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REPORT ON CITIZENSHIP LAW: RWANDA

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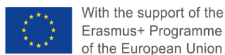
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Report on Citizenship Law

Rwanda

Francis Dusabe¹

1. Introduction

The halting of the Rwandan Genocide in 1994 by the Rwandan Patriotic Front (RPF) and the establishment of a new government sparked the mass return to Rwanda by Rwandans who had spent almost 40 years as refugees, living with unspeakable injustices and discrimination in neighbouring countries.²

Refused and confused, many had given up hope of seeing and living in their motherland, prompting comparison of Rwanda to “a glass full of water to which any attempt to add more would cause the rest to overflow.”³

This paper looks into the Organic Law on Rwandan Nationality of 2008 and evaluates its effectiveness in the light of relevant international legal obligations and best practices in the fight against statelessness.

The paper is divided into three main sections. After this introduction, section two covers the historical events underpinning Rwandan nationality. It discusses the different versions of Rwanda’s nationality law that have existed in different historical eras. Section three focuses on specific aspects of the current legislation on Rwandan nationality, namely types of nationality and modes of acquiring, losing and recovering it. The section also covers the process and the institutions involved in granting or withdrawing Rwandan nationality and other matters of concern. Section four summarises new developments in the management of Rwandan nationality. It presents unregulated issues and highlights areas needing improvement. Finally, a brief conclusion sets out some recommendations.

¹ Many thanks go to Dr. Bronwen Manby for her constructive insights during the writing of this report. The views and opinions expressed in the report are solely those of the author. All online references were correct at the time of writing.

² Mushemeza, E (2002: 59).

³ Mugesera, A (2015: 47); See also Prunier, G (1995: 78); See also Karooma, C (2017: 68).

2. Rwandan Nationality in a Historical Perspective

2.1. The pre-independence era

Rwandan nationality is a result of history and political realities.⁴ Rwanda is one of the few countries in Africa that were historical polities. Its current territory is smaller than that of the old kingdom of Rwanda and this continues to shape perceptions and debates on Rwandan nationality today.

The name Rwanda means expanded land. This name emanates from its history of conquests and land annexation under the leadership of the Mwami, or king, who was the supreme authority in the land. The Mwami implemented a feudal system in which his subjects were considered owners of Rwandan land and so Rwandans.⁵ During the rule of the king, Rwanda expanded up to three times its current size,⁶ making the populations of the defeated territories part of the Rwandan people.

Research reveals that these annexations had reached north to Lake Albert, located hundreds of kilometres inside today's Uganda; west to the region of Rutshuru, hundreds of kilometres inside today's Democratic Republic of Congo (DRC); and south to encompass a large part of Kagera Province in today's United Republic of Tanzania.⁷ The ultimate stage of territorial expansion and consolidation was achieved in the second half of the nineteenth century in the reign of Mwami Kigeri Rwabugiri.⁸

This period saw hundreds of Rwandans migrating to neighbouring countries in search of greener pastures or work, while foreigners from Burundi and the DRC, together with traders from Asian countries like India, Oman and Lebanon, poured in to settle in Rwanda and have never returned to their home countries.

Like all the other African territories, Rwanda's current boundaries were demarcated following the 1884-1885 Berlin conference. At the end of this conference, Rwanda became a German colony. In 1910, the colonial powers in the region, namely the Belgians, the British and the Germans, agreed to adjust the boundaries between Rwanda, Uganda and the Belgian Congo, resulting in the present borders of these states. Following these changes, thousands of people who had become Rwandans as a result of previous annexations were removed from Rwandan jurisdiction and became citizens of neighbouring colonies. The majority of these people are located in southwestern Uganda (also known as the Bufumbira),⁹ eastern DRC and north-western Tanzania.¹⁰

⁴ Mamdani, M. (1984: 1049).

⁵ Muzungu, B (2003: 4).

⁶ See Newbury, D. (1994: 202).

⁷ See Newbury, D (1978:141). See also Twagirimana, A (2007:76). In particular, see the conquest of Bunyabungo [currently in the Democratic republic of Congo's South Kivu] in which King Ruganzu II Ndoli waged a war to revenge his father, Ndahiro Cyamatare, by killing everyone, looting the cows and taking over the wives to ensure that this kingdom would never exist again.

⁸ Mushemeza, E, (2003:83).

⁹ Adejunmobi, M and Coetzee, C (2019: 134); See also Tabaro, P "Tracing incorporation of Bufumbira into Uganda British protectorate," The Observer 11 January 2016, available at <https://observer.ug/viewpoint/42008-tracing-incorporation-of-bufumbira-into-uganda-british-protectorate> [accessed 21/3/2020]

¹⁰ Rockel, S (2019: 243). See also Vansina, J (2004: 156).

Following the defeat of Germany in World War One, the League of Nations designated Rwanda as a Belgian ‘mandate territory’ and it became a Belgian ‘trust territory’ when the League of Nations was transformed into the United Nations in 1946.¹¹ The Belgians implemented their famous ‘paternalism’ policy, under which locals were considered Belgium’s eternal children, for whom everything was to be done.¹² In furtherance of this policy, in Rwanda the Belgians extended their administrative practices such as the ethnicity-based identity card system commonly known by the locals as ‘Ibuku,’ which were used to instrumentalise ethnic differences, culminating in the Genocide of 1994.¹³

2.2. The post-independence era

2.2.1. Legislating Rwanda’s first Nationality Code

As the Belgian colonial era reached an end and Rwanda geared up for its independence in 1962, widespread ethnic violence erupted between the two main Rwandan ethnic groups. The Hutu, who are mainly agriculturalists, took on the minority Tutsi, who are traditionally pastoralists and associated with the ruling class, over who would take control of the post-independence state. In 1959 this violence resulted in the flight of Rwanda’s last king together with thousands loyal to him. It is estimated that over 400,000 Rwandans, mainly from the Tutsi ethnic group, fled to the neighbouring countries and stayed in exile for almost 35 years, leaving political power in Rwanda in the control of the Hutu majority.¹⁴

