UNIVERSITY OF KWAZULU-NATAL

The link between the right to the prompt provision of a birth certificate and the right to education in Zimbabwe: holding the state accountable.

By

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A dissertation submitted in the fulfilment of the requirements for the degree of Master's in Law (LLM)

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As the candidate's supervisor I agree to the submission of this thesis.

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2024

DECLARATION

I, Maxine Chisweto, declare that:

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LIST OF ACRONYMS

ACHPR	African Charter on Human and Peoples Rights (ACHPR)
ACPF	African Child Policy Forum
ACRWC	African Charter on the Rights and Welfare of the Child
BDRA	Births and Deaths Registries Act
BEAM	Basic Education Assistance Module
CRC	Convention on the Rights of the Child
CSO	Civil Society Organisation
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
MOHCC	Ministry of Health and Child-Care
NEET	Not educated, trained, or employed.
RG	Registrar- General
UDHR	Universal Declaration of Human Rights
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund
USD	United States Dollar
ZHRC	Zimbabwe Human Rights Commission
ZimStat	Zimbabwe Statistics Agency
ZWL	Zimbabwean Dollar
ZWNCWC	Zimbabwe national Council for the Welfare of Children

CHAPTER 1

THE KEY TO LIFE

"There is no trust more sacred than the one the world holds with children. There is no duty more important than ensuring that their rights are respected, that their welfare is protected and that their lives are free from fear and want and that they grow in peace.".

- Kofi Annan

I INTRODUCTION

This study seeks to explore the link between the right to the prompt provision of a birth certificate and the right to education with a view to hold the state accountable.

World over, a birth certificate is considered to be a fundamental document that establishes a child's identity and allows that child to access services such as welfare, health and education.[1] It enables a child to do various things including registering for national exams, and advancing their schooling career as far as need be.[2] Under s81(1)(c) of the Constitution of Zimbabwe, every child who is born in Zimbabwe or born outside of Zimbabwe and is of Zimbabwean descent has the right to the "prompt provision of a birth certificate".[3] Under this right, it is implied that a child is to be provided with a birth certificate at the earliest reasonable time. The reality, however, has fallen short of this constitutional mandate. In 2015, UNICEF reported that only 31% of children in Zimbabwe had birth certificates,[4] whilst ZimStat presently pegs the number at 38%.[5] Whichever statistic holds true today, the matter remains the same: the disparity between those that have birth certificates and those that do not is of great concern.

[1] Jonathan Todres 'Birth Registration: An Essential First Step toward Ensuring the Rights of All Children' (2003) 10(3) Human Rights Brief 32 at 32.
[2] Zenzele L Weda & Rorisang 'Factors impacting on the primary school education of emigrants' children: The case of gwanda South, Zimbabwe' (2016) 33(6) Development of Southern Africa 822 at 823.
[3] The Constitution of Zimbabwe, 2013.
[4] Admire Chereni 'Underlying Dynamics of Child Birth Registration in Zimbabwe' (2016) 24(4) *The International Journal of Children's Rights*, 741 at 745.
[5] Zimbabwe National Statistics Agency otherwise known as Zimstat is the official statistics body for Zimbabwe. Presently refers to the year 2023.

According to UNICEF, a stateless child is one that does not belong anywhere. And a child who has no birth certificate is at the risk of being stateless. They do not hold citizenship and are not recognised by any state in the world.[6] They are invisible to the system.

Under s75 of the Constitution of Zimbabwe, a child is entitled to a basic state-funded education and this is limited to the availability of state resources. The right to education is also extended to s81(1)(f) of the Constitution although this type of education is not specified. In order to access state-funded education, a child must be a holder of a birth certificate. From this, it is evident that the right to an education is dependent on the realisation of the right to a birth certificate.[7] A birth certificate is therefore essential for a child to be educated.

The prevailing legislation in Zimbabwe that deals with birth certificates is the Births and Deaths Registration Act.[8] The responsible Ministry of this Act is the Ministry of Home Affairs and specifically the Department of the Registrar-General. It must be noted however that the Act came into force in 1986 whilst the current Constitution came into effect in 2013. Before the 2013 Constitution, Zimbabwe operated under the 1980 Constitution which had undergone several amendments but did not have the explicit mention of the right to a birth certificate. The right to a birth certificate is thus a new right under Zimbabwean law. There is a need to align legislation with the Constitution but there are questions that need to be addressed such as how the word "prompt" is defined and who will have oversight of the s81(c) right?

This study will therefore examine the problems that have riddled Zimbabwe in realising section 81(1)(c) and the effect this has on has on section 75 of the Constitution. This will be done through analysing the laws that govern the process of obtaining a birth certificate and the requirements thereof, the legal obstacles that people face in obtaining birth registration for their children and a look at the checks and balances that are currently in place to make sure that s81(1)(c) of the Constitution is realised. This study also seeks to consider the right to education and the interconnectedness of that right to the access to birth certificates in the Zimbabwean

[6] UNICEF 'Ending Statelessness for a Bright Future for Every Child : The right to a nationality for every child', available at https://www.unicef.org/thailand/livesuntold#:~:text=A%20stateless%20child%20does%20not,defined%20as%20a%20stateless%20child , accessed 25 September 2023.

[7] UN General Assembly *Report of the Office of the United Nations High Commissioner for Human Rights Birth registration and the right of everyone to recognition everywhere as a person before the law* 17 June 2014 A/HRC/27/22.

[8] The Births and Deaths Registration Act of 1986.

context. Recommendations on how to ensure the realisation of section 81(c) will therefore be made in the concluding chapter.

II BACKGROUND

Useful policy statements and documents from civil society and regional and international organisations include African Child Policy Forum (ACPF) and UNICEF. In 2005, the ACPF produced a policy document titled " Universal Birth Registration : The Challenge in Africa". The document serves to first and foremost show the importance of birth registration and ultimately birth certificates and statistically shows progress of birth certificates supply around Africa. The findings of this study show that Zambia has the lowest number of registered births at just 9.6% with Cameroon as the highest with 79%. Although the study does not cover Zimbabwe, it is useful in that as the numbers are indicated, it highlights common problems faced by African countries in obtaining birth certificates as well as highlights how countries are remedying the problem. For example, ACPF indicates how Lesotho consolidated and streamlined its registration authority in order to improve its birth certification rate.[9] In 1973, Lesotho shared the responsibility of births and deaths registration between the Registrar General in the Ministry of Law and Constitutional Affairs with the Chieftainship Institution and District Administration. By 2018, it is reported that only about 50.4% of people had birth certificates. Statistically, perhaps Lesotho is not the best example to follow however their progress since 1973 cannot go unnoticed. The method of marrying two government departments as occurred in Lesotho may be part of the solution for Zimbabwe's current birth certificate crisis. ZimStat reports that up to 67% of all Zimbabweans live in rural areas. With such a large population, perhaps linking the Registrar's office with the chiefs office, formally may assist in improving the Zimbabwean situation. The ACFP however, does not account in detail the obstacles that Lesotho faced and is facing. In Zimbabwe the role of chiefs is constitutionally recognised and they already have a limited degree of interaction with the Registrar's Office when it comes to the issuance of birth certificates.[10]

UNICEF highlights that birth certificates are important for two reasons – legal and statistical purposes. Birth certificates are important because they help protect children against

[9] Assefa Baquele 'Universal birth registration: The challenge in Africa' (2005) *The African Child Policy Forum* 1 at 21.

[10] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 page 22.

early child marriage, child labour and enlistment in armed forces.[11] This is important to this study as it touches on early child marriage which this study will explore in more detail as one of the effects of not having a birth certificate on the girl child and its impact on the right to education. Further, UNICEF indicates that 55% of the children in Sub-Saharan Africa have no birth certificates.[12] The ACPF report has country specific statistics whereas the UNICEF one focuses on regions. The UNICEF report therefore takes a more global approach to the matter. This is helpful in that a non-exhaustive list is provided by UNICEF which identifies why certain areas have better birth certificate supply rates than others. Through this, such a list can be adapted to see which one fits in the Zimbabwean situation and therefore may assist in finding out the root of the problem in Zimbabwe. The report states that the most common reason as to why people do not have birth certificates is that the cost may be too high.[13] At present, the application of a new birth certificate is free.[14] By looking at this reason, one begins to think that if this is to be applicable to Zimbabwe, perhaps then the peripheral costs are the deterring factor in obtaining birth certificates.

In his paper, Todres, examines what the right to a birth certificate means.[15] Todres argues that the right should be interpreted with the backdrop of all the international law that pertains to birth certificates and identity. This includes: The UN Convention on the Rights of the Child (CRC) and the International Convention on Civil and Political Rights (ICCPR). Both instruments place importance on the right to having an identity and the right to acquire nationality. Todres further explores the implications of birth registration of children on their civil and political rights. He then considers the effect that not having a birth certificate has on the right to education showing that there are countries which require a birth certificate in order to enrol in school. In such cases, the right to education is directly linked to having a birth certificate. Zimbabwe is one such country and such a study will be relevant to exploring the link between the two in the Zimbabwean context.

What appears to be challenging in the literature that has been examined is that there are very few scholars that are specifically focused on the Zimbabwean context of access to birth

[11] The United Nations Children's Fund "The Right to start a life: A statistical analysis of birth registration" (2005) UNICEF at 1.
[12] *Ibid at 3*
[13] *Ibid at 4*
[14] G Dzoma 'Passport Fees, Birth Certificates , National IDs' (2022), available at *https://zimpricecheck.com/price-updates/passport-fees-birth-certificates-national-ids/* , accessed on 8 March 2023.
[15] Jonathan Todres 'Birth Registration: An Essential First Step toward Ensuring the Rights of All Children' (2003) 10(3) Human Rights Brief 32 at 32.

certificates. The legal perspective is also missing. On the other hand, literature about education is much easier to find.

III RATIONALE

In June 2020, the African Union in partnership with UNICEF launched what became known as the "No Name Campaign : For Every Child a Legal Identity, For Every Child Access to Justice".[16] The campaign recognised that birth registration was key to access to child justice following the yearly theme that was chosen then for Day of the African Child in that year. The campaign, aimed for there to be speedy registration of births for children recognising that where a child does not have a birth certificate, then they cannot access any rights they have under law.

According to UNICEF, 164 million children under the age of 5 around the world have unregistered births. In Africa, nearly half of all children under 5 are reported to be undocumented.[17] Although many statistics have been released on a global or regional scale, such statistics are sometimes hard to come by in Zimbabwe. Where they are released, as in the National Inquiry on identification by the Human Rights Commission, more weight is placed on National Identity Cards for example and not necessarily on birth certificates.[18]

This study is to show how not having a birth certificate can impact a child immensely especially in getting an education and also to explore ways in which the section 81 right can be realised in a more practical way that actually contributes to bridging the gap between the 'haves and have nots' of birth certificates.

Further, for the past five years I have worked for a Non-Governmental Oraganisation in Zimbabwe called Veritas. Veritas specialises in law reform and is the official watchdog of The Parliament of Zimbabwe. In my five years, Veritas has been working towards obtaining funding to compel the government to provide children with birth certificates. I am the point person on this research and as such, this study will be relevant as it will be used as an advocacy tool for policy reform.

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[16] The African Union 'No Name Campaign'(2020) ,available at *https://au.int/en/newsevents/20200617/no-name-campaign*, accessed 23 February 2023.

[17] The United Nations Children's Fund 'More than half of the world's unregistered children under 5 un Africa' (2022), available at *https://www.unicef.org/wca/press-releases/more-half-worlds-unregistered-children-under-5-africa-unicef* ,accessed 29 February 2023.

[18] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.

IV RESEARCH PROBLEMS AND OBJECTIVES : KEY QUESTIONS

The following research questions are posed for this study to ascertain the main question, which is 'What is the link between the right to the prompt provision of a birth certificate and the right to education in Zimbabwe and how can the state be held accountable to offer prompt provision of birth certificates?'

1. What are the barriers to the realisation of the right to the prompt provision of a birth certificate?
2. Section 75 of the Constitution of Zimbabwe guarantees the right to education for Zimbabweans. How has the inadequacy of the supply of prompt provisions of birth certificates had an impact on the realisation of the right to education?
3. Who is responsible for the implementation of the section 81 right to the prompt provision of a birth certificate and how have they contributed to the realisation of section 81(1)(c)?

The aims of this study are as follows:

1. To identify the barriers to the realisation of the right to the prompt provision of a birth certificate.
2. To determine how the inadequacy of the supply of prompt provision of birth certificates impacted on the realisation of the right to education of children in Zimbabwe considering the constitutional mandate to provide it.
3. To identify and explore the role of the stakeholders of the s81 right to the prompt provision of a birth certificate.

V GUIDING LEGAL PRINCIPLES

This study will take on a children's rights based approach. According to UNICEF, there are seven principles covered by this approach namely; dignity, interdependence and indivisibility, best interests, participation, non-discrimination, transparency and accountability as well as life, survival and development.[19] Though numerous principles fall under the approach, the best interests of the child principle will be the main principle of this study. This will be complimented by the principles of dignity and non-discrimination as well as life, survival and development.

[19] UNICEF 'A Child Rights-based approach' available at https://www.unicef.org.uk/child-friendly-cities/crba/, accessed 15 October 2024.

Freeman's exposition of a children's rights approach identifies four kinds of 'rights', one of which is the group rights to welfare and this includes the right to a nationality or a name.[20] Prompt provision of birth registration is therefore part of this right to a child's welfare. Article 3 of the United Nations Convention on Children's Rights (CRC) states that all decisions that are to be taken regarding a child's private or social welfare shall be made in the best interests of the child. This sentiment is echoed in the African Charter on the Rights and Welfare of Children (ACRWC) in article 4 which states that the best interests of the child must be taken in all matters concerning the child. The principle of best interests means that where a decision is to be made regarding a child, careful consideration must be made of all the circumstances surrounding a matter and once such a consideration has been made, whatever favours; the child's welfare and wellbeing the most must be the decision that is taken.[21]

Further, this study will focus on the girl child. This will be through the lens of the principle on non-discrimination. This is because usually, the most exploited child is often the girl child. Statistically, it is recorded that at least one in three girls in Zimbabwe are married before the age of 18.[22] It is also common practice for under-aged girls to be taken in as domestic workers in Zimbabwe where the girls have not had any formal education or have had limited formal education.[23] The Campaign For Female Education (Camfed) states that only 14% of girls in Zimbabwe complete upper secondary school and amongst the poorest children, this falls to only 1%.[24] At a glance, it can be seen that the girl child in Zimbabwe is at a disadvantage. It is not an unwarranted assumption that the misfortunes of the girl child are linked to not having a birth certificate and thereby affecting her right to education.[25] This also has a bearing on the social future of these children.

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[20] MDA Freeman 'The Rights of Children in the International Year of the Child' 1980 *Current Legal Problems* 23. Cf MDA Freeman 'Taking Children's Rights more Seriously' 1992 *International Journal of Law, Policy and the Family* 5271.

[21] CRC Committee General comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1) CRC/C/GC/14 at 19.

[22] The United Nations Children's Fund "End Child Marriage – Empower Women", available at *https://www.unicef.org/zimbabwe/end-child-marriage-empower-women* ,accessed 5 March 2023.

[23] Amanda Ncube 'Underage, teenage maids sprout in Gwanda' *Newsday* 3 October 2021 , available at https://www.newsday.co.zw/theindependent/news/article/9964/underage-teenage-maids-sprout-in-gwanda , accessed 9 December 2023.

[24] CAMFED Zimbabwe 'Supporting girls to learn and lead in Zimbabwe' *https://camfed.org/what-we-do/where-we-operate/zimbabwe/* , accessed 5 March 2023.

[25] Byron Adonis Mutingwende 'Acess to education : Girl child still faces inequalities' *Spiked Media* May 2023, available at https://spikedmedia.co.zw/access-to-education-girl-child-still-faces-inequalities/ ,accessed 25 September 2023.

