NEGATIVE

Zimbabwe scores 4 out of 15 for prevention of statelessness at birth. Although Zimbabwe has no provision for stateless children born on the territory or children born to stateless parents, it does have a progressive foundling provision which grants nationality to foundling up until the age of 15 years.

4. Gender equality in nationality and birth registration laws

Discrimination in transmission of nationality based on sex is one of the most common causes of statelessness. There are five questions for this indicator, considering whether there is a general constitutional prohibition on discrimination based on sex, equality in the right to transmit nationality to children (natural and adopted) and to spouses, and discrimination in the provisions for mothers and fathers to register the birth of a child (subject only to proof of parentage, where relevant).

These questions are already addressed in the previous two indicators that consider birth registration and prevention of statelessness at birth generally; but this indicator pulls out the specific area where gender discrimination is likely to occur.

The questions on equal rights to transmit to children and to register a birth also request that information is recorded in the comment column relating to discrimination based on nature of the discrimination, including the rights of different parents in case of birth in or out of wedlock.

SCORE AVAILABLE: 5

POSITIVE

Zimbabwe scores 4 out of 5 for gender equality. Although it doesn't discriminate based on gender in its nationality laws, it does prevent fathers from registering the births of their children on an equal basis with women.

5. Naturalisation

Lack of access to naturalisation is a cause of statelessness, especially in countries that have no rights to nationality based on birth in the territory, where many adults hold no documentation recording their nationality, and where birth registration rates are low. Access to naturalisation is particularly important for (long-term) refugees and for stateless persons – and the UN Convention on Refugees and Stateless Persons provide that naturalisation should be facilitated in both cases.

This indicator considers the legal provisions on access to naturalisation based on marriage and based on long residence, and facilitation for refugees and stateless persons. It also considers the protections against statelessness that are in place in case a person is required to renounce any other nationality, for the children of those who naturalise, and for the children born after a parent has naturalised. Any special efforts to facilitate access to naturalisation are considered under indicator 8.

SCORE AVAILABLE: 8

SOMEWHAT NEGATIVE

Zimbabwe scores **2 out of 8**.

Like the other pilot countries it does not make provision for facilitated access to naturalization of refugees and stateless persons, and it requires renunciation for acquisition of Zimbabwean nationality by naturalisation without a protection against statelessness in case nationality is not granted.

6. Loss and deprivation of nationality

This indicator considers the formal legal provisions for loss and deprivation of nationality. Arbitrary denial of nationality is rather considered under indicator 7, which looks at implementation of the law in practice.

The most detailed international guidance on loss and deprivation of nationality is provided by the 1961 Convention on the Reduction of Statelessness (which uses 'loss' to mean withdrawal of nationality that is automatic, by operation of law; and 'deprivation' to mean withdrawal that is initiated by an act of the

executive branch). These standards must now be interpreted in light of later human rights law – as set out in UNHCR’s Guidelines on Statelessness No.5, on Loss and Deprivation of Nationality.

Neither loss nor deprivation of nationality should result in statelessness. One of the most common ways in which loss of nationality can result in statelessness is when dual nationality is not permitted, even for a person who is born with two nationalities (for example, because the parents have different nationalities). Whether this is applied to children, or only on attaining majority, a person may be left stateless if there is a presumption that another nationality has been acquired but there is no verification that the other state recognises the nationality of the person in practice.

SCORE AVAILABLE: 1

NEGATIVE

Zimbabwe scores **0 out of 1**.

Where Zimbabwe earns a point for dual nationality being allowed without automatic loss of nationality, it loses it again because it doesn’t prohibit deprivation of nationality by decision of the authorities if that would result in statelessness.

7. Due process in nationality decisions

The right to due process is enshrined in many international and African human rights instruments. In both cases, it is considered that arbitrary denial of nationality, in case of a person previously recognised as a national, constitutes arbitrary deprivation.

The African Commission has held that Article 7(1) of the African Charter on the right to have a cause heard applies to cases of deprivation or denial of nationality, and to a resulting deportation. The African Court on Human and People’s Rights has affirmed the views of the African Commission, and that the prohibition of arbitrary deprivation of nationality under Article 15 of the Universal Declaration of Human Rights is part of customary international law.

The questions for this indicator ask whether the constitution establishes the right not to be arbitrarily deprived of nationality, the right to due process in administrative decisions, and the right to court review of decisions by the executive branch.

In relation to the nationality law, they ask specifically whether administrative decisions must be reasoned and notified to the person concerned in writing, and whether the affected person has the right to make representations before loss or deprivation of citizenship takes effect.

In relation to administrative or judicial review of a decision, the questionnaire asks whether the fact that a person holds a document recording nationality is prima facie evidence that he or she is in fact a national, whether there is an administrative review, and the availability of appeal to national human rights institutions or the courts, and to legal assistance.

SCORE AVAILABLE: 8

NEGATIVE

Zimbabwe scores **1.5 out of 8** for due process in nationality law decisions.

The law doesn't provide for internal appeals and some decisions are not subject to court review. There is also no right not to be arbitrarily deprived of nationality. The law does however provide for a birth certificate to be considered prima facie evidence which shifts the burden of proof to the state when a person is in possession of such a document.

8. Resolution of unknown nationality and protection of stateless persons

This indicator considers, first, the existence of procedures to determine nationality of children and adults whose nationality is currently unknown (whether through recognition of existing nationality or naturalisation in the state of residence, or recognition of a different nationality); and secondly, the establishment of a statelessness determination procedure and protection of stateless persons. The indicator thus places greater weight on the determination of a person's nationality, with protection as a stateless person proposed only if nationality cannot be determined or granted, and as a temporary status, pending resolution of nationality.

The indicator recognises as best practice the legal provision in several states in Africa for recognition by a court of a person's 'apparent status' as a national, where nationality is undocumented by a person has always acted and been treated as a national.

The indicator also recognises special efforts that are made by states to identify populations that are stateless or at risk of statelessness and resolve their status.

SCORE AVAILABLE: 17

NEGATIVE

Zimbabwe scores **0 out of 17** for special initiatives to resolve undetermined nationality and protection of stateless persons. There are no special measures for stateless persons, but the government did conduct public hearings to identify documentation problems.

Bonus: Pledges

Zimbabwe scores **4 extra points** for 7 pledges made related to statelessness at the High-Level Panel at the 2019 UNHCR Exco meeting.

These pledges were also incorporated into the pledges at the Global Refugee Forum in December 2019. They are as follows:

1. The Government of Zimbabwe hereby commits: Conduct consultations with relevant stakeholders towards the accession to the 1961 Convention on the Reduction of Statelessness by 2023.
2. The Government of Zimbabwe hereby commits: By 2024, simplify and improve access to birth registration procedures, including issuance of birth certificates to descendants of former migrant workers and failed asylum seekers to ensure universal birth registration.
3. The Government of Zimbabwe hereby commits: By 2023, complete the ongoing process of aligning its Citizenship Act [Chapter 4:01] and Births and Deaths Registration Act [Chapter 5:02] with the new Constitution (Constitution of Zimbabwe Amendment (No. 20) Act. 20 1.1) in ensuring the proper safeguards in preventing statelessness.
4. The Government of Zimbabwe hereby commits: Include a question or questions in its next national census in 2022 to identify stateless persons living in its territory.
5. A pledge regarding data collection and developing a national action plan.