Those who had fled the violence in 1959 started to mobilise for an eventual return. In the mid-1960s, attempts to regain control of Rwanda were made by poorly organised Tutsi guerrilla forces known as ‘Inyenzi’ but were immediately defeated. In the late 1980s, a renewed effort for a forceful return to Rwanda was organised in what was termed the liberation struggle. This struggle started on 1 October 1990 and ended in December 1994 with an RPF victory.¹⁵

It is important to note that before independence Rwanda had never had any regulation on nationality as society was divided into known clans. The Belgians did not leave behind any transitional framework to determine who would be considered Rwandan after their departure. However, shortly after its independence, Rwanda enacted its first Nationality Code, which was modelled on the Belgian *Code de la nationalité*. Under this law:

- i. Rwandan nationality was divided into two categories: nationality of origin, attributed at birth by law, and nationality acquired through application later in life.
- ii. Nationality of origin was based on descent and only transmitted by the father. For a child born out of wedlock, he or she could take her mother’s Rwandan nationality only if the father was unknown or stateless.¹⁶
- iii. A child born from a marriage between a Rwandan mother and a foreign father would be eligible for Rwandan nationality once he/she reached the age of majority and if

¹¹ See Bruxelles: *Archives allemandes* microfilm, p. 67, 160 and 161. See also Deutsch, J.-G. (2006: 265); Mbonimana, G. (1981: 45); Paice, E. (2001: 53); and Paice E (2007:123).

¹² Kisangani, F. & Bobb, S. (2009) Historical Dictionary of the Democratic Republic of the Congo, p. 23.

¹³ Longman, T. (2001: 347).

¹⁴ See Sellstrom, T. and Wohlgemuth, L. (1996:14).

¹⁵ Cyrus, R. (1996: 491).

¹⁶ See Articles 3 and 9 of the Nationality Code of 1963.

he/she was not attributed his/her father's nationality at birth. To qualify, the applicant had to have lived in Rwanda for the three years preceding the date of application.¹⁷

- iv. There was no right to nationality based on birth in Rwanda to foreign parents.
- v. Dual nationality was outlawed. As a consequence, those with a Rwandan nationality of origin who had acquired the nationality of their host country were no longer recognised as having any connection with Rwandan. In many cases, the acquisition of a foreign nationality was not done in accordance with the necessary legal formalities, leaving the people concerned living in limbo and risking becoming stateless.
- vi. Nationality based on marriage was only open to foreign women who married Rwandan men. Acquisition was automatic on the day of the celebration of marriage unless the beneficiary was unwilling to lose her nationality of origin.¹⁸ A foreign woman who was not willing to acquire Rwandan nationality on her marriage to a Rwandan man was obliged to make a statement on the retention of her nationality of origin within a year of the date of marriage. Foreign men could not acquire Rwandan nationality through marriage to Rwandan women. Rwandan women who married foreign men had a right to renounce their Rwandan nationality within a year. Otherwise, their acquired foreign nationality would not be recognised in Rwanda.¹⁹
- vii. New-born infants of unknown parents found on Rwandan territory were attributed Rwandan nationality unless another nationality was later proved to exist.²⁰
- viii. Adopted children could become Rwandan only if the adopting parent was the father and if the adoption had caused the child to lose his/her nationality of origin.²¹ The law of 1963 also provided for the adoption of an adult person so long as the adoptee renounced his nationality of origin in favour of being Rwandan.²²
- ix. As in the Belgian *Code de nationalité*, naturalisation could be granted following parliamentary approval and through a presidential decree. The conditions to be met included ten years of legal residence in Rwanda, or abroad if in service for Rwanda or for study.²³ This period could be shortened to five years for those who had provided exceptional services to Rwanda. Other conditions included good character and good physical and mental health, assimilation into the national community including knowledge of the language, practising an activity of interest to Rwanda and renunciation of a previous nationality.

2.2.2. *Remaking Rwandan nationality: the game changer in the 1990s*

On 1 October 1990, a liberation struggle was launched by Rwandan refugees, following multiple demands to be allowed to return peacefully to Rwanda. This conflict led to a series of

¹⁷ See Article 8 of the Nationality Code of 1963.

¹⁸ See Article 7 of the Nationality Code of 1963.

¹⁹ See Articles 20, 33 and 34 of the Nationality code of 1963.

²⁰ See Article 5 of the Nationality Code of 1963.

²¹ See Article 9 of the Nationality Code of 1963.

²² See article 10 of the Nationality Code of 1963.

²³ See Article 13 of the Nationality Code of 1963.

agreements culminating in the Arusha Peace Accords of 1993.²⁴ The Arusha Accords incorporated five annexes, among which is a *Protocol on the Repatriation of Rwandese Refugees and the Resettlement of Displaced Persons*. This protocol benchmarked the concept of facilitating the return of people wishing to do so by removing any hurdles. Its Article 2 states:

The return is an act of free will on the part of each refugee. Any Rwandan refugee who wants to go back to his country will do so without any precondition.

Each person who returns shall be free to settle down in any place of their choice inside the country, so long as they do not encroach upon the rights of other people.

In addition, the protocol is considered to mark the birth of dual nationality in Rwanda as it laid a foundation for dual nationality to be recognised and legislated for. Its Article 7 states:

The principle of dual citizenship is hereby accepted. The laws governing Rwandese citizenship shall be reviewed accordingly.

In April 1994, genocide wiped out the lives of over a million Rwandans with nationality of origin: Tutsis and moderate Hutus. At the time of writing, no statistics are available on those with acquired nationality who perished in the 1994 genocide as they were not aligned in either of the recognised ethnic groups.