VI RESEARCH METHODOLOGY

This study is based on desktop research considering domestic and regional and international laws and policies. Further, the Zimbabwean Human Rights Commission carried out extensive interviews with various people from all over Zimbabwe on their difficulties to accessing birth certificates and collated it in a recent report.[26] This means that most of the data needed which may have been collected quantitatively has already been put together and now a deeper analysis to find out why s81 of the Constitution has not been implemented is necessary. Further, data available from reports and campaigns that organisations such as the African Union and United Nations International Children's Emergency Fund (UNICEF) is relied upon. Such reports offer valuable insight on both a regional and global level and will be relevant to keeping Zimbabwe accountable in terms of its obligations under international law.

VII STRUCTURE OF DISSERTATION

a) Chapter 1

This chapter seeks to establish the background of the research as well as set out the direction of the dissertation. In this chapter, the background, research questions, research methodology, theoretical framework as well as the chapter outline are set out.

b) *Chapter 2*

This chapter sets out the domestic and international laws on access to birth certificates.. An analysis of the interpretation of s81(1)(c) of the Constitution will also be conducted and the barriers that people face in accessing birth certificates will be outlined.

c) *Chapter 3*

Section 75 of the Constitution of Zimbabwe guarantees the right to education for Zimbabweans. This chapter seeks to determine how the inadequacy of the supply of prompt provisions of birth certificates impacted on the realisation of the right to education for Zimbabwean children.

d) *Chapter 4*

Chapter 4 looks into who exactly is responsible for enforcing the s81 right. Stakeholders of the right to a birth certificate such as the Registrar-General and others will be identified and

[26] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.

critically discussed. The chapter will determine how the right has been exercised so far and whether there has been proper implementation of the s81(1)(c) right.

e) *Chapter 5*

Chapter 5 is a concluding chapter. In this chapter, recommendations are made as to how the system in terms of the issuance of birth certificates may be improved.

CHAPTER 2

A PASSPORT TO PROTECTION

"The birth certificate is now regarded as a verifiable and objective fact of age. And age is central to our notion of citizenship."

- *Susan J Pearson*

I INTRODUCTION

A birth certificate is defined as an official document issued to record a person's birth and identify them by name, place, date of birth and parentage.[27] Historically, birth certificates were not always issued by governments. The church would record a birth at baptism.[28] In the last 200 years or so however, the responsibility of recording the match, hatch and dispatch has shifted from churches to civil registry departments within governments. The reason being that once these statistics are known, it then becomes easy to determine the needs of the population in various disciplines including, but not limited to, health and education.

The United Kingdom is known to have pioneered the formalisation of birth certificates in 1836 through the Births and Deaths Registration Act.[29] As aforementioned, the duty of registration had lied with the Catholic Church or the Church of England for centuries. However, as time went on, many people dissented from these churches. This then caused considerable problems in that lineage was now hard to trace in property disputes. Any documents not generated by the two churches could not be presented before the courts as legal tender. As such, the Births and Deaths Registration Act was conceived to solve this problem. With a proper registration system, it was believed that even mortality rates could be calculated.

As Zimbabwe is a former colony of the United Kingdom, it has largely inherited similar legal practices in the registration of birth certificates. In 1891, Zimbabwe was known as Southern Rhodesia. At the time, births and deaths were only recorded where someone was of white descent. By 1904, Indians and Coloured persons could also be registered and by 1963, the duty to register births and deaths was handed over from the Magistrates' Court to the Registrar-General's newly created office.[30] In 1961 however, a new Bill was introduced in

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[27] Miriam-Webster *https://www.merriam-webster.com/dictionary/birth%20certificate* , accessed 20 August 2023.
[28] H L Brumberg, D Dozor & S G Golombek 'History of the Birth Certificate: from inception to the future electronic data' (2012) 32 Journal of Perinatology 407 at 408.
[29] The Births and Deaths Registration Act of 1986.
[30] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.

Parliament that proposed that people of all races be registered for birth certificates in Southern Rhodesia. According to Morris Hirsch, a former Member of Parliament present at the time of the Bill, the advancement of Africans in Southern Rhodesia had become undeniable.[31] In his writings, he argues that although the need to make registration for births and deaths compulsory for all blacks existed, it would be impracticable at the time especially for the rural population.[32] The Bill came into effect in 1963 and by 30 November, the registration of births and deaths was voluntary for Africans and compulsory for non-Africans.

In 1980, Southern Rhodesia gained independence from White colonial rule. The country was renamed to Zimbabwe and a new Births and Deaths Registration Act came into effect in 1986. The Act made registration of births and deaths compulsory regardless of race. The Act has been in place for over 37 years, yet in the Child Rights Coalition Position Paper on Birth Registration, it was stated that only 48.7% of children under the age of 5 are registered for birth certificates.[33] This means that at least 4 million people in Zimbabwe are 'stateless'.[34] The statistics of today are an indicator of the damage which was done in the 90 years that African people could not register their births and deaths. African people were left behind and now must face the long-term consequences of such discrimination.

Although the remnants of the past are to blame, there are faults in the present registration system which contribute to the low number of birth certificates issued since the start of the Act. The aim of this study is to flesh out the problems that emanate from the existing laws surrounding birth registration, if any, and to be able to make recommendations for a better and improved system which is based on the best interests of the child principle as well as non-discrimination. To do this, it will first be necessary to investigate:

1. The importance of a birth certificate
2. Laws that regulate birth registration – both domestically and internationally
3. Scenarios which have prevented people from obtaining birth certificates – i.e. barriers to accessing these documents.

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[31] M I Hirsch "The Registration of Births and Deaths of All Races in Southern Africa" *The Central Journal of African Medicine* August 1962 at 320.
[32] *Ibid* 321.
[33] Zimbabwe National Council for the Welfare of Children 'Child Rights Coalition Position on Birth Registration' *Kubatana* 2 May 2022, available at *https://kubatana.net/2022/05/02/child-rights-coalition-position-on-birth-registration/#:~:text=According%20to%20the%20World%20Bank,of%205%20are%20not%20registered*. Accessed 24 September 2023.
[34] Statelessness is a term used to refer to children who are without citizenship.

Through establishing what the law says and means, what is happening practically can be juxtaposed against the theory and the gaps in the system can be identified.

II THE IMPORTANCE OF A BIRTH CERTIFICATE

Birth certificates are essential documents which prove the foundational facts of a child such as age, nationality, and sex.[35] Although somewhat basic, these documents allow for a child to have access to all other rights. And most importantly it affords a child human dignity. A birth certificate in other words is the key to life- it is the passport to protection. Not having a birth certificate bears negative impact on a child's development and stifles their future life chances.[36] A child who does not have a birth certificate is not legally recognised. This means that the child will find it difficult to access both health and education, let alone prove citizenship or even access to support grants. Later in life, such a child cannot register land, obtain a driver's license, vote, travel, have access to employment, access to courts, access to religion, open a bank account or even purchase a mobile phone.

Children who are without birth certificates are sometimes referred to as "stateless" – as children who do not belong. [37] Zimbabwe is a state party to the 1954 Convention Relating to the Status of Stateless Persons (UNCRSSP) but is not party to the 1961 Convention on the Reduction of Statelessness. According to the UNCRSSP, a stateless person is defined as anyone who is not considered a national by any State by operation of its law. By definition, it can be said that children who are without birth certificates can be considered as stateless as they are not formally recognised by the State – they are not counted in.[38] Although there are scholars who argue that lack of birth registration was not envisaged when drafting the Stateless Convention , children who face birth registration challenges cannot be excluded from being covered by the Convention.[39] Birth registration is what allows a child to be recognised a citizen of a country.[40] The UNHCR, published a paper as part of its #IBelong Campaign to End

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[35] Anette Bayer Forsingdal, Dianne Hubbard and Adrijana Corluka 'Birth Registration and Statelessness in the Member States of Southern Africa Development Community' *UNHCR* 2022 at 3, available at *https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKEwjs-t7nu8OBAxVARfEDHVH_CsAQFnoECA0QAQ&url=https%3A%2F%2Fdata.unhcr.org%2Fen%2Fdocuments%2Fdownload%2F97772&usg=AOvVaw14695F6V3jvuSBWlt37KZt&opi=89978449* accessed 3 August 2023.

[36] 'Reaching the hard to Reach: A Case Study of Birth Registration in South Africa" Reach Alliance at 2, available at *https://reachalliance.org/case-study/reaching-the-hard-to-reach-a-case-study-of-birth-registration-in-south-africa/#report* ,accessed 23 August 2023.

[37] Forsingdal *et al* at 7.

[38] The Convention Relating to the Status of Stateless Persons, adopted 28 September 1954.

[39] F Khan "Exploring Childhood Statelessness in South Africa' *PER/PELJ 2020(23)* at 22, available at http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1727-37812020000100013, accessed 23 August 2023.

[40] The Citizenship of Zimbabwe Act of 1990.

Statelessness by 2024 titled "Ensuring birth registration for the prevention of statelessness".[41] The UNHCR has 10 Actions to end statelessness by 2024 and Action 7 calls on States to ensure birth registration for the prevention of statelessness.[42] Although the ten year target of the campaign is coming to an end, the campaign reinforces the importance of a birth certificate and highlights how this is not only a Zimbabwean problem but an issue that needs to be resolved world-wide.

Being considered stateless has a direct effect on human dignity. It means that children do not have a direct relationship with the State and as aforementioned cannot be afforded protections and benefits that other citizens of a country have. The consequences of statelessness to children are harsh as they exhibit a "condition of legal invisibility".[43]

A birth certificate is not only a document to establish legal identity but a document which seeks to protect those that have it. Where a child does not register for a birth certificate, they cannot be allocated state resources and generally counted under the vital statistics programme of the government. These children will not be counted when the government seeks to assess levels of inequality or plan to monitor and develop programmes.[44]

In General Comment 17 on the rights of the child, the Human Rights Committee highlighted that the main purpose of registering children after birth is to reduce the dangers of abduction, sale or trafficking of children and other forms of maltreatment.[45] Having a birth certificate is a form of security. In the context of the Global South, while such a protection is vital, an aspect that implicates the daily life of children is birth certificates as passports to basic services and rights such as education, health and social security.

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[41] UNHCR "Ensuring birth registration for the prevention of statelessness" Ending Statelessness Within 10 Years, available at https://www.unhcr.org/ke/wp-content/uploads/sites/2/2017/11/Good-Practices-Paper-on-Ensuring-Birth-Registration-for-the-Prevention-of-Statelessness.pdf , accessed 8 January 2024.
[42] *Ibid.*
[43] F Khan "Exploring Childhood Statelessness in South Africa' *PER/PELJ 2020(23)* at 14, available at http://www.scielo.org.za/scielo.php?script=sci_abstract&pid=S1727-37812020000100013, accessed 23 August 2023.
[44] Plan International 'Innovations in Birth Registration' 16 October 2017 at 8, available at https://plan-international.org/publications/innovations-in-birth-registration/#:~:text=Innovations%20in%20Birth%20Registration%20provides,most%20challenging%20birth%20registration%20contexts, accessed 3 August 2023.
[45] Office of the High Commissioner For Human Rights 'CCPR General Comment No.17: Article 24 (Rights of the child)' UNHRC 7 April 1989 at para 7, available at *https://www.refworld.org/docid/45139b464.html accessed* 23 August 2023.

Neither the importance of a birth certificate nor the laws that regulate the issuance of the document cannot be ignored without dire consequences for children and their families.

III ZIMBABWEAN LAWS ON BIRTH CERTIFICATES

(a) The Births and Deaths Registration Act [46]

Section 10 of the Act states that the registration of births, deaths and still births in Zimbabwe shall be compulsory. In section 11 of the Act, a wide range of people are given the responsibility to give notice of a birth or still birth of a child. This includes the parents of the child, people living at a house the child was born, headmen of villages, or any person above the age of 18 to name a few. Section 11(2) goes further on to say that this notice must be given within 42 days of the birth of the child. The registration notice is to be given in the "prescribed form" as set by the Registrar of the district. In the 2020 National Inquiry Report, the Zimbabwean Human Rights Commission, indicates that "the prescribed form" differs according to the place of birth.[47] For example, where a child is born in a village, a confirmation letter from a traditional leader may suffice as a birth notification.[48] Where a child is born in a public hospital, a birth confirmation record is required from the institution. And where a home birth took place midwives, witnesses and letters from school/community leaders are required in order to prove that indeed the child was born to this family.

There have been issues though in the "prescribed forms". For example, as of late there has been a pattern of non-acceptance of confirmation letters from traditional leaders.[49] Chief Mangwe of the Matabeleland South Province is quoted to have said that "it has come to our knowledge that most of the letters we write are no longer assisting them".[50] If a traditional leader's letter is not accepted, then the villagers are in a precarious position as they are unable to produce the "prescribed form" and therefore are unable to register the birth of their child. This constitutes discrimination against persons in rural and traditional communities.

Birth confirmation records are also another problem. Birth confirmation records are notices from a particular hospital that show that indeed a child was born to a mother at that place. In the National Enquiry Report, it is stated that 2.2% of the 38% of witnesses that experienced registration challenges because hospitals were withholding their birth

[46] Act of 1986
[47] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 page 22.
[48] *Ibid.*
[49] *Ibid.*
[50] *Ibid.*

confirmation records because of failure to pay hospital bills. Although this happens in practice, there has been a policy directive from the Ministry of Health and Childcare that this is not permissible.[51] The issue of "prescribed form" is the major hurdle when it comes to the Births and Registries Act and the provision of birth certificates to children.

It must also be remembered that this Act precedes the current Constitution of Zimbabwe. This means that although it gives effect to s81 of the Constitution which gives the right to the provision of a birth certificate, it is not necessarily on all fours with the provision. The Act is silent on the promptness of the birth certificate. It must however be noted that in his 2023 State of the Nation Address, the President of Zimbabwe, Emmerson Mnangagwa, flagged that the Births and Deaths Registration Act should be put on the Parliamentary Agenda.[52] Whether or not the Parliament will get to it especially in their first sitting since elections – only time will tell. It must also be noted that the Bill was one of the last Bills he mentioned should be amended. It cannot be submitted with certainty that this is an indication of the importance placed on the matters to do with birth registration, but it can be fairly assumed that it is not top priority at the moment.

(b) The Constitution

Section 81(1)(c) (ii) of the Zimbabwean Constitution, reads as follows:

Every child, that is to say a boy and girl under the age of eighteen years, has the right –

(c) in the case of a child who is –

(i) born in Zimbabwe; or

(ii)born outside Zimbabwe and is a Zimbabwean citizen by descent.

To the prompt provision of a birth certificate.

It is important to note that the highlight of s81(1)(c)(ii) is the word "prompt". Before there is any interpretation of section 81, it is necessary to note the standing of the Constitution in Zimbabwean law. Under section 2 of the Constitution of Zimbabwe, it is declared that the Constitution is the supreme law of the land. This means that all laws and cultural practices within

[51] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 page 23.
[52] President Emerson Mnangagwa 'State of the nation Address at the official opening of the first session of the 10th Parliament' 3 October 2023 page 14, available at https://veritaszim.net/sites/veritas_d/files/SONA%20SPEECH%202023.pdf accessed 20 November 2023.

Zimbabwe must be compliant with the Constitution.[53] Further, section 3 of the Constitution lays out the founding values and principles of Zimbabwe. Section 3(2)(i)(iii) places value on the recognition of the rights of women, elderly, youths and children. Section 19 of the Constitution has a provision titled "children". This section falls under the National Objectives Chapter of the Zimbabwean Constitution. Under this chapter, the state is to adopt policies and measures which are child friendly. This means that "in all matters relating to children, the best interests of the children concerned are paramount".[54] From this alone, it is evident that the rights of children are of special interest in the Zimbabwean Constitution and have been put on the fore of the Constitutional project.

Section 81 of the Constitution is a relatively new provision within the Zimbabwean context. It was only in 2013 that the current Constitution came into existence and became enforceable. The previous one, the Lancaster House Constitution from 1980, was silent on the issue of birth certificates. This means that from start, section 81(1)(c) had two main antagonists which had been operating in the shadows for decades. Firstly, the fact that it was not compulsory for black people to get birth certificates means that many people in post 1980 Zimbabwe suffer because of that historic discrimination. To put it into perspective, white people used to have a significant population in the country but now they only make up 1%, meaning that 98% of the population falls in the previously disadvantaged group in accessing documentation.[55] Secondly, the other antagonist is that in the new and democratic Zimbabwe, the idea of the supply of birth certificates had not been entrenched as a right in the Declaration of Rights and so the matter had not been given the gravitas it deserved until nearly 33 years later.

(c) Interpreting section 81

Section 81(1)(c)(iii) has only been alive for ten years. In the ten years that it has been in operation, very little to no litigation has been brought before the courts on it. There is however, one case in which the court was faced directly with the notion of providing a prompt birth certificate. This was in the *Paunganwa* case. [56] In this matter, a woman had been in an unregistered customary marriage and her husband had died before they managed to obtain a birth certificate for their child. She had hoped that the child would have its father's surname but under s12 of the Births

[53] Section 2 of the Constitution of Zimbabwe, 2013.
[54] Section 19(1) of the Constitution of Zimbabwe, 2013.
[55] World Population Review 'Zimbabwe Population 2023' available at *https://worldpopulationreview.com/countries/zimbabwe-population#:~:text=Zimbabwe%20Demographics,tribes%20with%20which%20they%20intermarried*, accessed 21 August 2023.
[56] *Paunganwa v Registrar of Births and Deaths and the Master of the High Court* HC 9462/10 2016.

and Registries Act, if the father is not present and if there is no Marriage Certificate to prove the parents were married, then the relatives of the husband must attest that the child is their descendent.[57]

The lawyers for Zvikomborero Paunganwa argued that this section is contrary to the right to equality as well as the right to the provision of a prompt birth certificate.[58] By the time the matter was heard, her child was five years of age and still living without a birth certificate. The judge commented that the provision of a child's birth certificate is a matter of "paramount importance" and expressed with displeasure, the amount of time it had taken to set down this matter.[59] Although the judge did not fully unpack this statement, it is an important indicator that issues to do with the realisation of s81(1)(c) of the Constitution must be dealt with a sense of urgency. To say that the matter is of paramount importance is an echo of s81(2) which states that the best interests of the child are paramount in all matters concerning the child.[60] This further cements the fact that the issuing of the birth certificate should have been dealt with first as indicated by the word "importance".

The learned judge also goes on to say that section 81 emphasises the importance of lineage and ultimately inheritance.[61] Again, this statement was not fully unpacked, but it does point to the fact that birth certificates are an important indicator for identity at the inception of life and even at the end of life when one has to consider inheritance matters. Unfortunately, the opportunity to fully deconstruct and interpret s81(1)(c) was missed.

To date, there are no other cases at Zimbabwean law which have interpreted the meaning of section 81. This leaves room for further interpretation. It must also be remembered that every right within the Declaration of Rights does not operate in a silo. This means that when giving interpretation to s81(1)(c), the other rights that the child has must be taken into consideration. For example, under s51 of the Constitution, everyone has the right to inherent dignity and to have that dignity respected and protected.[62] Further, under s56 of the Constitution, everyone has the right to equality and not to be unfairly discriminated on the basis of race, colour, place of birth, being born in and out of wedlock and the like.[63] Going back to the rights at play, the prompt provision

[57] *Paunganwa* at page 3.
[58] *Ibid.*
[59] *Paunganwa* at page 2.
[60] Section 81(2) of the Constitution of Zimbabwe, 2013.
[61] *Paunganwa* at page 6.
[62] The Constitution of Zimbabwe, 2013.
[63]It must be noted that children who have mothers that cannot be found or unavailable can be registered for a birth certificate by their fathers as of November 2021 in Zimbabwe.

of a birth certificate works to improve the dignity of a child. It provides a child with legal status and a sense of self as well as the sense of belonging.[64]

Section 46 of the Zimbabwean Constitution lays out how rights in the Declaration of Rights are to be interpreted. The section states that full effect must be given to the rights which are set out in Chapter 4.[65] The rest of the section speaks to promoting the principles and objectives of the Constitution as laid out in previous chapters. What is of particular interest, however, is s46(1)(c) which states that when interpreting rights set out in the Constitution, international law must be considered and s46(1)(e) says that foreign law may be considered in the exercise of interpretation.

IV INTERNATIONAL LAW

Zimbabwe is a member of the United Nations and the African Union. In Chapter 12 of the Constitution of Zimbabwe, it is stated that Zimbabwe must have a respect for international law.[66] The section goes further to say that the State must promote regional and pan-African integration.[67] And when interpreting the Constitution, international law must be considered.[68] Further, section 34 of the Constitution says that the State must ensure that all international conventions, treaties and agreements to which Zimbabwe is party to are incorporated into domestic law.[69]

There are several laws that address issues to do with birth certificates but are there are three main international and regional instruments that speak to the matter in detail:

(a) The Convention on the Rights of the Child (CRC)[70]

Article 7 states that every child has the right to a name and nationality from birth. It also explicitly mentions that every child should be registered immediately after birth.

F Munyoro 'Zimbabwe: Landmark Ruling On Birth Certificates Hailed' November 2021 https://citizenshiprightsafrica.org/zimbabwe-landmark-ruling-on-birth-certificates-hailed/ , accessed 11 December 2023.

[64] A Arkdas-Thibert & Gerison Lansdown 'Article 7: The Right to a Name, Nationality, and to Know and Be Cared for by Parents' *Monitoring State compliance with the UN Convention on the Rights of the Child, Children's Well-being: indicators and Research* 25 at 55.

[65] Section 81 lies within Chapter 4 of the Zimbabwean Constitution which is also known as the Declaration of Rights.

[66] Section 12(1)(b) of the Constitution of Zimbabwe, 2013.

[67] Section 12(2) The Constitution of Zimbabwe, 2013.

[68] Section 46 of The Constitution of Zimbabwe, 2013.

[69] Section 34 of The Constitution of Zimbabwe, 2013.

[70] The Convention on the Rights of the Child adopted 20 November 1989, GA Res 22/25.

(b) The International Covenant on Civil and Political Rights (ICCPR)[71]

Article 24(2) states that a child's birth shall be registered immediately after birth and that child shall be entitled to a name.

(c) The African Charter on the Rights and Welfare of the Child (ACRWC)[72]

Article 6(1) of the Charter states that every child shall have the right from his birth to a name and 6(2) of the same says that every child shall be registered immediately after birth.

From the abovementioned instruments, the CRC is considered as being the leading international instrument on the rights of children. It is the only Convention which every single member of the United Nations is party to except the United States of America.[73] Its importance on the world stage cannot be ignored. All provisions of the CRC must be in conformity with the general principles of the Convention. These are the best interests of the child and non-discrimination *inter alia* a few others. [74] According to Arkdas-Thibert and Landsown, there are three main attributes which Article 7 of the CRC exhibits. These are free, compulsory and accessible birth registration immediately after the birth of all children, acquiring a name, nationality and prevention of statelessness and knowing and being cared for by their parents.[75] This means that article 7 is interpreted to place importance on these three attributes. Article 7 is therefore an enabling right.

General Comment 17 on Article 24 of the ICCPR also unpacks what article 7 means. The Human Rights Committee highlights that when interpreting the right to a birth certificate, it must be borne in mind that the main purpose of registration is to protect a child from dangers such as abduction, sale, trafficking, and others. [76] The Committee notes that the right must be interpreted to recognise a child's legal identity and places an obligation on states to register children as soon as they are born.[77] Such an interpretation reminds us that we must always act in the best interests of the child. To shield a child from these dangers mentioned, an immediate safety net must be provided. A birth certificate is both a sword and a shield for children. On

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[71] The International Covenant on Civil and Political Rights, adopted on 16 December 1966, GA Res 2200A (XXI).
[72] African Charter on the Rights and Welfare of the Child, adopted July 11, 1990, OAU Doc. CAB/LEG/24.9/49 (1990)."
[73]Humanium 'Signatory States and Parties to the Convention on the Rights of the Child' https://www.humanium.org/en/convention/signatory-states/ , accessed 10 December 2023.
[74] Article 3(1) of The Convention on the Rights of the Child, adopted 20 November 1989 , GA Res 22/25.
[75] https://link.springer.com/chapter/10.1007/978-3-030-84647-3_6
[76] Office of the High Commissioner For Human Rights 'CCPR General Comment No.17: Article 24 (Rights of the child)' UNHRC 7 April 1989 at para 7, available at *https://www.refworld.org/docid/45139b464.html accessed* 23 August 2023.
[77] *Ibid* para 8.

the one hand it is a sword that allows them to demand their rights and on the other it is a shield that protects them from exploitation.

The last country report for Zimbabwe under the Convention of the Rights of the Child was in 2016.[78] This was the second periodic report for Zimbabwe. Though the report is nearly a decade old, it holds pertinent commentary. In the report, it was noted that the low number of births registered, and the low number of birth certificates issued was of great concern.[79] It was suggested that the office of the Registrar-General needs to be adequately decentralised as well as exercises to raise public awareness of the importance of birth certificates.

As aforementioned, article 6 of the ACRWC is the counterpart of article 7 of the CRC in regional law. General Comment 6 of the ACRWC, also comments on the right to birth registration in Africa.[80] In the general comment, the importance of a birth certificate is emphasised through highlighting that the right is interlinked to the right to a nationality and a name for a child.[81] It is argued that birth registration should be done at the point where non registration becomes apparent not when it becomes an impediment to the child's access to other rights.[82] Just like the general comment on the CRC, this general comment also notes that registration makes access to health services, social security and medical care easier when a child has a birth certificate.[83] Children without birth certificates are at risk of not receiving mandatory early childhood vaccinations which are detrimental to the survival of the child. This further supports that birth certificates should be registered promptly.

The general comment takes it a step further however and notes that birth registration is important to furthering democratic governance in Africa. This is because once a child has a birth certificate, she can participate in the economy and take part and enjoy civil and political rights in future which include the right to vote.[84] Further, States are urged to take a children's rights approach when it comes to birth registration realising that it is not just a mere

[78] Committee on the Rights of the Child "Concluding observations on the second periodic report of Zimbabwe" United Nations 2016 , available at https://digitallibrary.un.org/record/834986?ln=en&v=pdf, accessed 17 October 2024.
[79] *Ibid page 8.*
[80] African Committee of Experts on the Rights and Welfare of the Child 'ACRWC General Comment No.6: Right to birth registration, name and nationality' African Union, available at https://www.acerwc.africa/en/key-documents/general-comments, accessed 16 October 2024.
[81] *Ibid* page 6.
[82] *Ibid* page 15.
[83] *Ibid* Page 16.
[84] *Ibid* Page 18.

bureaucratic or administrative formality.[85] For birth registration to be effective, it must be free, accessible and made immediately after the birth of a child.[86] And so resonating with the comments made by the CRC Committee.

The lesson learnt from international provisions and general comments is clear – a child has the right to a name and identity and a birth certificate should be supplied to a child as soon as is reasonably possible. The provision of a birth certificate is a matter of urgency.

Apart from international law, Zimbabwe has also committed itself to soft norms such as the United Nations Sustainable Development Goals.[87] Overall there are 17 goals that the United Nations General Assembly agreed should be met by 2030. One of them is Goal 16 which countries should seek to "promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels".[88] Under Goal 16 however, there are also several targets. Target 16.9 states that by 2030, legal identity must be provided for all, and this includes birth registration.[89] Sustainable Goals or Global Goals are considered soft law norms and although they are not binding on states, they do act as guiding principles.[90]

V TYING UP THE INTERPRETATION OF S81 AND THE BEST INTERESTS OF THE CHILD

The Zimbabwean government has gone to great lengths to make sure that everyone can read the constitution in a language that she is most comfortable with. The Constitution is available in the 16 official languages. Such translations may also be used as useful tools of interpretation. For example, s81(1)(c) in Shona reads that every child "ane kodzero yekuwaniswa gwaro rekuzvarwa nekukasika". The word "kasika" is a verb that means to do something with great speed or quickly. In the Miriam Webster dictionary, the word "prompt" means "being ready

[85] *Ibid* Page 20.
[86] *Ibid* Page 22.
[87] United Nations 'Sustainable Development Goals Knowledge Platform Zimbabwe' December 2022 , available at https://sustainabledevelopment.un.org/memberstates/zimbabwe#:~:text=Prioritisation%20is%20key%3A%20Zimbabwe%20has,unfinished%20business%20from%20the%20MDGs, accessed 10 December 2023.
[88] United Nations 'Targets and Indicators', available at https://sdgs.un.org/goals/goal16#targets_and_indicators , accessed 10 December 2023.
[89] United Nations Development Program "Goal 16 : Peace, Justice and Strong Institutions' , available at https://www.undp.org/sustainable-development-goals/peace-justice-and-strong-institutions accessed 1 December 2023.
[90] V Barral 'Sustainable Development in International law: Nature and Operation of an Evolutive Legal Norm' 2012 *European Journal of International Law* 23(2) 378.

and quick to act as occasion demands".[91] Another version says that when a provision is deemed prompt, it is to be performed without delay.[92]

Judge Munangati- Manongwa throughout the *Paunganwa* judgment, did however provide a good starting point, as she implied that the bench would take an ordinary grammatic approach in the interpretation of the provision.[93] This means that every word in s81(1)(c) should be interpreted in its ordinary sense. The phrase "to the prompt provision of a birth certificate" should indicate that the birth certificates should be given quickly.

Internationally, it has been indicated that a birth certificate is to be provided quickly as it is the key to unlocking other human rights a child is entitled to. Remembering s46 of the Zimbabwean Constitution, it goes without saying that the interpretation of s81 is to be borrowed from international law. Simply put, section 81 means that when a child is born, all processes that are required to obtain a birth certificate must be expedited.

When seeking to interpret s81(1)(c) of the Constitution, the principle of the best interests of the child must be applied. Section 81(2) of the Zimbabwean Constitution states that the best interests of the child are paramount in every matter concerning a child.

At present, Zimbabwe has invoked the best interests of the child in limited circumstances. For example, the best interests of the child are only mentioned in two sections in the current Children's Act,[94] and once in the Children's Amendment Bill.[95] In the Children's Act, sections 14 and 65 speak to the principle. The sections refer to when a child is removed from a place of safety and when interim orders are to be made in matters of adoption, respectively. Clause 49B states that the best interests of the child should be observed in matters of early intervention and family prevention programmes. Both pieces of legislation show that section 81(2) of the Zimbabwean Constitution is not being used to its full extent.

Section 81(2) should not be limited to matters of adoption and where custody of a child is concerned. The wording says that in "all matters" concerning the child thus meaning that even in the interpretation of s81(1)(c), the best interests of the child must be considered as

[91] Miriam-Webster*https://www.merriam-webster.com/dictionary/prompt#:~:text=transitive%20verb-,1,forgotten%20or%20imperfectly%20learned%20%3A%20cue* accessed 20 August 2023.
[92] Reverso Dictionary https://dictionary.reverso.net/english-definition/prompt+provision , accessed 20 August 2023.
[93] *Paunganwa* at page 10.
[94] The Children's Act of 1971.
[95] The Children's Amendment Bill H.B 12, 2021.

paramount. In the *Chokuramba case*,[96] the Constitutional Court emphasised that when interpreting anything to do with children, the best interests principle must be taken into consideration. The Court said that the principal highlights that there will be competing interests when it comes to decisions concerning the child, however what is favourable to the child's rights must be superior to all others.[97]

Due to Zimbabwe's international and regional commitments to both the CRC and the ACRWC, it follows that such an interpretation should be made within the confines of the best interest principle. The principle is crucial in development children's rights in the country. It therefore follows that when considering the issuance of a birth certificate, it is important to consider how the life of the child will be affected if a birth certificate is not immediately availed to the child. The principle should not only be used in matrimonial matters or adoption matters but should be applied universally in all matters concerning the child.