After stopping the genocide and coming into power, the RPF and other political parties which had not taken part in the killings of 1994 formed a broad-based transitional government of national unity. Together, they embarked on a wide range of legal and policy reforms, including the return and resettlement of Rwandan refugees, mainly ones dating back to the independence era and ones who had fled the 1994 genocide. On the basis of the Arusha protocol, hundreds of thousands of people of Rwandan origin were enabled to return without any hurdle. Moreover, those who had lost their Rwandan nationality as a result of acquiring foreign nationalities automatically regained their Rwandan nationality after resettlement in Rwanda without forfeiting their nationalities acquired elsewhere.

Before 2003, these policies were enforced through administrative directives. However, a new constitution came into force that year reaffirming the concept of dual nationality in its Article 7 as follows:

Every person has a right to nationality.

Dual nationality is permitted. No person may be deprived of Rwandan nationality of origin.

No person shall be arbitrarily deprived of his or her nationality or of the right to change nationality.

Rwandans or their descendants who were deprived of their nationality between 1st November 1959 and 31 December 1994 by reason of acquisition of foreign nationalities automatically reacquire Rwandan nationality if they return to settle in Rwanda.

All persons originating from Rwanda and their descendants shall, upon their request, be entitled to Rwandan nationality.

²⁴ See the Peace Agreement between the Government of the Republic of Rwanda and the Rwandese Patriotic Front, signed at Arusha, 4 August 1993, and the protocols (the Arusha Peace Accords) at <http://www.incore.ulst.ac.uk/services/cds/agreements/pdf/rwan1.pdf> [accessed 17 December 2019].

The conditions of acquisition, retention, enjoyment and deprivation of Rwandan nationality are determined by an organic law.

On the basis of this constitution, a new law on Rwandan nationality was adopted in 2004 to enshrine in law the content of administrative directives which had been in place since the coming into power of the broad-based Government of National Unity. In this law:

- i. Men and women were provided with equal rights to transfer their Rwandan nationality to their children. Therefore, a child one of whose parents was a Rwandan was attributed Rwandan nationality regardless of whether his or her birth was in or outside a registered marriage.²⁵
- ii. Gender equality in nationality matters was furthered by allowing women to confer eligibility for Rwandan nationality on their foreign spouses.²⁶ In the nationality code of 1963 this option was only open to men.
- iii. Dual nationality was reaffirmed in accordance with the Constitution.²⁷ To put this into effect, those who had lost their Rwandan nationality by reason of acquisition of foreign nationalities automatically reacquired Rwandan nationality on returning to settle in Rwanda.²⁸
- iv. A child born in Rwanda of unknown or stateless parents, or who was unable to acquire nationality from a parent, was considered Rwandan. New-born children found in the territory of the Republic of Rwanda were presumed to have been born in Rwanda.²⁹ Protection against statelessness was thus extended from abandoned new-born infants to children born in Rwanda who could not acquire the nationality of a parent.
- v. Nationality based on birth in Rwanda was introduced: a child born in Rwanda to foreign parents was given the right to acquire Rwandan nationality on reaching adulthood on application.³⁰
- vi. An adopted minor automatically became Rwandan through the act of adoption,³¹ while an adult or emancipated person adopted by a Rwandan could only become Rwandan on application and after fulfilling requirements including demonstrating the desire to become Rwandan and having residency of at least 5 years.³²
- vii. The application procedure for naturalisation was simplified, as the granting authority was shifted from the President of the Republic to the Minister of Justice.³³ Likewise, the parliamentary process for approving decisions of the President to grant nationality was removed.³⁴ The procedure was simplified in terms of the institutions involved. In addition, residency requirements were further relaxed from 10 years to 5 years, and for those with a national interest from 5 to 2 years. Finally, competence in nationality matters shifted from the

²⁵ Article 4 of the Nationality Law of 2004.

²⁶ See Article 9 of the Nationality Law of 2004.

²⁷ Article 2 of the Nationality Law of 2004.

²⁸ Article 26 of the Nationality Law of 2004.

²⁹ Article 6 of the Nationality Law 2004.

³⁰ Article 7 of the Nationality Law of 2004.

³¹ Article 11 of the Nationality Law of 2004.

³² Article 13 of the Nationality Law of 2004.

³³ Article 14 of the Nationality Law of 2004.

³⁴ See Article 14(4) of the Nationality Code of 1963.

Ministry of the Interior to the Ministry of Justice, which at this time had civil status in its attributions.

In 2008, a new organic law on Rwandan nationality came into force to rectify deficiencies observed in the 2004 law in a spirit of further facilitation and service delivery. Whereas the content of the 2008 law is similar to that of the 2004 law, some changes should not go unnoticed.

The law of 2008 deployed a coordinated approach to the management of Rwandan nationality centralised under one institution, the Directorate General of Immigration and Emigration (DGIE). This institution was put in charge of receiving and processing applications for the acquisition, renunciation and recovery of Rwandan nationality, and of advising the cabinet on who to grant Rwandan nationality to. Before 2008, the authority competent to handle nationality matters was the Ministry of Justice and processes were cumbersome involving various public institutions.

In addition, the law of 2008 eliminated some outdated forms of nationality acquisition such as the adoption of an adult person. The philosophy behind this move was that this mode of acquisition was seen as promoting a culture of dependency and defeated the purpose of adoption, which is to help the vulnerable and powerlessness who need family for their protection.³⁵

The law of 2008 also ended the automatic reacquisition policy provided for in the 2004 law. In contrast, it provided that those who had not returned to Rwanda for the purpose of settling by the time the law of 2008 came into force had to undergo a recovery procedure. This provision was criticised for being contrary to the constitutional protection against deprivation of nationality by origin.³⁶ The legislators were therefore torn between enforcing the law as drafted and preserving the facilitation spirit, as many people were yet to return to their motherland.