The question then becomes, if there are laws that make registration compulsory and quickly, then what is stopping these laws from being practically realised on the ground?

VI ON THE GROUND

By March 2019, it was recorded that the Registrar's Office had a backlog of 225 747 birth certificates.[98] This means that for these birth certificates, paperwork was handed in, but the process was not completed for whatever reason.

The COVID-19 period then ensued and the operations of the civil registry were suspended in 2020. The registration process resumed in April 2021. Immediately after this, the Registrar's office ran a mobile registration initiative in 2022 which is reported to have issued out over 1 993 007 birth certificates. It must be remembered however that this number includes adults who also had missed the opportunity to get them earlier or had lost their initial documents. It cannot be said to be an indication of the implementation of s81(1)(c), rather it shows how many children had not been afforded that right initially.

In 2022, there were 438 776 live births in Zimbabwe. In the same period, it is recorded that only 19% of the children born in this period were issued with birth certificates. This means that for whatever reason about 351 020 children born in 2022 were not registered and the

[96] *S v Willard Chokuramba* CCZ 10/19.
[97] *Chokuramba* page 51.
[98] Bulawayo Bureau ' Digital Registry Services to start by December' 7 September 2021 The Herald , available at https://www.herald.co.zw/digital-registry-services-to-start-by-december/ accessed 25 August 2023.

number continues to grow. In the urban areas, only 28.3% of people got birth certificates and only 13.7% in rural areas.[99]

The numbers indicate that there is a disconnect between what the Constitution says in s81(1)(c) and what takes place in practice.

VII BARRIERS AND SETBACKS TO BIRTH CERTIFICATES

As earlier indicated, the Zimbabwe Human Rights Commission conducted a national inquiry on access to documentation. [100] They produced a report and chapter three of the report lays out the challenges people faced in trying to access documents. Of the people that they interviewed, 50.9% indicated that they had challenges accessing birth certificates. These challenges included registration issues, socio-cultural norms, and economic issues.[101]

Registration issues are those issues that stem directly from the registration process such as non-uniformity of accepting "prescribed forms", clerical errors and the attitudes of the Registrar General's office. Socio-cultural norms on the other hand refer to issues such as presenting witnesses where a father is absent, migration and demand for bride price before a child may be registered for a birth certificate. Economic issues are issues that arise from the bus fare required for example, when people must travel a great distance to get access to a birth certificate.

One of the major challenges to the acquisition of a birth certificate is the requirement to produce a birth confirmation record. For example, say a mother resides in Epworth but for some reason she had given birth in Chipinge, geographical distance can pose a problem. Chipinge is 394km away from Epworth. Epworth is a settlement in Harare with a population of about 167 000 and sprung out of informal settlements.[102] A lot of people who settle from the rural areas to Harare, start off there. At the time she gave birth, she did not have money to pay for the full hospital fees and so did not immediately receive the birth confirmation record of her child. She then relocated to Epworth in search of better opportunities. A few years go by and eventually she realises a birth certificate is needed to access some of the rights of her child such as healthcare and education. She then visits central registry in Harare and is told that she needs the birth

[99] Zimbabwe National Statistics Agency ' 2022 Population and Housing Census : Preliminary Report on Fertility' 2022, available at *https://www.zimstat.co.zw/wp-content/uploads/2022/10/2022_PHC_Fertility_Report.pdf* , accessed 25 August 2023.
[100] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.
[101] Zimbabwe Human Rights Commission at page 16.
[102] Epworth Local Board, available at *https://ucaz.org.zw/members/epworth-local-board/* accessed 20 August 2023.

confirmation of the child. This causes her to be defeated as she is aware that she a) has an outstanding bill in Chipinge b) has no bus fare to Chipinge c) she was given insufficient information at the Registrar's office by recording officers such that she decided to not proceed with trying to register her child. Although this situation is hypothetical, it does not fall far from the truth and the reality on the ground. In their observations report, the African Committee of Experts on the Rights and Welfare of the Child expressed their concern over the declining birth registrations due to the existence of legal and administrative barriers which include birth confirmation records and a death certificate where a mother is dead.[103]

In an article in the New Zimbabwe Newspaper, a story of a young woman who only received her birth certificate when she was 19 years old was recounted.[104] The girl had not obtained a birth certificate because as far back as her great grandmother, her family had not been documented. The great grandmother had been reluctant to get the birth certificate due to fears of administration issues. Mataimire, points out that a lot of people who remain stateless, cite lack of resources, limited infrastructure, and logistical issues as some of their main reasons for not having birth certificates. Mataimire also says that broken relationships, limited access to technology and records as well as lack of awareness are some of the main barriers to accessing birth certificates. For example, Nyathi samples people living in Tsholotsho. Historically, the acquisition of a birth certificate in places like Tsholotsho is tough because securing death certificates of parents remains difficult.[105] Without a death certificate to prove parentage, it becomes difficult to obtain a birth certificate. This is a matter that is quite common in this region because of the Gukurahundi massacres of 1983-1985. According to the Zimbabwe Peace Project, an estimated 20 000 people were massacred during that time. [106] The genocide has never been formally recognised in Zimbabwe and so children and grandchildren of those victims suffer statelessness as the Births and Deaths Registries Act does not accommodate for their situation. The United Nations`

[103] African Committee of experts on the Rights of the Child 'Concluding Observations and Recommendations by the African Committee of Experts on the Rights and Welfare of the Child (ACERWC) on the Republic of Zimbabwe Report on the Status of implementation of the African Charter on the Rights and Welfare of the Child' 2015 , available at https://www.acerwc.africa/sites/default/files/2022-06/Concluding_Observations_Zimbabwe.pdf , accessed 11 December 2023.

[104]Kenneth Matimaire ' Children on Gukurahundi Victims Strugglpe To Access IDs' *New Zimbabwe* 24 August 2021, available at *https://www.newzimbabwe.com/children-of-gukurahundi-victims-struggle-to-access-ids/* , accessed 20 August 2023.

[105] Kholwani Nyathi 'San community in Tsholotsho sees bright future after birth certificates , IDs blitz' *UNICEF* 6 June 2023 , available at *https://www.unicef.org/zimbabwe/stories/san-community-tsholotsho-sees-bright-future-after-birth-certificates-ids-blitz* ,accessed 25 July 2023.

[106] Kenneth Matimaire ' Children on Gukurahundi Victims Struggle To Access IDs' *New Zimbabwe* 24 August 2021, available at *https://www.newzimbabwe.com/children-of-gukurahundi-victims-struggle-to-access-ids/* , accessed 20 August 2023.

guidelines state that the proof of evidence of a birth must be sufficient enough to be accurate but not so burdensome as to deter birth registration.[107]

In 2019, the people in the eastern Highlands of Zimbabwe mainly in Chimanimani and Chipinge were affected by cyclone Idai.[108] The storm is said to have affected over 270 000 people with 341 dead and many missing. Up to 17 608 people were left homeless and 139 schools were affected. [109] Many a time, when people talk about the effects of the cyclone, it is often forgotten that a large part of this population was left undocumented due to their national identity documents and birth certificates being destroyed by the floods. By November 2019, it is reported that 3000 identity documents had been issued to the survivors of the cyclone.[110] What has happened to the documentation and especially birth certificates for the remaining 267 000 people or so – only one can guess. Such people would have also migrated to other areas, and whether all of them were eventually tended to, is a mystery. Much like the Gukurahundi situation, this breeds generational problems in obtaining birth certificates.

Another event in history that may prove to be a barrier to obtaining a birth certificate is Operation Murambatsvina. In 2005, the Zimbabwean government led a military style clean-up campaign which destroyed illegal vending sites, structures, informal businesses, and homes. These demolitions and forced evictions were carried out by the police and the military.[111] The housing demolitions were instant and nationwide. It is estimated that up to 569 685 people lost their homes.[112] Again, as in the cyclone Idai tragedy, as the demolitions took place without warning, it is safe to assume that many people also lost their identity documents including birth certificates due to these demolitions. People who faced the forced evictions were not given time to gather their essential belongings. Graders often rammed through their properties without warning. Although there are no statistics related to birth certificates on this matter, it cannot be

[107] UN Guidelines for the Legislative Framework for Civil Registration, Vital Statistics and Identity Management Systems (Second Draft) (2019) at para 272.
[108] International Federation of the Red Cross and Red Crescent Societies 'Zimbabwe: Tropical Cyclone Idai Final Report' 26 August 2020 *https://reliefweb.int/report/zimbabwe/zimbabwe-tropical-cyclone-idai-final-report-dref-operation-n-mdrzw014* ,accessed 9 September 2023.
[109] *Ibid.*
[110] Zimbabwe Broadcasting Corporation ' Zimbabwe: 3000 Cyclone Idai survivors issued new identity documents' *Citizenship Rights Africa* 12 November 2019, available at *https://citizenshiprightsafrica.org/zimbabwe-3-000-cyclone-idai-survivors-issued-new-identity-documents/* ,accessed 9 September 2023.
[111] Anna Kajumulo Tibaijuka 'Report of the fact-Finding Mission to Zimbabwe to assess the Scope and Impact of Operation Murambatsvina by the UN Special Envoy on Human Settlements Issues in Zimbabwe' *UN* 18 July 2005 at 7 *http://hrlibrary.umn.edu/research/ZIM%20UN%20Special%20Env%20Report.pdf* , accessed 26 July 2023.
[112] *Ibid at 32.*

ignored that yet again a scenario where people lost their birth certificates and subsequently failed to replace them, for one reason or another, and thereby perpetuating the birth registration of future generated was perpetuated. In the Supreme Court of Appeal of South Africa in the matter of *Ngomane*,[113] the judges remarked that they were not pleased with tactics of confiscating identity documents when trying to enforce the law.

These are just a few examples of the barriers that Zimbabweans face in acquiring birth certificates.

VIII CONCLUSION

Understanding the history behind the birth certificate in Zimbabwe is important to paint the picture of how it is that so many do not have birth certificates until this day. As previously mentioned, the system only catered to the white population which at the time was only a handful of people. As the years went by and the nation gained independence, the demand on the Civil Registry was strained but very little upgrades have been made to keep up with the demand. The Registry was further inundated when the COVID-19 lockdown took place.

The barriers to birth registration are many and wide. What is clear from the above discussion is that there is no one root cause, and this makes the prompt provision of the birth certificate complicated. Barriers are geographical, administrative, economical, humanitarian and even climate change related. Although the problems always appear to boomerang back to administrative issues. There are gaps in the numbers as to how people were helped when they potentially lost their birth certificates in matters of disasters, for example. Having statistics would show the government's commitment to providing the child promptly with a birth certificate – not just at birth but whenever a child loses a birth certificate.

There has also been an attempt to unpack the meaning of s81(1)(c) in this chapter. It was concluded that the section means that birth certificates should be accessible to a child as soon as possible after birth. There should be no delays in affording a child this right as it is the key to accessing other important and critical rights for the wellbeing of the child.

Having gone through the laws that speak to the right to a birth certificate both locally and internationally, what is clear is that there is a disconnect between Zimbabwe's international

[113] *Ngomane and Others v City of Johannesburg Metropolitan Municipality and Another* 2020 (1) SA 52 (SCA).

obligations, what the Constitution says and what happens on the ground. Section 81(1)(c) has not been given proper effect to.

CHAPTER 3

THE LEFT BEHIND

"Education is the most powerful weapon you can use to change the world".

- President Nelson Mandela

I INTRODUCTION

Education is regarded as the "formal process by which society conveys its accumulated knowledge, skills, customs and values from one generation to another."[114] Globally, the right to education has been enshrined in numerous constitutions such as the Zimbabwean, South African and Namibian Constitutions.[115] This is because education plays an important role in global progress and advancement.[116]

All over the world, Zimbabweans are known for the importance they place on education. This is so because at independence, in 1980, one of the main focus areas of the government of the day was to make sure that all African children were educated.[117] Previously, the majority of the population had been barred from exceeding certain levels of education.[118] This policy shift, bred a strong belief in the Zimbabwean culture that every child must go to school and that education is the gateway to a better life. This way of thinking has lived on, and this can be seen in how even low paying jobs require a person to have some sort of school certification, usually O-level qualifications to qualify for employment. [119]

The right to education benefits both the individual and her society. It is fundamental for both social and economic development as education is important to achieve peace, sustainable development and ensuring human dignity.[120] The right to education is an empowerment right that helps to alleviate poverty in marginalised communities and overall allows a person to realise their other rights as they would have gained knowledge and understanding of the way

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[114] C Chürr "Realization of a child's right to a basic education in the South African School System: Some lessons from Germany" 2015 18(7) *PELJ* 1727 at 2404

[115] Section 29 of the Constitution of South Africa,1996 and Article 20 of the Constitution of Namibia ,2000.

[116] Chürr at 2406

[117] T J Nhundu 'A Decade of Educational Expansion in Zimbabwe: Causes, Consequences and Policy Contradictions' (1992) 61 Journal of Negro Education 78 at 79.

[118] O E Maravanyika 'Implementing Educational Policies in Zimbabwe' World Bank Discussion Papers Africa Technical Department at 7.

[119] The CV People 'Truck Drivers – Class 2 x 3' available at *https://www.cvpeopleafrica.com/jobs/view/zimbabwe/supply-chain-logistics-transport-shipping/truck-drivers-class-2/28183* , accessed on 23 September 2023.

[120] *Ibid.*

the world works. The right to education means that education must be available, accessible, acceptable, and adaptable.[121]

Accessibility is the intersection where the right to education and the right to a prompt provision of a birth certificate meet. For a child to have access to education, that child must first have access to a birth certificate.

This Chapter will seek to explore the effects at this crossroad. To do that however, it is important to look at:

a) Education as right in Zimbabwe
b) Zimbabwe's international obligations in relation to the right to education.
c) The impact that a birth certificate has on the right to education.

II EDUCATION AS A RIGHT IN ZIMBABWE

a) The Constitution

In 2013, Zimbabwe adopted a new Constitution which recognised education as a basic human right for the first time in over 30 years.[122] Education is mentioned in two distinct chapters in the Zimbabwean Constitution. The first being under s27 of the Constitution under the National Objectives. Under this section, it is stated that the State must take all practical measures to promote free and compulsory basic education for children and ensure that girls are afforded the same opportunities as boys to obtain education at all levels.[123] Section 75 on the other hand is within the Declaration of Rights Chapter. Under this section, it is stated that:

(1) Every citizen and permanent resident of Zimbabwe has a right to –
  (a) A basic State-funded education, including adult basic education and
  (b) Further education, which the State, through reasonable legislative and other measures, must make progressively available and accessible[124]

[121] K Tomasevski 'Human Rights Obligations: making education available, accessible , acceptable and adaptable' January (2001) 12 available at https://www.google.com/search?client=safari&rls=en&q=the+right+to+education+must+acceptable+accessible+and+adaptable&ie=UTF-8&oe=UTF-8 accessed 1 December 2023.
[122] The Lancaster House Constitution of 1980 did not have the right to education enshrined as a right under the Declaration of Rights.
[123] Section 27(a) and (c) of the Constitution of Zimbabwe, 2013.
[124] Section 75 of the Constitution of Zimbabwe, 2013.

Unlike in other jurisdictions such as South Africa,[125] the socio-economic right to education is subject to the availability of state resources. This claw-back clause is then often used as a scape goat by the government for not implementing certain rights such as these.

On the other hand, section 81(f) of the Constitution guarantees all Zimbabwean children the right to "education, healthcare services, nutrition and shelter". Unlike s75, this section has no limits on resources to realise the right. The difference however, between the two is that s75 speaks of a specific type of education namely "basic", whereas the s81 education has no parameters. This means that section 75 addresses formal education whereas section 81 could encompass many types of education including cultural, informal and knowledge in general. Read together, the sections indicate Zimbabwe's commitment to first and foremost free education and secondly to the universal education of all children. In both provisions, the duty to provide education lies with the State.

Such a right as s75 has been termed a 'provision right'. Provision rights are injunctions against the state as the Constitution recognises the indivisibility of children's rights- they promote a holistic approach in the development of children.[126] Such a right broadens the scope of the right to life, survival and development.[127] Provision rights are intrinsically linked to protection rights such as the right to a birth certificate, as the provision of certain goods, balanced growth and full citizenship promote the best interests of the child.

b) Enabling Legislation?

The Education Act regulates systems relating to education in Zimbabwe. Sections 4 and 5 of the Act directly address the issues of free education and education for all children. Section 4 of the Act recognises education as a fundamental right whilst section 5 states that primary education is compulsory for all in Zimbabwe. The original Education Act predated the Constitution and in 2019, an Amendment to the Act to align it to the Constitution was passed.

Section 4 (2) of the Act states that no child shall be refused admission to any school or be discriminated against on the basis of an "onerous term" or "condition" which relates to race, tribe , political opinions , gender and alike matters.[128] The section goes on to state that any person who bars a child from attending school on the above grounds shall be guilty of an

[125] Section 29 of the Republic South African Constitution, 1996.
[126] Admark Moyo 'The Legal Status of Children's Rights in Zimbabwe" Selected *Aspects of the 2013 Constitution and the Declaration of Rights* (2022) 243-286.
[127] *Ibid.*
[128] Section 4(2)(b) of The Education Act of Zimbabwe of 1986.

offence not exceeding a level six fine or imprisonment for over a year or both.[129] The Act specifically states why a child may not be barred from school. It does not however tell us instances where a child may be reasonably barred from school. For example, it does not explicitly or tacitly say that where a child has no birth certificate, that child should not be admitted into primary education.

Originally, section 4 of the Act established the right to education for children. It states that there must be equality and non-discrimination when enforcing the right to education. It must be understood that the mischief the legislator was trying to address in this section was to avoid the discrimination that had existed in the education sector pre-independence.[130] Although an Amendment was made in 2019, the section remained unchanged and does not tell us further parameters of the right to education other than what is already in the Constitution.

Section 5 of the Education Act goes on to say that attendance of primary education shall be compulsory for every child of school going age. The section says that the duty of attendance shall be placed on the parent to ensure their child is educated. This section, put next to section 75 holds contrasting ideas. Section 75 of the Constitution places the duty of a free basic education on the State to the availability of its resources whilst section 5 of the Education Act places parents as the duty bearers when it comes to providing basic education. This then leaves the question, who exactly is the duty bearer? It must not be forgotten that in the Zimbabwean context, the Constitution takes precedence over all legislation as it is the Supreme law of the land.[131] From this, it can be drawn that the duty to ensure the right to education lies with the State. It is the State that must make sure that the four A's of education are achieved – accessibility, availability, adaptability and acceptability. This means that the State is responsible for ensuring that education is accessible to all. Part of that accessibility means that the State should ensure that children have the required documentation to access education.

Although the exercise of constitutional alignment was taken, critics such as Veritas still believe that there is a disjuncture in s5 of the Act and s75 of the Constitution. This is because the term "state funded" has not been defined in the Act and all the while the Act still allows for

[129] Section 4(2) of The Education Act of Zimbabwe of 1986.
[130] O E Maravanyika 'Implementing Educational Policies in Zimbabwe' *World Bank Discussion Papers Africa Technical Departmen*t at 7.
[131] Section 2 of the Constitution of Zimbabwe, 2013.

the State to fix fees tuition or government schools in s13 of the Act.[132] This is important to this discussion as it adds to the confusion of who bears the duty to provide education.

It is also imperative to look at s10 of the Act. Section 10 speaks to the enrolment of children in schools. It states that every child of school going age must be enrolled in a school nearest to her. Where this is not possible, the head of the school shall issue a certificate for a child to get enrolled at the next nearest school. Section 10 does not offer any other reasoning as to why a child may not be enrolled at a school. More specifically, the Act does not state that a child may be excluded from school due to failure to present a birth certificate. Section 68C addresses non-exclusion of pupils from school. It only states that pupils shall not be excluded from school for non-payment of fees and based on pregnancy.

Historically, children who have not been able to produce their birth certificates at schools, for one reason or the other have been denied the right to education. Although there is no provision in the Education Act that states that a child needs a birth certificate to attend school, it has become common practice that to be able to enrol in a school, a child must present their birth certificate as proof of identity.[133]

III ZIMBABWE'S INTERNATIONAL OBLIGATIONS

Zimbabwe is party to several international instruments that prove its commitment to educating all children. It is a State party to the Universal Declaration of Human Rights (UDHR) which states that "everyone has a right to education".[134] Although the UDHR has no binding effect, it forms part of international customary law and so influences the ideals and freedoms of parties to the United Nations Charter.[135] Zimbabwe has also undertaken to domesticate obligations brought on by the International Covenant on Economic, Social and Cultural Rights (ICESCR). Article 13 states that everyone has the right to education but unlike the UDHR, the ICESCR goes a step further. Article 13 points out that education is important in giving a person a sense of dignity and enables all persons to participate effectively in a free society. Section 75 of the

[132] Veritas Zimbabwe 'Bill Watch 20 – 2019 The Education Amendment Bill' 15 April 2019 available at *https://www.veritaszim.net/node/3490* , accessed on 22 September 2023.
[133] Kudzai Mazvarirawofa 'Right to Identity: Zimbabwe's Phantom kids Left in Limbo Without Birth Certificates' 3 January 2017 available at https*://globalpressjournal.com/africa/zimbabwe/right-identity-zimbabwes-phantom-kids-left-limbo-without-birth-certificates/,* accessed on 5 June 2023.
[134] Article 26 of the Universal Declaration of Human Rights.
[135] Amnesty International 'What is the Universal Declaration of Human Rights and Why Was It Created?' available at *https://www.amnesty.org/en/what-we-do/universal-declaration-of-human-rights/* accessed 2 June 2023.

Zimbabwean Constitution echoes article 13(2) in that it states that primary education shall be compulsory and free for all.

In General Comment 13, the Committee on Economic, Social and Cultural Rights emphasises that education is both a human right and an empowerment right.[136] Under this Comment, the Commission highlights that education must be accessible, acceptable, adaptable and available.[137] This is particularly important for Zimbabwe in that in order for education to be accessible to all, all children must have birth certificates. Failure to provide birth certificates results in a breach of international obligations to provide education to all.

In 2022, under the Universal Periodic Review Report, Zimbabwe was urged by Canada to upscale efforts to ensure that all citizens have access to birth certificates in order to improve access to education. Thus further highlighting the effect that birth certificates have on realising the right to education.[138]

Further, Zimbabwe is also party to regional instruments such as the African Charter on Human and People's Rights (ACHPR) and the African Charter on the Rights and Welfare of the Child (ACRWC). In Article 17 of the ACHPR, every individual has the right to education. Article 11 of the same charter states that every child has the right to education and in Article 11(3)(a), all State parties have the obligation to provide a free and compulsory basic education. Article 28 of the Convention of the Rights of the Child (CRC) guarantees free and compulsory primary education for all and emphasizes that higher education should be accessible to all.[139] As aforementioned, Zimbabwe is a signatory to the CRC. It must be remembered that the CRC is a legally binding treaty.[140] As can be seen, the burden placed on the Zimbabwean government to achieve universal education is not light.

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[136] The United Nations Committee on the Economic, Social and Cultural Rights ' General Comment No.13 : The Right to Education 9article 13) ' 8 December 1999 available at *https://www.ohchr.org/en/resources/educators/human-rights-education-training/d-general-comment-no-13-right-education-article-13-1999#:~:text=For%20the%20most%20part%2C%20they,effectively%20in%20a%20free%20society%22%2C* accessed 2 May 2023.

[137] *Ibid.*

[138] Human Rights Council "Report of the working group on the Universal Periodic Review" United Nations General Assembly 2022 para 140.97.

[139] The Convention on the Rights of the Child adopted 20 November 1989, GA Res 22/25.

[140] Save the Children 'UN Convention on the Rights of the Child(UNCRC) , available at https://www.savethechildren.org.uk/what-we-do/childrens-rights/united-nations-convention-of-the-rights-of-thechild#:~:text=The%20United%20Nations%20Convention%20on,their%20race%2C%20religion%20or%20abilities, accessed 24 January 2024.

Generally, Zimbabwe has numerous factors that hinder the realisation of the right to universal education. For example, in its report, UNICEF stated the lack of teachers and child marriages as some of the barriers to realising education in Zimbabwe.[141] The Zimbabwe Human Rights Commission on the other hand listed the access to birth certificates as one of the major barriers to attaining basic education for both undocumented local and immigrant children.[142]

IV WHERE THE RIGHT TO EDUCATION MEETS THE RIGHT TO A BIRTH CERTIFICATE

As aforementioned under the international obligations section, the four A's of education must be present in an education system in order to make the right realisable. One of the most relevant A's to this discussion is access. The United Nations Educational, Scientific and Cultural Organisation (UNESCO) describes access to education as including on schedule enrolment which is done at an appropriate age and allows learning that is consistent with national achievement norms.[143] But how can a child be enrolled at an appropriate age and achieve the learning milestones that allow them to progress further in their education when they have no birth certificates?

In 2019, the Zimbabwe Human Rights Commission (ZHRC) held public hearings on access to documentation in Zimbabwe. Subsequently, in April 2020, the Commission published a report titled "National Inquiry on Access to Documentation in Zimbabwe".[144] Prior to compiling the report, the ZHRC held public hearings on the matter as part of their research methods in collecting data. In one of the hearings in Bulawayo (Zimbabwe's second largest city), it was submitted that of the 133 143 primary learners that were enrolled in school, 12 808 did not have birth certificates.[145] This means that in the year 2019, about 9.61% of children were at risk of not completing their education because they did not have a birth certificate. This

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[141] UNICEF and the African Union 'Transforming Education in Africa : An Evidence-based overview and recommendations for long term improvements' available at *<https://www.unicef.org/zimbabwe/media/6371/file/Transforming%20Education%20in%20Africa.pdf*, accessed 2 June 2023.

[142] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 page 45.

[143] K M Lewin 'Educational access, equity and development : planning to make rights realities' *Fundamentals of Educational Planning* (UNESCO) page 29.

[144] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.

[145] Patricia Sibanda 'Pupils without IDs must write public exams: Education Official' 28 October 2019, available at *https://www.newsday.co.zw/news/article/51406/pupils-without-ids-must-write-public-exams-education-official* ,accessed on 4 June 2023.

is because to register to sit for national exams in the country, every child must produce a birth certificate.[146] In Zimbabwe, national exams are first written in the 7th grade. The 9.61%, were at risk of not proceeding past primary education onto secondary learning.

In the ZHRC report, 25% of the people who were interviewed stated that not having a birth certificate directly affected their right or their children's rights to education.[147] As aforementioned, in Zimbabwe, it is a prerequisite for parents to present the birth certificates of their children upon registration at a primary school. Although this has not been formally legislated, it has become common practice. [148]

In some instances, parents are given a grace period to present the needed documentation while a child attends school whereas in other institutions that may not be particularly classified as a government school or private in the common sense of a private school, may exclude children without birth certificates all together. The report also states how although a child may initially be admitted into school, not having a birth certificate can cause problems at every stage they are meant to advance. For example, a child in Zimbabwe is required to write national exams at grade 7, form 2 (grade 9), form 4 (grade 10) and form 6 (grade 12). At each of these stages, the results are pivotal for that child to be able to advance to the next stage of schooling.

A grade 7 child for example, cannot complete primary school and advance to secondary school if they have not written and passed the grade 7 national exams. The competence of a student to proceed is determined by their level of understanding shown in those exams. In the ZHRC report, it is indicated that where children may have been allowed to write the exams, even without birth certificates, for whatever reason, their results and certificates will be withheld until they can produce birth certificates.[149] In this scenario, birth certificates become a barrier to realising the right to education in that although in some instances exceptions may be made, ultimately a child cannot progress with their basic education because of the lack of the document. The disadvantaged remain disadvantaged.

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[146] Bureau of International Labor Affairs 'Country Report on Zimbabwe' 2021 at 2, available at *https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2021/Zimbabwe.pdf* , accessed 5 June 2023.
[147] Zimbabwe Human Rights Commission "For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe" April 2020 page 43.
[148] Kudzai Mazvarirawofa 'Right to Identity: Zimbabwe's Phantom kids Left in Limbo Without Birth Certificates' 3 January 2017 available at https*://globalpressjournal.com/africa/zimbabwe/right-identity-zimbabwes-phantom-kids-left-limbo-without-birth-certificates/,* accessed on 5 June 2023.
[149] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 page 25.

The ZHRC report also highlighted how children with no birth certificates become disadvantaged in access to welfare programmes such as BEAM. BEAM is a government initiative that stands for Basic Education Assistance Module. Under the programme, established in 2000, children from disadvantaged backgrounds such as orphans are assisted in payment of school fees. According to UNICEF, 26.6% of children in Zimbabwe below the age of 18 years are not living with either parent. It is reported that many of these children have either been abandoned by their parents or are orphaned.[150] Other donors also feed into funding the programme.[151] Orphans tend to be the most disadvantaged in the group of children without birth certificates. Often, the birth records of orphans cannot be traced and the relatives which they live with often cannot get access to their birth certificates. It must be noted however, that in practice, the Department of Social Welfare can assist in these instances in acquiring a birth certificate but very few people know this. This means that those living in poverty, by virtue of not having birth certificates cannot also access programmes such as BEAM. In the State Department country report, it was reported that only 26% of Zimbabwean parents can afford education expenses for their children.[152] This means that BEAM is a need. Although statistics do not explicitly show how many children are turned away yearly from BEAM because they do not have birth certificates, the matter cannot be novel. Birth certificates are important to access social welfare related to access to education.

V ZIMBABWEAN CASE LAW

The only time the Constitutional Court in Zimbabwe has ever dealt with the right to education is in the case of *Makoni & Ors v Arundel School & Ors*.[153] The matter primarily dealt with the right to religion although it touched on the right to education. The matter concerned an Anglican school that holds chapel every morning. The four applicants in the matter are fathers to girls who attended the school. The children are of the Jehovah's Witness denomination. The parents of the children did not want the girls to be compelled to attend the Anglican chapel service which is held four out of the five school going days. When the children refused to attend chapel, the headmistress expelled them. The matter was then brought before the court and the applicants put forward that one of the reasons the children should not have been expelled was

[150] UNICEF 'Situation of Children' available at https://www.unicef.org/zimbabwe/situation-children, accessed 07 October 2024.
[151] F Maushe 'In search for the right to education: the role of the Basic Education Assistance Module (BEAM) in promoting access to education in Zimbabwe' (2019) 4 *Journal of Development Administration* 1 at 4.
[152] United States Department of State '2022 Country Reports on Human Rights Practices : Zimbabwe' *Bureau of Democracy, Human Rights and Labor* 2022, available at https://www.state.gov/reports/2022-country-reports-on-human-rights-practices/zimbabwe/ ,accessed 30 May 2023.
[153] *Makoni & Ors v Arundel School & Ors* 2016 CCZ 7-16.

due to their right to education. Regarding the right to education here, the court concluded that it is not applicable to private school institutions.[154] Rather the right to education as enshrined in s81(1) (f) is the right to education that is applicable to all. It must be submitted that the difference being that the s75 is for basic education whereas the s81 right appears to have a more universal approach. It was concluded that the right to education was not infringed upon by the expulsion of the children. Unfortunately, a clear and more defined interpretation s75 by the Constitutional Court was not given.