It remains unclear why the law suddenly changed after only four years of its existence, given the fact that many Rwandans were still returning to Rwanda. No official reason was provided for the sudden removal of the policy of automatic reacquisition on returning to settle. However, there is no denying the fact that this decision helped to curtail neighbouring countries' moves to expel their nationals of Rwandan origin under the assurance that these people would be received and helped to settle in Rwanda.³⁷

In 2015, the Rwandan Constitution was revised through a referendum to enable a third term re-election of Paul Kagame as President of the Republic. The provisions on Rwandan nationality were also slightly amended in Article 25 as follows:

Every Rwandan has the right to his or her country. No Rwandan can be banished from his or her country.

Every Rwandan has the right to Rwandan nationality.

Dual nationality is permitted.

No one can be deprived of Rwandan nationality of origin.

³⁵ Karomba F (2004:12).

³⁶ See Article 7 of the Constitution of the Republic of Rwanda (Version 2015), of the Constitution of the Republic of Rwanda (Version 2010).; See also Article 25 (3) of the Constitution of the Republic of Rwanda (Version 2015).

³⁷ See Manby B (2018: 92).

All persons of Rwandan origin and their descendants are, upon request, entitled to Rwandan nationality.

An organic law governs Rwandan nationality.

The striking difference between the provision on Rwandan nationality in the Constitution of 2015 and other previous laws is that the new Constitution removed the rule that those eligible for recovery were categorised according to the time they left the country. Although the rationale behind this change remains unclear, there is no denying the fact that the move upheld the constitutional principle of equality of all Rwandans.

3. The Anatomy of Rwandan Nationality: the Current State of Affairs

3.1. The legal regime governing nationality in Rwanda

The legal regime governing Rwandan nationality comprises the Constitution of the Republic of Rwanda of 2003 as revised in 2015, the international legal instruments to which Rwanda is party, the organic law No. 30/2008 of 25 July 2008 relating to Rwandan nationality and Presidential Order No.21/01 of 27 May 2009 establishing requirements and the procedure for application and acquisition of Rwandan nationality. In addition, Law No. 32/2016 of 28 August 2016 governing persons and the family is also used as complementary legislation in the management of Rwandan nationality.

Starting with the constitution, nationality is provided for as a fundamental right of every Rwandan,³⁸ a foundation for the enjoyment of social, economic and political rights.³⁹ The right to nationality gives Rwandans a right to their country and therefore safeguards them against any form of banishment.⁴⁰ In addition, the constitution allows dual nationality to enable those who have acquired another foreign nationality to retain their Rwandan nationality.

All the above features are further detailed in the organic law. This law also provides for types of Rwandan nationality, its modes of acquisition, the grounds for its withdrawal and how it may be recovered. The organic law is also complemented by the Presidential order.

The Rwandan nationality legal regime also comprises a set of international and regional instruments to which Rwanda is a party. These include the International Covenant on Civil and Political Rights (ICCPR), the Convention on the Rights of the Child (CRC), the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW).⁴¹ In 2006, Rwanda acceded to the two treaties on statelessness: the 1954 Convention Relating to the Status of Stateless Persons (CSSP) and the 1961 Convention on the Reduction of Statelessness (CRS).⁴²

³⁸ See Article 25 para. 2 of the Constitution of the Republic of Rwanda (Version 2015).

³⁹ See Gasamagera, W. (2007: 4).

⁴⁰ There is a history of Rwandans being banished from their country on the assumption that the country was full and could not accommodate any further Rwandans.

⁴¹ Rwanda ratified the ICCPR on 16 April 1975, the CRC on 24 January 1991, the CEDAW on 2 March 1982 and the ICRMW on 15 December 2008.

⁴² Rwanda acceded to the CSSP and the CRS on 4 October 2006.

At the regional level, Rwanda is a party to the African Charter on Human and Peoples' Rights (ACHPR), its protocol on the Rights of Women in Africa and the African Charter on the Rights and Welfare of the Child (ACERWC).⁴³ Rwanda is actively participating in negotiating on the protocol to the African Charter on Human and People's Rights on the right to a nationality and the eradication of statelessness in Africa, which is currently in the final stages.

3.2. Modes of acquisition of Rwandan nationality

3.2.1. Attribution

a. Attribution at birth based on parental descent

A person born to a Rwandan parent is attributed Rwandan nationality at birth.⁴⁴ Both the mother and the father qualify to transmit their nationality status to the child.

b. Attribution at birth to children of unknown parents or found in the Rwandan territory.

As in the law of 2004, the 2008 Rwandan nationality law attributes Rwandan nationality to a child of unknown parents who is born in Rwanda. In addition, as in 2004 and 1963, a new-born baby found in the Rwandan territory is considered to have been born in Rwanda, and by implication attributed Rwandan nationality⁴⁵ unless his or her nationality is proven otherwise.⁴⁶ International best standards recommend the use of the term 'foundling,' which by definition covers all minors unable to effectively provide information pertaining to the identification and whereabouts of their parents for the purposes of identifying their nationality.⁴⁷

c. Attribution at birth to children of stateless persons or those who cannot acquire nationality from either of their parents.

Rwandan nationality law attributes Rwandan nationality to a child born from stateless parents or who, due to the provisions in the nationality law of the country of origin of the parents, is unable to acquire the nationality of either of his or her parents.⁴⁸

Rwanda is a party to the 1961 CRS and the ACRWC, both of which require state parties to grant nationality to a child born on its territory if he/she cannot be granted another nationality at birth.⁴⁹ Rwanda considers the attribution of nationality to children born from stateless parents the most effective way to cut the intergenerational chain of statelessness.

⁴³ Rwanda acceded to the ACHPR on 15 July 1983 and to the ACRWC on 11 May 2001.