In the matter of *SM & AH & CATCH*,[155] the High Court interpreted the right to education to mean that each parent has the enjoined duty with the State to provide State-funded education to children. This is of interest in that above, it had been submitted that there is a disjuncture between what is meant to be the enabling legislation and the Constitution. This was so because the Constitution gives duty to provide education to the State whilst the Act places is it on the parents. The High Court then goes on to state that both the parent and the State have respective duties when it comes to the education of a child. It is true to say that with every right comes a responsibility – where the State provides education then parents must be active in taking their children to school.

VI SOUTH AFRICAN CASE LAW

The right to education in the Zimbabwean Constitution is quite similar to the right to education in South Africa. The difference between the two provisions however is that section 75(4) of the Constitution of Zimbabwe specifically says that a basic state funded education shall be provided within the availability of resources available to the state. This is quite different to section 29 of the South African Constitution which has no parameters of resources on the right. The right to education in South Africa, is immediately realisable. With such similarities, lessons can be drawn and imported from South African case law into the Zimbabwean jurisprudence. Further, the Constitution states that when interpreting the rights in the declaration of rights, foreign law may be considered.[156]

In the South African case of *Juma Musjid*,[157] the learned judge highlights the importance of access to schools in realising the right to education. The judge says, "access is

[154] *Makoni* at 11.
[155] *SM & AH v CATCH v The Minister of Primary and Secondary Education and Others* 2023 HC 221-23 page 4.
[156] Section 46 of the Constitution of Zimbabwe, 2013.
[157] *Governing Body of the Juma Musjid Primary School and Others v Ahmed Asruff Essay N.O and Others* 2011 (8) BCLR 761 (CC) para 5.

an important component of the right to education […] it is a necessary achievement". Although the case did not deal with access to documentation, it assists in highlighting that access to education is a key component of the right to education itself. For the State of Zimbabwe to boast that children are adequately afforded the right to education, access to education must be made easy. This means that documents such as birth certificates must be afforded to all to enable access to education.

In the case of *Centre for Child Law and Others v Minister of Education and Others,*[158] 37 children in South Africa had been denied admission to their local schools because they did not have birth certificates. The South African Schools Admission Policy at the time stated that children should either present their birth certificates or their parents to continue schooling. Failure to produce these documents would result in the children being excluded from the schools within 12 months. At the time, a circular had been issued by the Department of Basic Education which stated that undocumented children would also be excluded from funding which included food and support materials. When the case was heard, up to 998 433 children in South Africa were considered undocumented of which 880 968 were South African citizens. This means that nearly 1 million children were at risk of being excluded and thereby being denied their right to education.

The court then decided that no child should simply be denied of his right to education because she is undocumented. Mbenenge J, pointed out that to act in the best interests of the child means that all children must be afforded education.[159] He also stressed that each child is entitled to their own dignity as well as the right to equality. Through this, it means that children without birth certificates should not be treated differently than those without. There are children who hail from precarious situations that make the obtaining of a birth certificate impossible and so risk being excluded from school indefinitely. It was ruled that the clauses in the Admission Policy that excluded children from school for being unable to produce birth certificates after a certain period were unconstitutional. [160] As a result, principals in the Eastern Cape were directed to accept admission of all children without birth certificates.

The *Centre for Child Law* case illustrates how not having a birth certificate can be a detrimental barrier to realising the right to education for children. The South African

[158] *Centre for Child Law and Others v Minister of Education and Others* 2020 (3) SA 141 (ECG).
[159] *Centre for Child Law and Others* para 77.
[160] *Centre for Child Law and Others* para 135

Constitutional Court has taken a progressive step in doing away with the consequence whereby children can be sent back home for not being able to produce a birth certificate upon request at school and even after the 12-month period. The judgment offers a practical solution to the problems that many learners face where in some instances the acquisition of a birth certificate may not be so much of a straightforward process for them. The case also pointed out important lessons as to how the birth certificate is the seed right. This means out of possession of the birth certificate; all other rights are born from it.

VII SOCIAL IMPACT

Klasen, argues that children who are denied the right to education are set up for social exclusion.[161] Klasen defines social exclusion as the "inability to participate in and be recognised by society".[162] Initially, this may sound harsh or exaggerated, but this has proved to be true in the Zimbabwean context. About 34% of all girls in Zimbabwe are victims of child marriages.[163] This means that roughly 1 in 3 girls under the age of 18 in Zimbabwe become wives before they are adults. Further, Girls Not Brides states that 66% of girls who are married off, have no primary education whilst 57% of the girls have a primary education but were not able to complete their education.[164] Although the research does not explicitly state the intersection between being undocumented, in our case not having a birth certificate, and not having an education, the possibility of the existence of this subset cannot be ignored.

What then happens to the boys? According to Girls Not Brides, at least 2% of boys in Zimbabwe are married before the age of 18. It must also be remembered that at least two thirds of Zimbabwe's population is rural. In matters where children such as boys are unable to continue with education, they are encouraged to find work. This then brings about the issue of child labour whereby Zimbabwe is said to have at least 40% of children between the ages of 5-14 working.[165] Most working boys work on commercial farms or in farming communities as ranch herders or any other types of handy men. In urban areas, a good number of gardeners found are male children under the age of 18 who for one reason or another never got to complete

[161] S Klasen 'Social Exclusion, Children and Education : Conceptual and Measurement Issues' Organisation for Economic Co-operation and Development at 3 , available at https://www.oecd.org/education/school/1855901.pdf, accessed 6 June 2023.
[162] *Ibid* at 12
[163] Girls Not Brides ' Zimbabwe', available at https://www.girlsnotbrides.org/learning-resources/child-marriage-atlas/regions-and-countries/zimbabwe/ accessed 6 June 2023.
[164] *Ibid.*
[165] United States Department of Labour "Child Labour and Forced Labour reports : Zimbabwe' available at https://www.dol.gov/agencies/ilab/resources/reports/child-labor/zimbabwe accessed 9 June 2023.

their schooling. Further, children are often found at streetlights selling goods or begging during what should be their school hours. These are mostly boys.

In 2023, the ZimStat Labour survey revealed that up to 53.9% of girls under the age of 24 years are not educated, trained, or employed (NEET) in Zimbabwe[166] Whilst 40.2% of males in the same age range suffer the same fate. Although the causes for this are not stated, there is reasonable cause to believe that some of the root causes are tied to not having a birth certificate. Further areas such as Matabeleland which was indicated in the Chapter above as being one of the places with the least birth certificates registered, has the highest percentage of NEETs. There are 70% females under the age of 24 considered to be NEETs in Matabeleland North (Tsholotsho) and 67% of males falling under this category[167]. This cannot be a coincidence. There is a clear corelation between having access to a birth certificate and access to education which in most instances affords access to employment or training.

Although there have not been research on the subject, the intersection between children who have no birth certificates and children with disabilities or who are children of parents with disabilities cannot also be ignored. It is common to see children with a parent with disabilities begging on the roadside whilst they assist their parent.

Further, girls are sometimes prejudiced because of cultural beliefs, religious attitudes, and norms. For example, in some communities, it is believed that there is no need to educate a girl because her sole purpose is to eventually become a mother.[168] According to the Zimbabwe Country report, about 37% of the population belongs to the Apostolic sect which is a strong propellor of the ideology previously mentioned that discriminates against the girl child. Because of this belief, it is not seen as necessary to undergo the hassle of obtaining a birth certificate for a girl child. Even where she is allowed to go to school, sometimes the education is limited and only allowed to a certain degree and sometimes she must fight things such as period poverty and duties expected of her at home.

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[166] Zimbabwe National Statistics Agency '2023 First Quarter Quarterly Labour Force Survey Report' 2023 , available at https://www.zimstat.co.zw/wp-content/uploads/2023/04/2023_First_Quarter_QLFS_Report_140423.pdf , accessed 2 December 2023.

[167] *ibid*

[168]UKAID 'Girls education challenge: God, Government and Girls' , available at https://www.wvi.org/sites/default/files/God%2C%20Government%20and%20Girls%20-%20CIES%202016%20Presentation.pdf , accessed 2 December 2023.

Whether a child is a boy or girl- the impact of not having a birth certificate in terms of access to education remains the same. Being undocumented robs children their future. It does not allow them to participate in the fruits of tomorrow.

VIII CONCLUSION

In this chapter it has been illustrated how birth certificates are instrumental in the realisation of the right to education. Section 75 as shown above is clear – children must be afforded a basic education. The government has the duty to ensure that such education is accessible and one of the ways this can be done is to make sure that birth certificates are provided to children promptly as s81(1)(c) states. Parents on the other hand have the duty to make sure that they have taken the initial step to register the child as soon as possible.

Having looked at local legislation, there is a need for clear policy when it comes to whether or not, not having a birth certificate is a cause for exclusion of a child from the school system. Lessons can be drawn from South African Constitutional Court rulings which barred children from being excluded from school on account of not having a birth certificate. Until the Zimbabwean government can make reasonable accommodations and amendments on their side to make birth certificates more accessible, children should not be punished and excluded from schools. It must be accepted that the system is faulty, and measures should be taken to remedy the faults.

Without a birth certificate, the furthest a child can go in Zimbabwe is grade 7 which merely allows children the ability to read and write. In a modern and competitive world, this is barely enough to allow them to have the chance to survive and better their living conditions. There is no question when it comes to Zimbabwe's international obligations in providing education. The international laws are clear – education must be provided for all children. Zimbabwe, however, is in direct contravention of its international obligations and has fallen behind in its commitments to the SDG goals to make education available to all children. There are layered barriers as aforementioned in realising this right. And the prominent one is being access to education through the provision of a birth certificate. Girls are the most disadvantaged and there is need for stakeholders to take account of this.

CHAPTER 4

COUNTING EVERY CHILD

"To provide children the protection they deserve and make sure no child is left behind, all children must be counted. Count every child because every child counts!"

- Anne-Birgitte Albrectsen
(CEO Plan International)

I INTRODUCTION

Although all children in Zimbabwe are entitled to their s81(1)(c) right to the prompt provision of a birth certificate, not all children are counted. Currently, it is estimated that only 49% of children under the age of 5 are registered for a birth certificate with only 45% of them actually possessing one.[169] This means that up to 55% of the children under 5 are not formally counted in the system. Despite having such low levels of birth registration, there is very little empirical evidence that paints the picture as to why the rates may be so low.[170] How can birth registration rates be so low when the law provides for a steady resolution to ensuring a child should be supplied with a birth certificate? What is the possible explanation of the disconnect between what the right says and what is actually taking place on the ground.

The barriers that citizens face in obtaining a birth certificate for their children were discussed in previous chapters – that is only one side of the coin. There is another side which is important to discuss in order to paint the full picture as to why s81(1)(c) has not been fully realised. And perhaps answer the question why every child has not been counted in the country.

When one imagines obtaining a birth certificate for their new-born, they automatically think of the role they play as a parent as well as the administrative issues attached to getting one from the civil registry. As with any right, there are two sides – there are those that hold the right and those who are responsible for the ensuring the right is adequately provided. Different Governmental Ministries, Departments as well as other authorities are mandated, or should be

[169] Ronald Musizvingoza, Naomi N Wekwete, Kudzaishe Mangombe, Garikai Zinumwe 'Trends and Determinants of Birth Registration Completeness in Zimbabwe, 2005-2015' (2023) 48 *Comparative Population Studies* 1 at 2.
[170] Admire Chereni 'Underlying Dynamics of Childbirth Registration in Zimbabwe' (2016) *International Journal of Children's Rights* 721-763 at 754.

mandated in protecting the rights of children to the prompt provision of a birth certificate. From a previous chapter, it has been established that the Ministry of Home Affairs through the office of the Registrar-General (RG) is at the apex of the duty bearers. Other duty bearers include the Ministry of Health and Child Welfare (MOHCC) and the Ministry of Public Service, Labour and Social Welfare. The Zimbabwe Human Rights Commission is also included in the duty bearers as well as civil society organisations which specialise in children's rights.

This chapter, will outline the role of each stakeholder and highlight the areas in which the duty bearers are found lacking in terms of fully protecting and promoting section 81(1) (c) of the Constitution.

II THE ROLE OF THE REGISTRAR-GENERAL

The Registrar-General's (RG) office has the responsibility of registering all births in Zimbabwe. It is through this office that birth certificates are issued and that the entire process that relates to a birth certificate – be it a new application or a replacement is handled.[171] According to sections 4 and 5 of the Births and Deaths Registration Act (BDR Act), the office of the Registrar -General has the mandate to keep all records of births, still births and deaths in the country. Inversely, this means that they also have the mandate to make sure all the births, still births and deaths are registered to begin with. They are in charge of both the registration process and record keeping. The Act also indicates that the office of the RG is the final record holding office although the initial registration may be done at district level.[172] This means that the first stop for parents when wanting to register a birth certificate is often the district office.

Zimbabwe has 10 provinces and 98 districts. The Department of the Registrar -General has offices in all provinces and in all districts.[173] There are 282 civil registration centres in Zimbabwe.[174] According to the 2022 statistics, Zimbabwe has a population of just over 15 million people.[175] This means that for every one registration centre, there are 54 000 citizens. Before going further, the numbers alone are a cause for concern. One can only ask if the civil registry officer/office to population ratio is sufficient to address all the registration needs of

[171] Section 5 of the Births and Deaths Registration Act of 1986.
[172] *Ibid.*
[173] It must be remembered however that the country has up to 1988 wards or local municipalities. This means that there is an average of 20 wards covered per district office. One ward can have to over 30 000 people.
[174] Country Profiles 'Republic of Zimbabwe' Centre of Excellence for CRVS Systems, available at *https://crvssystems.ca/country-profile/republic-zimbabwe* ,accessed 7 September 2023.
[175] Zimbabwe National Statistics Agency 'Homepage' available at *https://www.zimstat.co.zw*, accessed 7 September 2023.

ordinary citizens. Such ratios are breeding grounds for inefficiency, registration apathy and poor service delivery.

In terms of birth certificates, the Registrar's office first and foremost registers new births. This means that within 42 days of a child being born, the parents of that child must register a child's birth. This is done by handing in the birth record of the child along with the parent's identification documents and marriage certificate.[176] Where one parent is deceased then the death certificate of that parent is submitted and where the parents are not married, both parents must be present at the submission of the documents for the birth certificate. Further, where a mother is single she can register the child in her own surname and where a father is single, the father can register the child in his own surname. [177]

Where a registration happens after 42 days, the registration is considered a late one and may incur a nominal fee of ZWL10.[178] Other than this, no other administration fee is applicable at initial registration.[179] It must be noted however, that the ZWL10 used to be equivalent to USD10 around 2019 but because of the economy and volatile exchange rate, this fee has depreciated. The fee had been set in a time where Zimbabwe only used the USD as legal tender but now it has the ZWL. The news since then has not reached some communities.[180] There are people that still believe that USD10 instead of ZWL10 is needed in order to register their child for a birth certificate. At the time of writing, the USD10 is equivalent to about ZWL65 000 which can be considered a relatively high amount as that can buy 10 – 12 loaves of bread. It can be seen why this would be a deterrent factor in obtaining a birth certificate to some.