⁴⁴ See Article 6 of the Nationality Law of 2008.

⁴⁵ See Article 6(2) of the Nationality Law of 2008.

⁴⁶ Article 9 of the 2008 Nationality Law.

⁴⁷ See UNHCR (2018: 13).

⁴⁸ See Article 9 of the 2008 Nationality Law.

⁴⁹ See Article 1 of the 1961 Convention on the Reduction of Statelessness and Article 6(4) of the African Charter on the Rights and Welfare of the Child.

3.2.2. Acquisition

a. Acquisition based on birth in Rwanda

Rwandan nationality law provides that a child born in Rwanda from known non-Rwandan parents with lawful residence may apply for Rwandan nationality on reaching the age of majority. A parent is said to be known if he or she can be identified and is proved to be the parent of the child concerned. Parenthood is determined based on rules in the family law for children born in or out of wedlock, including a person's own acknowledgment and whether this is done formally,⁵⁰ presumptively⁵¹ or through discovery.⁵²

Therefore, a child born from known parents may acquire Rwandan nationality on satisfactorily proving to the competent authority his/her birth in Rwanda. The applicant must prove (a) his or her birth in Rwanda, and (b) the legality of stay of his parents at the moment of his or her birth. Evidence of fulfilment of both conditions must be provided.

Starting with the proof of birth in Rwanda, the official evidence required is the birth certificate. Other documents such as hospital birth statements or civil registry documents proving the child's birth in Rwanda may also be accepted in some instances. Where the applicant is unable to produce any of the above documents to justify his birth in Rwanda, other factual circumstances may be considered as proof of birth in Rwanda because the standard of proof in nationality matters has been simplified.⁵³

In addition, the applicant must prove the lawfulness of his parents' residence at the time of his birth. The official proof of residence in Rwanda is a residence permit. It is unlike a visa, which proves the legality of stay in most cases for a short time for a well-determined purpose. Unfortunately, not all foreigners residing in Rwanda possess these documents, especially those originating from neighbouring countries and border communities. Once the above two substantive requirements are satisfied, the applicant must be tested against the age requirement, which is set at 18 years, the legally established age of majority.⁵⁴

b. Acquisition through marriage

A non-Rwandan citizen may acquire Rwandan nationality through a lawful marriage to a Rwandan spouse. Under Rwandan laws, only a civil monogamous marriage between a man and a woman contracted before the relevant public official is recognised.⁵⁵ A marriage celebrated in Rwanda must be officiated by a civil status officer. A marriage celebrated outside Rwanda is recognised if it has been contracted in accordance with the law of the country of celebration.⁵⁶ Under this provision, customary marriages contracted in accordance with foreign laws may be recognised in Rwanda as lawful marriages.

Once the lawfulness of marriage is established, it must be tested against the time requirement. Under Rwandan law, a marriage must be in existence for at least three years to grant eligibility for Rwandan nationality. Even if the time requirement is fulfilled, the

⁵⁰ See Article 262 of the Law on Persons and the Family [on the recognition of a child born out of wedlock].

⁵¹ See Article 256 of the Law on Persons and the Family [on presumption of paternity], Article 257 of the law on persons and the family [on the presumption of maternity] and Article 258 of the Law on Persons and the Family [on the presumption of conception during wedlock].

⁵² See Article 282(6) of the Law on Persons and the Family.

⁵³ See Article 6 of the Presidential Order on Rwandan Nationality.

⁵⁴ See Article 113 of the Law on Persons and the Family.

⁵⁵ Article 166 of the Law on Persons and the Family.

⁵⁶ See Article 17 of the Constitution of the Republic of Rwanda (2015 Version).

competent authority still reserves a margin of discretion in granting nationality based on marriage.⁵⁷ In the law, nationality through marriage is thus a privilege that comes with responsibility rather than a right that one acquires after a given period of time.

Finally, marriage alone, even when fulfilling the time requirement, cannot guarantee the acquisition of Rwandan nationality if it has not been registered in a Rwandan registry of civil status. A marriage contracted in Rwanda is immediately registered with no additional requirements. However, a marriage contracted outside Rwanda must undergo the registration process,⁵⁸ not just for record-keeping but to ensure that it meets Rwandan legal requirements, as arrangements (including marriages) contracted out of Rwanda cannot have any effect in Rwanda when they are contrary to public order, social interest or public morals.⁵⁹

c. Acquisition through adoption

A non-Rwandan child who is formally adopted by a Rwandan automatically becomes Rwandan.⁶⁰ No more procedures are required except those related to adoption itself. Nationality by adoption is a means by which the government implements its constitutional duties, namely the constitutional duty to family protection, the promotion of the child's right to a nationality under international law⁶¹ and the upholding of the best interests of the child.⁶²

d. Acquisition through naturalisation

A non-Rwandan of adult age may apply to become Rwandan provided he or she meets the conditions prescribed in Articles 13-15 of the 2008 law. Whereas a majority of the requirements are related to character and personality, applicants are also subject to time requirements and financial requirements. In terms of procedure, naturalisation is subjected to higher levels of approval as the last say lies with the cabinet. This makes the 2008 law less procedural when compared to the 1963 law⁶³ but also more bureaucratic when compared to the law of 2004.⁶⁴

Regarding time requirements, the applicant must be of majority age and must have legally resided in Rwanda for at least five years prior to lodging the application. Rwandan nationality law is not clear on the type of residence required for the purpose of nationality acquisition. If residence is restricted to residence provided for in immigration laws, vulnerable groups such as refugees, stateless persons and other undocumented persons do not fit into this

⁵⁷ See Article 11 of the Law of 2008. The use of 'may' rather than 'shall' in this provision substantiates that the granting of nationality based on marriage is discretionary and not an entitlement.

⁵⁸ See Article 11 of the 2008 Nationality Law.

⁵⁹ See Articles 5 and 166 of the law on persons and the family.

⁶⁰ See Article 12 of the 2008 Nationality Law. See also Article 22 of the Presidential Order on Rwandan Nationality.

⁶¹ See Article 7 of the Convention on the Rights of the Child. See also Article 6 of the African Charter on the Rights and Welfare of the Child.

⁶² See Articles 9, 18 and 21 of the United Nations Convention on the Rights of the Child.

⁶³ In the laws of 1963 and 2008, applications for naturalisation are approved by the President (i.e explicitly in the law of 1963 and implicitly in the law of 2008 as the President chairs the approving organ, the cabinet). A slight difference is that in the law of 2008 the President does not seek parliamentary approval as in the law of 1963.

⁶⁴ The law of 2008 is more bureaucratic as compared to the one of 2004, as it skyrockets the decision-making to the cabinet. In the law of 2004, the Ministry of civil registry was the approving organ of last resort.

definition since they are not residents within the meaning of immigration laws.⁶⁵ As a result, they would not be entitled to naturalisation regardless of their length of stay in the country.

Financially, a foreigner intending to seek naturalisation in Rwanda must have “sustainable activities” as evidence of his permanent settling and readiness to engage in the economic life of the country. This condition also serves as a guarantee that a naturalised person is not a burden on the country. Therefore, vulnerable groups such as refugees, stateless persons and others who are financially struggling are unable to meet this requirement for naturalisation.

The greatest interpretative challenge in terms of financial requirements is that the law is unclear on what constitutes sustainable activities. Whereas the Kinyarwanda version uses the words ‘*ibikorwa birambye*,’ which translates as a blend of ‘durability’ and ‘continued relevance,’ the Rwandan authorities still give special consideration to the size and type of activity and its social or economic utility to the public.

Given the reality that this requirement barred many applicants from naturalisation, including those who might be of interest to Rwanda, the law provides for “facilitated naturalisation” for a foreigner not fulfilling the above conditions, but who is deemed to be of interest to the country.⁶⁶ This category covers highly skilled migrants, talented individuals who use their talents in the interest of Rwanda and any other foreigner whose naturalisation is deemed a national interest by the government.⁶⁷ As mentioned above, this leaves out those in need of nationality, mainly because such a consideration is not something one requests. It is a privilege, entirely determined by the state.

Finally, regardless of his or her place of birth, a minor automatically becomes Rwandan alongside his/her naturalised parent(s) as long as his/her birth is legally recognised in Rwanda.⁶⁸

3.3 Renunciation and deprivation of Rwandan nationality

Under Rwandan laws, nationality may be relinquished voluntarily (renunciation) or against one’s will (deprivation), leaving the previous holder a complete stranger in the land he/she once called his/her own.⁶⁹

3.3.1. Renunciation

Any Rwandan of majority age has a right to voluntarily renounce his Rwandan nationality so long as this act is not aimed at compromising other Rwandan laws, seeking refugee status or becoming stateless in Rwanda.⁷⁰ The decision on an application for renunciation requires a two-stage screening. First, the Director General receives the application and undertakes a rigorous examination of the case by looking at the motives provided by the applicant and his

⁶⁵ Rwandan immigration law does not have a specific visa category for refugees. The National refugee determination committee determines their status. The only residence permit provided under Rwandan laws is Class J, which is normally a work visa granted to foreigners with refugee status granted by a foreign country.

⁶⁶ Article 16 of the Nationality Law of 2008.

⁶⁷ Article 16 of the Nationality Law of 2008.

⁶⁸ Article 17 of Nationality law of 2008

⁶⁹ See Article 13 Para 4 of the Presidential Order on Rwandan Nationality.

⁷⁰ See Article 18 of Nationality Law of 2008

or her overall personal conduct. Once suitability is determined, a proposal for granting is made to the cabinet for approval.⁷¹

Whereas this level of oversight may be considered a good move to scrutinise the Director General, it is time-consuming due to delays in cabinet schedules. Moreover, it closes options for appeal, since the cabinet as the appealable organ has already been involved in the decision-making in the first round. Thus, the chances of having the cabinet reconsider its decision without a significant change in circumstances are close to none.

3.3.2. *Deprivation*

The term ‘deprivation of nationality’ refers to an act by a competent authority to take back the status of Rwandan nationality from a person who the authority believes has acquired it fraudulently or maliciously.⁷²

Rwandan nationality law defines fraudulent acquisition as a situation where nationality was acquired or recovered in accordance with the law but through manoeuvres, fraud, false statements, sham marriages, corruption or any other form of misrepresentation or abuse of process.⁷³

Malicious acquisition is referred to as a situation where the acquisition of Rwandan nationality was ill-intentioned and aimed at furthering the commission of a much bigger offence, the betrayal of the country.⁷⁴ Thus, this raises the following legal questions:

- i) If malicious acquisition is premised on the existence of an ill-intentioned act against Rwanda, this must be established not by the institution taking a decision to withdraw nationality but rather by a competent court in accordance with its guiding principles.⁷⁵ Thus, the Court must be satisfied of a pre-existing plan to betray the country and make a ruling before a move to withdraw nationality is even entertained.
- ii) As malicious acquisition is a concurrent offence, it cannot be separated from the overriding offence of betraying the country, which is only determined by the court. Thus, a move by an institution to withdraw nationality on the basis of a crime that has not been legally established is an abuse of power.

Rwandan laws are not clear with regard to acts amounting to the crime of ‘betrayal of the country.’ The penal code applies the term ‘damaging the national interest’ in its provisions relating to espionage and treason.⁷⁶ However, it is not clear whether ‘betraying the country’ is approximated to ‘damaging the national interest’. Even if these provisions are dynamically interpreted as having the same meaning, it would still be contrary to the demands of Rwandan criminal law, which prohibits the interpretation of Rwandan criminal law broadly and courts deciding on cases on the

⁷¹ See Article 9 of the Presidential Order on Rwandan Nationality

⁷² Article 19 of the Law of Rwandan Nationality of 2008

⁷³ Article 19(2) (1) of the Law of Rwandan Nationality of 2008

⁷⁴ Article 19(2) (2) of the Law of Rwandan Nationality of 2008, permits deprivation if a person “applied for and was granted Rwandan nationality with the intention of betraying the country”.