The office of the RG has the role to clearly inform the public of the requirements of a birth certificate. This means misinformation such as registration costing over ZWL65 000 when

[176] Section 11(2)(a) of the Births and Deaths Registration Act of 1986
[177] It must be noted that until 2022, a single father of a child born out of wedlock could not register a child on his own. The mother had to be present. In November 2021, the High Court ruled that fathers out of wedlock can acquire a birth certificate where a mother has abandoned a child or is not available. Previously this had been a barrier for many as some mothers moved away to the diaspora and have not contacted their children since or cannot return for one reason or the other. The judge did not write a judgment on the matter but gave his ruling. New Zimbabwe "High Court in landmark ruling : Dads can acquire birth certificates for kids born out of wedlock" 8 November 2021, available athttps://www.newzimbabwe.com/high-court-in-land-mark-ruling-dads-can-acquire-birth-certificates-kids-born-out-of-wedlock/ , accessed 26 January 2024.
[178] According to the ZWL to USD rate on the 27th of August 2023, this is only equivalent to less than USD0.001
[179] Under the General Comment on Article 6 of the ACRWC, the Committee suggests that late birth registration should be allowed and made at no cost or an extremely low fee. The Committee notes this under their plea for birth certificates that are free and accessible in Africa. Page 30
[180] Zimbabwe Embassy to France, Spain, Portugal and Vatican "Birth and Death Certificates' http://www.zimparis.gov.zw/index.php/consular/registration/birth-death-and-marriage-certificate, accessed 26 August 2023.

in fact it only costs ZWL10 needs to be adequately addressed. Such information can be a barrier to the prompt provision of a birth certificate as some families may mistake the late registration fee as the initial registration fee. Hearsay can be misleading.

Another issue of concern is that the law regarding birth certificate registration has not changed since 1986. If taken at the central registry, a birth certificate should take about 24 hours to be issued whereas if taken at a district office it may take a few days. With the law not having changed for so long, it is of great concern that the details of obtaining a birth certificate are often murky. In 2022, the Registrar General's Office carried out a mobile registration initiative in order to try clear the backlog of identity documents as well as make an effort to rectify instances where children had not been afforded the right to a prompt provision of a birth certificate.[181] The blitz was considered a much welcome move and it is said that over 1 million people managed to obtain identity documents.[182] Although the office of the Registrar General sought to remedy its past backlog, the blitz only treated the symptoms and not the cause. The blitz waivered all fees for registration whether it was a late registration or a lost birth certificate.

It is submitted however, that the barriers which hinder people from obtaining birth certificates were not addressed. It is still reported that only 19% of the children born during the time of the blitz were registered for birth certificates. [183] This means that it can be assumed that 81% of children born in that time frame have either registered late or have not registered for birth certificates at all. Though the registration was brought to the communities, misinformation was still rife. Further where there were lost birth certificates, a replacement could only be made where one had a certified copy of the lost document. Very few people had such copies. Although mobile, the registration process still had some hurdles. Firstly, one would have to submit documentation and then return in about three days to collect it. In spite of this, on return, the person would only get a handwritten copy of the birth certificate. Secondly, in order to get a digitally printed copy, which is widely more accepted for use, there was still need to go and withstand cumbersome queues at the district office or the central registry at a another time. This in itself, caused registration apathy.

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[181] The Chronicle 'Zimbabwe: Two million IDs target for mobile registration blitz' Citizenship Rights in Africa Initiative 18 February 2022 , available at *https://citizenshiprightsafrica.org/zimbabwe-two-million-ids-target-for-mobile-registration-blitz/* accessed 18 September 2023.

[182] *Ibid.*

[183] NewsDay 'Birth Registration must be mandatory' 6 October 2022, available at https://www.newsday.co.zw/editorials/article/200001537/birth-registration-must-be-mandatory%20accessed%2020%20November%202023 , accessed 20 November 2023.

The mobile registration also highlighted another problem that is within the office of the RG – the need to digitalise in order to better realise the right to the prompt provision of a birth certificate. Initial registrations of births are recorded by hand. These handwritten copies are then sent to the typing pool at the central registry and then after that the printed copies are transmitted back to the district offices and then issued out. This causes unnecessary delay in the process.

UNICEF, has highlighted that it has assisted in providing a budget for digitalisation of the registry system in 2021.[184] This served as an indicator as to how important digitalisation would be to help count the children that have been left behind. Digitalising the system will not only improve efficiency, but will also help in lessening requirements for replacement such as certified copies which in some instances may be impossible to obtain. Digitalization will also help in terms of coordination with the Ministry of Health and Child Welfare for example in terms of birth records. It will also assist the Zimbabwe Statistic Agency in providing more up to date records. Overall, this will improve efficiency of the system and will assist in better mapping for the office of the RG. As statistics can be readily harvested, loopholes and delays can be easily spotted and prompt attempts can be made to rectify issues that hinder the prompt provision of a birth certificate. In General Comment 25, the Committee on the Rights of the Child, highlighted the importance of the intersectionality between digitalisation and the right to identity and birth registration.[185] In this comment, the Committee states that up-to-date technology including mobile registrations are of great importance when it comes to providing access to birth registration for children who are in marginalised communities. The comment also highlighted for the need to add children to the system whereby they may have been born before the digitalisation process. At present, most of the paper work at the Civil Registry in Harare, the capital city of Zimbabwe, is being done by hand and then sent to the typing pool. Although this system may have been previously efficient, it adds to the fatigue of the person trying to access documentation as it makes queues unnecessarily long and lengthens the process.

In 2014, the government of Zimbabwe joined the #IBelongCampaign by UNICEF and committed to developing an action plan on statelessness but there have been no reports on this

[184] UNICEF 'Strengthening Zimbabwe's Civil Registration System' UNICEF available at *https://www.unicef.org/zimbabwe/media/7001/file/Strengthening%20Zimbabwe's%20Civil%20Registration%20System.pdf* accessed 4 September 2023.

[185] Committee on The Rights of the Child 'General comment No.25 (2021) on children's rights in relation to the digital environment' 2 March 2021 CRC/C/GC/25 at 13.

just yet.[186] In this same campaign, Zimbabwe had committed to addressing access to birth certificate improvements by 2024. The RG's Office plays a pivotal role in ensuring the best interests of the child are put first yet they can be found wanting in the realisation of s81(1)(c).

III THE ROLE OF THE MINISTRY OF HEALTH AND CHILD WELFARE

The Ministry of Health and Child Welfare plays an important role in the realisation of the right to the prompt provision of a birth certificate in that it is through this Ministry that the very first document which proves birth is issued. The Ministry is responsible for issuing birth records. Birth records prove that a child was born , tells the location of the birth and the time and date of the birth which are all important for the issuance of a birth certificate.

Birth records are issued at the birth of a child together with the child's birth card. The birth card allows for a child to get initial immunisation. The two are issued simultaneously.[187] What has become a trend however, is that birth records are not availed to mothers immediately at discharge after giving birth for numerous reasons. In a report in 2022, it was said that health personnel were carrying out corrupt activities and soliciting bribes from mothers in order to obtain birth records. Health personnel at local clinics were claiming that there is not enough materials to enable them to issue out birth records. They demanded USD5-10 for the bribe.[188] To these allegations, the MOHCC however responded that they had sufficient supply of birth records and that an investigation was underway. The results of this investigation could not be found.

Further, women have complained that where they do not immediately access the birth record, they are asked by local health personnel to pay a 'search fee' of up to USD5 in order for the record to be found and issued. Again, this is a heavy burden on women on an otherwise free service. [189] The MOHCC is responsible for curbing any corruption that takes place in regards to birth records. As mentioned above, were the system purely digitalised and

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[186] UNHRC Regional Bureau for Southern Africa 'Achievements and Pledges High-level Segment on statelessness Prepatory Meeting' August 2019 , available at https://www.unhcr.org/ibelong/wp-content/uploads/Southern-Africa-Regional-Preparatory-Meeting-Achievements-and-Pledges.pdf , accessed 4 September 2023.

[187] Combined Harare Residents Association 'Corruption Thwarts Access to Birth Records at Council Clinics' *Kubatana* 10 February 2022, available at *https://kubatana.net/2022/02/10/corruption-thwarts-access-to-birth-records-at-council-clinics/* , accessed 5 September 2023.

[188] Combined Harare Residents Association 'Corruption Thwarts Access to Birth Records at Council Clinics' *Kubatana* 10 February 2022, available at *https://kubatana.net/2022/02/10/corruption-thwarts-access-to-birth-records-at-council-clinics/* , accessed 5 September 2023.

[189] Human Rights Watch 'Women Fail to Access Birth Records' Kubatana 7 March 2022, available at *https://kubatana.net/2022/03/07/women-fail-to-access-birth-records/* ,accessed 30 August 2023

centralised, this could curb such corruption as children will be entered into the system with no need of issuing a physical document. This is however, easier said than done.

IV THE ROLE OF THE MINISTRY OF SOCIAL WELFARE

The Ministry of Social Welfare is also considered a duty bearer in issuance of birth certificates and the realisation of s81(1)(c) through the Department of Child Protection and Probation Services. This department specifically deals with vulnerable children, namely orphans and children living in the streets. They also deal with adoptions and foster care. A large portion of the Children's Act is implemented by them.

This department has the ability to recommend that certain births be registered even though the parents' information for the particular child is not readily available. Unfortunately, there is no available data on the operation of this department and in relation to this aspect.

It is also of great concern that in the year ending 2021, the Ministry of Social Welfare is reported to have underspent its allocated budget by over ZWL 1.5 billion.[190] According to Veritas, 2022 was the third year in a row that the Ministry had no technology policy or IT plan. Both these facts are a great cause for concern in that the underspending indicates the inefficiency and failure to meet targets which has a direct impact on the vulnerable children under their care. Further, the fact that they have no IT policy means that their system to protect such children can prove to be inefficient – without modern record keeping mechanisms, how can they truly account and cater for vulnerable children? Can this be considered to be a policy within the best interests of the child? This Ministry has also been one of the most affected Ministries in terms of brain drain in Zimbabwe over the past few years as most leave to do social work in countries that seemingly offer better working conditions. This high staff turnover contributes to unmet targets and disadvantages the children and target groups of the Ministry.

The abovementioned Ministries are all accountable to the President and the Parliament of Zimbabwe. Section 107(1) of the Constitution of Zimbabwe states that all Ministers and their Deputies are accountable to the President for the performance of his functions. Under s107(2) of the Constitution of Zimbabwe, every Minister and Deputy Minister must attend Parliament as well as parliamentary committees to answer questions on matters which he or she is collectively or individually responsible for. On occasion, Ministers are called to parliament to answer to various issues that Parliament would have noticed will be affecting the

[190] Veritas 'Economic Governance Watch: AG's Shocking Report on Ministry of Social Welfare' 2022, available at https://www.veritaszim.net/node/6049 accessed 7 December 2023.

effectiveness of the Ministries. For example, the Minister of Social Welfare and Labour will have to answer to the Public Accounts Committee in parliament to justify the underspending in parliament. Unfortunately, sometimes, Ministers do not show up and such a no show often goes without consequence even though this is their constitutional mandate. This largely undermines the doctrine of separation of powers in that Ministers and their Ministries go unchecked. This then has a ripple effect on providing services and realising the right to the prompt provision of a birth certificate.

V THE ROLE OF THE MINISTRY OF PRIMARY AND SECONDARY EDUCATION

The Ministry of Primary and Secondary Education (MPSE) is the main custodian of the Education Act in Zimbabwe. According to the Act, the Minister of PSE has the responsibility to administer the Act.[191] This means that he/she must make sure that all the provisions within the Act and the right which the Act emanates from is realised. The role of this duty bearer is clear – provide education as described by the Education Act and therefore make sure that s75 is realised.

Unlike the other Ministries discussed above, this Ministry has nothing to do with the process of obtaining a birth certificate. It plays no active role in the prompt provision of birth certificate. Throughout this paper however, it has been argued that there is an intersection where the right to the prompt provision of a birth certificate and the right to education meet. Without a birth certificate, a child cannot access education. This therefore means there is need for a relationship between the RG's office and the Ministry of Education to be clearly defined and established.

In 2024, UNICEF Zimbabwe released statistics that up to 500 000 children of primary and lower secondary age in Zimbabwe are out of school.[192] Although there is no breakdown of why these children are out of school, it cannot be taken for granted that potentially a substantial amount of these children do not have birth certificates. The Ministry of Education can potentially have a larger role to play when it comes to bridging the gap between children that have birth certificates and those that do not. Many a time, the birth certificate becomes a pressing need when children are confronted with the school system. For example, there were

[191] The Education Amendment Act, 2019.
[192] Pindula News "500K Zimbabwean Children Out of School-UNICEF" *Pindula News* 24 January 2024, available at https://www.pindula.co.zw/2024/01/25/500k-zimbabwean-children-out-of-school-unicef/ , accessed 25 January 2024.

reports of children not being able to access BEAM because of not having a birth certificate.[193] From this, it is submitted that perhaps the role of the Education Ministry should be widened to assist the RG's office to realise s81(1)(c). Headmasters could be given similar powers to that of the Ministry of Social Welfare where their letters may bypass some requirements which make birth registration impossible in seemingly difficult circumstances.

VI THE ZIMBABWE HUMAN RIGHTS COMMISSION

The Zimbabwe Human Rights Commission (ZHRC) is established by section 242 of the Constitution of Zimbabwe.[194] It is one of the five independent Commissions that support democracy under the Constitution. Section 243 of the Constitution lays out the functions of the Commission. It has about eleven listed functions but it first and foremost has the duty to raise awareness of human rights and to promote the protection, development and attainment of these rights.[195] Further, the Commission also has the duty to conduct research into issues relating to human rights.[196] The ZHRC is guided by the Zimbabwe Human Rights Commission Act.[197] Under this Act, the Commission further has the power to conduct and investigate complains under.[198] Under paragraph 7 of the First Schedule of the Act, working groups within the Commission are established and as such a working group that focuses on children's rights was created. These thematic working groups comprise of various stakeholders which are both state and non-state actors. These include the Ministry of Justice, Ministry of Labour and Social Welfare, UNICEF and others.

The ZHRC has had a hand in ensuring that children are afforded the right to the prompt provision of a birth certificate. For starters, they have carried out a nation-wide enquiry which has resulted in the publication of a report on access to documentation which has been referred to previously.[199] This has been instrumental in finding out the loopholes that Zimbabwe has in birth registration. It also helps to highlight the barriers in which many face when wanting to acquire a birth certificate. In this way, the ZHRC has exercised its research and investigative function in ensuring that the barriers to the realisation of s81(1)(c) are well noted. Since the

[193] L Moyo "Senior Citizens Failing to Obtain Birth Certificates for Orphans" May 2015 , available at https://reliefweb.int/report/zimbabwe/senior-citizens-failing-obtain-birth-certificates-orphans , accessed 28 January 2024.
[194] The Constitution of Zimbabwe, 2013.
[195] Section 243(1)(a) and 243(1)(b) of the Constitution of Zimbabwe, 2013.
[196] Section 243(1)(j) of The Constitution of Zimbabwe, 2013.
[197] Zimbabwe Human Rights Commission Act of 2012.
[198] Section 4(1) of the Zimbabwe Human Rights Commission Act of 2012.
[199] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020.

release of the report however, there has been very little public follow up from the Commission as to what is taking place when it comes to the improvement of the birth registration system.

The ZHRC has also been known to intervene in matters where children are not afforded birth certificates. For example, in 2018, the ZHRC successfully intervened in a matter in Hopley. In this matter, 94 residents, including minors had been denied identity documents and birth certificates. This was on the basis that they are considered to be aliens under the law.[200] The ZHRC intervened through writing to the Registrar-General on behalf of the residents and the birth certificates were successfully issued.[201]

In its 2022 report, the ZHRC states that it only dealt with three matters pertaining to children's rights in that year.[202] The cases however were not discussed in detail and there is no evidence to show if any of the mentioned cases discussed the s81(1)(c) right.