⁷⁵ See Article 151 of the Constitution of the Republic of Rwanda (2015 version).

⁷⁶ See Article 192 of the penal code. In its definition of crimes of espionage, it uses the Kinyarwanda wording “kugirira nabi Repubilika y’u Rwanda” which is translated as “harming the Republic of Rwanda.”

basis of analogy.⁷⁷ The fact that there is no legislative guidance on how to apply this provision leaves it hanging, with few prospects of application.

- iii) For the acquisition of nationality to be framed as malicious, the question of pre-existence must be carefully addressed to determine if the act of betrayal was committed in furtherance of an existing plan. A foreigner who has acquired Rwandan nationality deserves to be protected against bias and abuse of power by authorities interpreting his acts as pre-existing malice to get rid of him.

Constitutionally, holders of Rwandan nationality by origin are protected against any form of nationality deprivation⁷⁸ even when they are dual nationals. Such a protection emanates from a renewed importance placed on the concept of ‘origin,’ which was broadened as compared to the earlier interpretation found in the Belgian-modelled Rwandan nationality code of 1963 that assimilates nationality of origin to nationality by birth. The current interpretation has been broadened, as will be discussed in section 4.

Moreover, the Rwandan law of 2008 prohibits nationality deprivation where such a move will cause statelessness only in respect of malicious acquisition and not fraudulent acquisition. However, the latter category comprises the majority of those who, due to their economic and social status, resort to unorthodox means simply because they are unable to fulfil the requirements in the law. It is therefore unclear how the law chose to protect potential offenders (i.e. malicious acquirers) and forgot those who pushed themselves where the law was not permitting, often not with bad intentions but just to fit into society and fully integrate.

3.4. Recovery of Rwandan nationality

3.4.1. Definition

Recovery of Rwandan nationality is a process enabling those who were once Rwandan nationals to regain their nationality. Given the multitude of claims by people who are still returning to Rwanda, this provision remains widely applied and has been highly contentious since the negotiation of the Arusha Peace Accords. This subsection describes the legal provisions and gives a practical interpretation of how the provisions are applied.

3.4.2. The legal basis for recovery of Rwandan nationality

Rwandan nationality recovery has received much legislative attention, from the Arusha Peace Accord to the current Constitution as revised in 2015.

- a. The Constitution of the Republic of Rwanda as revised in 2015 addresses this matter openly and proactively in its Article 25 paragraphs 4 and 5 as follows:

No one can be deprived of Rwandan nationality of origin.

⁷⁷ See Article 4 of the Penal Code.

⁷⁸ See Article 25 para 4 of the Constitution of the Republic of Rwanda (2015 version). See also Article 19 para. 1 of the Nationality Law of 2008.

All persons of Rwandan origin and their descendants are, on request, entitled to Rwandan nationality.

- b. The law on Rwandan nationality of 2008 provides for “recovery of nationality of origin.” As in the case of deprivation, it deploys the concept of ‘nationality of origin,’ which is not defined earlier in the law, leaving the provision open to varied interpretations. Article 22 states:

A Rwandan or his or her descendant who was deprived of his or her Rwandan nationality between 1 November 1959 and 31 December 1994 due to acquisition of a foreign nationality shall on their returning home re-acquire their Rwandan nationality of origin without applying for it.

However, the person referred to in paragraph 1 of this Article wishing to stay in a foreign country shall recover Rwandan nationality in accordance with the laws governing the registration of Rwandans.

Any person with Rwandan origin and his or her descendants shall have the right to acquire Rwandan nationality on request to the Director General in accordance with a Presidential Order.

It is important to note that the current law was drafted prior to the revision of the constitution in 2015. Thus, the changes observed in the new constitution are not reflected in the law as it has yet to be aligned with the current legislation. Such changes include a rejection of categorisation of applicants for recovery.

3.4.3. An interpretation of the application of the rules on recovery

Practically, the legal provisions cited above put applicants for recovery of Rwandan nationality into three main categories:

- a. Nationals of origin who were deprived of their Rwandan nationality between January 1959 and December 1994 because of their acquisition of foreign nationalities.** This category, referred to here as ‘the deprived,’ combines those who returned to settle and automatically acquired Rwandan nationality and those who registered their intention to regain their Rwandan nationality at a Rwandan embassy but had no plan to settle in Rwanda.⁷⁹ From this, two practical challenges emanate.

First, the language of the law causes a misconception that everyone who fled in 1959 and who returned to settle in Rwanda from 1994 onwards was a *de facto* acquirer of a foreign nationality. A small proportion of Rwandans who fled in 1959 actually acquired foreign nationalities. Although many perceive themselves as having acquired foreign nationalities by virtue of possessing foreign identity documents, very few actually went through legal acquisition procedures. Even when a generalised facilitation approach closed in 2008, the same misconception was applied in requiring those who had not returned earlier to undergo the recovery process because they were considered as having foreign nationalities. As such, it would be uncalled for to impose an obligation for recovery on a person who actually did not lose his/her nationality.

⁷⁹ See Article 22 paras. 1 and 2 of the Nationality Law of 2008.