Overall, as a duty bearer, the ZHRC has made great strides in promoting the rights of children and has also had a significant hand in the fight to fully realising s81(1)(c) of the Constitution. There are still gaps however in the focus on the right to a prompt provision of a birth certificate. As a starting point, though the Children's Rights working Group is established in the First schedule to the Act, a glance at the roles of each Commissioner in the yearly report will indicate that this working group has been collapsed into what is known as the special interest working Group. This could explain the very few number of cases that relate to children which the Commission handled. By not having a dedicated Commissioner to children, the realisation of the right to a prompt provision of a birth certificate becomes an ancillary matter which is not given the much needed attention. This is unlike its South African counterpart, the South African Human Rights Commission which has a designated Children's Rights Commissioner under the Children's Rights Unit.[203] For example, the SAHRC on its website has a designated section for children's rights which has a booklet on how to get documentation.[204] The ZHRC has a long way to go in terms of specifically focusing on children's rights and more so s81(1)(c) and promoting the right. Very few appear to be aware

[200] Aliens are people who are primarily not from Zimbabwe. Usually, these people are found in farming communities as Hopley (former farm turned settlement).
[201] Chris Mungama in Admark Moyo 'The Role of the Zimbabwe Human Rights Commission in the Protection, Promotion and Enforcement of Fundamental Rights and Freedoms' Selected *Aspects of the 2013 Constitution and the Declaration of Rights* (2022) 454-476 at 474.
[202] Zimbabwe Human Rights Commission 'For Human Dignity: Report on National Inquiry on Access to Documentation in Zimbabwe' April 2020 at page 10.
[203] South African Human Rights Commission 'SAHRC Children's Rights Unit', available at *https://www.sahrc.org.za/childrensrights/index.php/en/*, accessed 8 September 2023.
[204] *Ibid*

of the services which can be offered to them with regard to birth certificates by the ZHRC. Access to information on this is crucial to parents and caregivers.

VII THE ROLE OF THE CHIEFS

In Zimbabwe, the role of traditional leadership under customary law is recognised under s280 of the Constitution. Under s282, the traditional leaders are tasked with the functions to promote sound family values and preserve culture, history and the heritage of communities. Under the same provision, they can also exercise any other function that is conferred to them under any other Act of Parliament.

Although the constitution does not outwardly give chiefs the duty to deal with births in their villages, by way of leadership they do interact with the civil registry system as indicated in Chapter 3 under the discussion of "prescribed forms". As the majority of the Zimbabwean population falls under rural districts, their role in the realisation of s81(1)(c) cannot be ignored. As they function to protect history and heritage, their role should be extended to protect the identity of children. The letters which the chiefs issue should be formalised and standardised so as to be acceptable under prescribed forms by the Registrar-General's office. This can be done by way of issuing out Regulations to the Act which contain a standard form.

Further, chiefs are the first point of authority that rural people are in contact with. With about 70% of Zimbabwe's population being rural and nearly 4.5 million children in the rural areas, it is important that chiefs extend their role in the campaign for identity from just mere administrators but to campaigners of the cause.[205] Chiefs should periodically raise awareness in their addresses to their subjects of the importance of birth certificates.

VIII THE ROLE OF CHILDREN IN CIVIL SOCIETY ORGANISATIONS

In Zimbabwe, there are about 150 Civil Society Organisations that focus on the rights of children. In 2021, they submitted a report to the Universal Periodic Review of Zimbabwe as the Child Rights coalition of Zimbabwe.[206] The report is a submission for the third periodic

[205] UNICEF 'Situation of Children' https://www.unicef.org/zimbabwe/situation-children#:~:text=Of%20the%2013%20million%20people,being%20and%20quality%20of%20life, accessed 11 December 2023.

[206] The Child Rights Coalition ' CSO Stakeholders Report to the Universal Periodic Review of Zimbabwe 2016-2020' July 2021, available at *https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKEwj7ofnPnMaBAxU-RvEDHVJnBncQFnoECBIQAQ&url=https%3A%2F%2Fuprdoc.ohchr.org%2Fuprweb%2Fdownloadfile.aspx%3Ffilename%3D9381%26file%3DEnglishTranslation&usg=AOvVaw2HVKWm_28Pbsbs51aQLqi6&opi=89978449*, accessed 25 September 2023.

review for the country. In the report, the CSOs highlight the importance of section 81 as a whole as well the right to free and basic education. Under the section of access to education, the CSOs highlight school fees as a challenge to access to education as well as a shortage of schools.[207] At this point, there was no mention of the intersection between the right to the prompt provision of a birth certificate and the right to education. The report goes on to mention child registration under the child protection section, highlighting the need to improve child registration rates.[208] The report ends with a recommendation that there should be improvement in the birth registration regulations to ensure universal registration of all children. How this will or can be done, is not mentioned.

The Zimbabwe National Council for the Welfare of Children (ZCNCWC) is the umbrella body for child rights which coordinates the Child Rights Coalition. In its 2020 report, which is their last published report on their website, there is no mention of birth certificates as an issue that was worked on neither is birth registration. [209] The lack of commitment to the issue of birth registration by CSOs is disappointing. There is a gap in the advocacy for child protection. A strong and collective voice regarding the issue of birth registration could push the government to be more active on the matter.

IX CONCLUSION

Unfortunately, the attitudes portrayed by the stakeholders show that the rights of children appear to be secondary in importance, let alone the right to the prompt provision of a birth certificate.

The RG's office is under resourced and understaffed. There is a need to increase the capacity of the RGs office in order to meet the demand of the people. Such an increase in capacity may be in the form of increasing personnel, offices and digitalising the office of the RG. In Chapter 2, there was reference made to birth certificates being initially registrable through the church before the RG's office was established. Perhaps, this archaic method may be tweaked and adapted to suit the needs of today and pass the legal muster. Should the RG's office partner with the Roman Catholic Church , the Anglican Church , the Lutheran Church and other such

[207] *Ibid* at 8.
[208] *Ibid* at 13.
[209] ZNCWC 'Annual Report for the Zimbabwe national Council for the welfare of Children' 2020, available at *https://zncwc.co.zw/news-updates/publications/* , accessed 20 September 2023.

traditional churches in the country which have many branches all over the nation. Just as they can register marriages, so should they be able to register birth certificates.

In order for section 81(1)(c) to be made into a reality, there needs to be an information campaign across all duty bearers. This simply means that duty bearers must be dedicated to spreading correct information on the acquisition of birth certificates which will also assist in fighting corruption which sometimes hinders the issuance of birth certificates. Parents and caregivers need to know the general requirements for a birth certificate , the amount it costs to get one as well as any other changes that have taken place recently that make the process easier. For example how single fathers can now get birth certificates for their children where the mother cannot be located. Another thing that has been revealed in this chapter is the need for transparency across all stakeholders including those that are private players. In order for the prompt provision of a birth certificate right to be realised, all actors must act in the best interests of the child.

From this chapter, it is also clear that the issuance of birth certificates is a mammoth task and if the process can be distributed amongst the stakeholders, and each does its duty to the best of its ability, then section 81(1)(c) might stand more of a chance to be realised in Zimbabwe.

CHAPTER 5

CONCLUSION

"If I had an hour to solve a problem, I'd spend 55 minutes thinking about the problem and 5 minutes thinking about the solution".

- Albert Einstein

I INTRODUCTION

When trying to improve a system as complex as birth registration, it is often important that the proposed solutions be both sustainable and scalable. Throughout the four previous chapters, there has been a vigorous attempt to identify some of the problems that leave the birth registration process in Zimbabwe in quagmire. Various weak points in the system and law have been recognised and this chapter seeks to conclude the study by giving recommendations which will make the implementation of section 81(1)(c) more effective.

II CHAPTER SUMMARIES

(a) Chapter One

The first Chapter introduced the problem at hand and identified three main issues; the barriers to obtaining a birth certificate in a prompt manner that people face, the effect of being stateless on one's right to education and a look at how stakeholders are operating to achieve s81(1)(c) for all children in Zimbabwe. The chapter also highlighted that stateless children are not a problem that is unique to Zimbabwe, other African countries also have low birth registration rates. Solutions from other countries can also be borrowed to better the Zimbabwean system such as integrating the civil registry system with the health system.

(b) Chapter Two

Chapter two starts off by tracing the history of birth certificates and thereby laying the foundation as to why birth certificates are important in present day. Through tracing the history of birth certificates and finding out when they became compulsory for all in Zimbabwe, more light is shed on why such a large population does not have this important document. The importance of the birth certificate is then discussed, highlighting that the birth certificate is the key to all rights especially for children. In this chapter, there is a look into local laws that address the provision of a birth certificate. International laws regarding birth certificates are also looked at. Through taking a closer look at the laws, it is established that all children have

the right to the prompt provision of a birth certificate however, there is a great difference between the theory and the reality. The Constitution clearly says that birth certificates should be supplied promptly to all children born in Zimbabwe.

To investigate the disparity between what the law says and what's happening on the ground, there is a look into the barriers and setbacks to accessing birth certificates in Zimbabwe. Through this, it is found that there are cultural, social, financial as well as institutional barriers that hinder Zimbabweans from accessing a birth certificate for children promptly. It was also found that natural disasters and historic events are also barriers.

The chapter is then concluded by further reinforcing the disconnect between what the law says and what happens on the ground.

(c) Chapter Three

After having established the importance of a birth certificate, chapter three seeks to highlight one of the major effects of not having a birth certificate. It seeks to illustrate a direct effect of not having a birth certificate and thereby prove the importance of the document. In this chapter, education as a right given in the Constitution is looked at, the enabling legislation as well as Zimbabwe's international obligations. A child in Zimbabwe cannot have access to education without a birth certificate. In some instances, a child can access education to a certain level and then cannot progress further because she does not have a birth certificate. The chapter also looked at the benefits a child cannot access without a birth certificate. Some of these benefits include not having access to social welfare grants that can pay for school fees for the less privileged children. Once a child does not get a birth certificate immediately at birth, she will become 'left behind'. It then makes it harder for them to avoid prejudices which are naturally set against them.

In the chapter, case law is looked at that is concerned with access to birth certificates *vis a vis* access to education. The Zimbabwean case law seeks to illustrate how courts are interpreting the right to education. South African law is also looked at for comparative purposes. The South African case law illustrates the importance of education, looks at the schools' admission policies and highlight the importance of the birth certificate in the education equation. The chapter shows the social impact on a child who does not have both a birth certificate and an education. It emphasises that that child is left behind.

(d) Chapter Four

Chapter 4 focused on the duty bearers and stakeholders of the right to the prompt provision of a birth certificate. In this chapter, it is realised that the right to the prompt provision of a birth certificate cannot be afforded to children without the will power of the relevant duty bearers and stakeholders.

There is a look at first and foremost the Registrar-Generals' office and the importance it plays in realising the right to the prompt provision of the birth certificate and ultimately the effect this has on the right to education. It was found that the RG's office is understaffed, does not have enough reach and is lagging in fulfilling its mandate due to the lack of digitalisation.

In this chapter, there is also a look into the role of various other entities such as the Ministries of Health and Child Care, Primary and Secondary Education as well as other entities such as the ZHRC, Chiefs and CSOs. All these actors have a part to play in the realisation of the right to a birth certificate which not only has a bearing on the right to education but all other rights of children as well.

In this chapter, it was found that the duty bearers have not met their required mandates. They have not been fully accountable to Parliament as they are required to and so play a large role in children not having birth certificates promptly. In order to realise s81(1)(c), all the players here need to work together and do so efficiently to make the right a reality.

III RECOMMENDATIONS

The recommendations flowing from the findings in preceding chapters are listed below:

(a) *The Right to the prompt provision of a birth certificate*

- First, there needs to be enabling legislation to s81. Furthermore, regulations are also needed to clearly outline which Ministry or department is responsible for the enforcement s81(1)(c) and what the obligations of the duty bearer are. This should emanate from the Ministry of Home Affairs as the coordinating stakeholder with clear guidance on the specific roles that each Ministry is to take. Such legislation or regulations will ensure that the duty bearers are held accountable for fulfilling their duties in this regard.
- Second, there should be clear procedures of how to register orphaned or abandoned children and such procedures should be made public to all by the Ministry of Social Welfare and Labour.

- Third, fiscal commitment is needed from Ministry of Finance to realise the s81 (1)(c) right to digitalise and upgrade registration and record keeping processes. This may include money for expansion and training purposes. For example, the RG's office may consider training religious leaders in birth registration and bestowing the powers of birth registrations to such religious leaders.
- Fourth, all policies that are related to birth certificates should be availed to the public – online and in print at the Civil Registry or in local libraries by the Ministry of Home Affairs. Radio and other awareness campaigns are necessary to improve access to information about how to access this right. Although the Ministry of Home Affairs will take the lead, it should be a collaborative effort amongst the duty bearers and stakeholders mentioned above.
- Fifth, CSOs should conduct research, collect evidence of rights violations, and consider whether strategic litigation is necessary on the right to a birth certificate which will assist in the interpretation of s81(1)(c).
- Sixth, more mobile units should be made available and mobile registration blitz' more frequent and should reach the farther most parts of the nation.

(b) *The intersection between the right to education and birth certificates*

- Seventh, the government should initiate policy which bars children from being excluded from school because they have no birth certificate.
- Eighth, the system should enable headmasters to be able to send the office of the RG letters in matters which prove to be difficult and so enabling the Ministry of Primary and Secondary Education through headmasters to have the same bypassing powers as the Ministry of Social Welfare and Labour.
- Ninth, publishing of a position paper on the right to Education by the Ministry of Primary and Secondary Education to assist citizens and the courts to interpret the right to education. The paper should also include the distinction between the s75 right to education and the s81(1)(f) right to education.

(c) The Custodians of the Rights

- Tenth, the Chiefs Office and the Registrar-General's Office can also be interlinked to improve efficiency of the birth certificate issuance. This can

be done by an amendment to the BDRA which should clearly flesh out the steps that a chief need to take to assist the birth registration process. This will include a substituted version of a birth record that is acceptable to submit to the RG's office. This may be a form that is then stamped by the chief.

- Eleventh, an integrated and digitalised system where immunisation and birth registration services are on one platform could assist curbing corruption where it is claimed birth records cannot be found. This can be done by the Ministry of Health and Child-Care.
- Twelfth, the Registrar-General's office should provide clear guidelines on procedures and amounts to be paid on obtaining birth certificates and publicise such information on billboards and local news networks.

III THE WAY FORWARD

In order for s81(1)(c) to be realised in a way that is effective and sustainable, there needs to be reforms that promote the best interests of the child. It has been ten years now since s81(1)(c) came into effect yet the right is still shrouded in mystery. As mentioned above, the major custodian of the right is the Registrar-General but matters such as staffing in the department and adequate record keeping cannot keep up with the population growth in the nation. Although major changes can be made to legislation, the realisation s81(1)(c) will start with small steps such as tackling the corruption that takes place at the Civil Registry. The attitudes which each stakeholder and duty bearer have toward securing a better future for all children will also play a big role in turning the tide.

It is in the greatest hope, that in the next ten years, the review of the right will be much different and great ground would have been covered.

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UNIVERSITY OF KWAZULU-NATAL
INYUVESI YAKWAZULU-NATALI

Miss Maxine Chisweto (222081987)
School Of Law
Howard College

Dear Miss Maxine Chisweto,

Original application number: 00021295
Project title: The link between the right to the prompt provision of a birth certificate and the right to education in Zimbabwe: Holding the state accountable.

Exemption from Ethics Review

In response to your application received on 4 July 2023 , your school has indicated that the protocol has been granted **EXEMPTION FROM ETHICS REVIEW.**

Any alteration/s to the exempted research protocol, e.g., Title of the Project, Location of the Study, Research Approach and Methods must be reviewed and approved through an amendment/modification prior to its implementation. The original exemption number must be cited.

For any changes that could result in potential risk, an ethics application including the proposed amendments must be submitted to the relevant UKZN Research Ethics Committee. The original exemption number must be cited.

In case you have further queries, please quote the above reference number.

PLEASE NOTE:
Research data should be securely stored in the discipline/department for a period of 5 years.

I take this opportunity of wishing you everything of the best with your study.

Yours sincerely,

[redacted]

Mr Matthew Blain Kimble
obo Academic Leader Research
School Of Law