Second, for those who legally acquired a foreign nationality, the automatic acquisition of Rwandan nationality may not be without a risk. For those holding nationalities of countries which accept dual nationality, their foreign nationality would not be affected by their acquisition of Rwandan nationality. For those with the nationality of a country which does not accept dual nationality, their automatic acquisition of Rwandan nationality exposes them to the risk of forfeiting their foreign acquired nationality. While for some it is their choice to extinguish their foreign status and remain with only Rwandan nationality, for others it is a misinformed mistake that the person concerned would have avoided if he or she knew the real implications.⁸⁰

- b. Persons of Rwandan origin, and their descendants, who do not fit into the timelines provided in the above category.** This category, referred to here as ‘foreigners with nationality entitlement,’ combines all foreigners who have an origin in Rwanda by virtue of which they are entitled to Rwandan nationality if they apply for it.⁸¹ In other words, it is their origin that grants them a status which is a little above others who have become Rwandans by acquiring nationality through naturalisation.

The law does not clarify whether such a request is a simple request with reduced formalities or if it is a formal application normally subject to the discretion of the competent authority. It is submitted that the competent authority’s powers to decline are highly limited as it is mandated to respond positively. Responding negatively may result in a situation of ‘renewed deprivation’⁸² or of banishment from the country,⁸³ something proscribed by the Constitution.

- c. Former Rwandans by acquisition who lawfully and intentionally renounced their Rwandan nationality for any justifiable reason.** This category, referred to here as ‘former Rwandans by acquisition,’ comprises those who acquired Rwandan nationality through the above-mentioned modes of acquisition and for a justifiable reason renounced their nationality.⁸⁴ The procedure for regaining Rwandan nationality is more one of ‘re-acquisition’ rather than recovery as provided for in the above other two categories.

The concept of re-acquisition implies that on renunciation the person becomes fully detached from Rwanda and can only regain Rwandan nationality by making a fresh application. The competent authority has a wider margin of discretion when deciding on applications for re-acquisition. A foreigner seeking re-acquisition must prove his/her earlier status as Rwandan. More specifically, he/she must satisfy the competent authority about why (s)he should be allowed to recover his/her Rwandan nationality.⁸⁵ Re-acquisition may not be granted if the applicant has had his nationality withdrawn in accordance with the law or is a security threat.⁸⁶

⁸⁰ Mamdani, M. (2001: 87).

⁸¹ See Article 25 (1), 25 (2), and 25 (4) of the Constitution of the Republic of Rwanda (2015 version).

⁸² Article 25 (4) of the Constitution of the Republic of Rwanda (2015 version).

⁸³ Article 25 (1) of the Constitution of the Republic of Rwanda (2015 version).

⁸⁴ See Article 23 of the 2008 Nationality Law.

⁸⁵ See Article 23 of the 2008 Nationality Law.

⁸⁶ See Article 24 of the 2008 Nationality Law.

3.5. Conflicts of nationality

For cases involving persons with more than one nationality one of which is Rwandan, only the latter is considered when the case involves compliance with Rwandan laws. Thus, Rwandan nationals are subject to Rwandan laws even when they have acquired other nationalities unless they have renounced their Rwandan nationality in accordance with the law. In a case where it is unclear which nationality should be applied to determine the applicable law, the nationality of residence is considered. Otherwise, consideration is given to the nationality of the country with which the person has the closest relationship.⁸⁷

3.6. Nationality management and control

The government of Rwanda has put in place measures to manage Rwandan nationality through a centralised National Identification Agency (NIDA). In addition, procedures have been put in place to document non-Rwandans in the country to enable proper management of nationality matters. More specifically, the following measures have been put in place.

3.6.1. Registration of births

Registration of births is mandated by the law⁸⁸ and coordinated by the Ministry of Local Government (MINALOC), the custodian of civil registration. The registration mechanisms include registration by the national identification service, registration during the national population census, registration for a health insurance coverage scheme and registration of birth at hospitals.

According to official statistics, the birth registration rate is currently 56%, a reduction from 85% in 2005.⁸⁹ This happened when at least 91% of Rwandan children were being born in hospitals. The decrease is attributable to, among other things, the overlapping child registration mechanisms and associated fees paid by parents when registering their children.⁹⁰

Once a child is properly registered, he/she is issued with a copy of the birth certificate as evidence. This certificate clearly mentions the date of birth, the place of birth, the names of the parents and their nationality.

3.6.2. Identity cards and passports

Rwandan nationality is evidenced by a national identity card, an ordinary passport or a certificate of citizenship, which is an official document issued by the DGIE to evidence the acquisition of nationality. While children may be issued with ordinary passports and citizenship certificates regardless of their age, they must be at least 16 years old to acquire a national identity card. Before this age, they rely entirely on the identification of their parents, and when necessary they are required to produce their birth certificates.

It is the duty of every Rwandan to present one of these documents to a competent authority that requests them. However, in the case of contestation it is for the contesting authority to

⁸⁷ See Article 33 of the 2008 Nationality Law.

⁸⁸ See Articles 100, 101, 102, 103 and 104 of the Law governing persons and the family.

⁸⁹ See the Rwanda Demographic and Health Survey (DHS) 2014-15, p. 28.

⁹⁰ IPAR & World Vision (2016: 24).

prove that the person holding the above documents is not Rwandan.⁹¹ Putting the burden of proof on the competent authority is a safeguard against arbitrariness. However, it undercuts the ability of the competent authority to act swiftly against people who have fraudulently acquired these documents.

3.7. Institutions involved in the naturalisation process

As a means of integrating foreigners into Rwandan society, naturalisation requires participation by relevant government institutions from the executive to the judiciary, with each playing its specific role. During the application stage, the DGIE is responsible for receiving and processing applications for Rwandan nationality. On receipt of the application, it undertakes rigorous screening to determine suitability. The findings are submitted in the form of a proposal to the cabinet,⁹² which in turn also conducts further assessments and consultations as it may find necessary. At the granting stage, the citizenship certificate is granted by the Director General,⁹³ while the local government administers the taking of the oath and the integration of the newly naturalised person into the community. A notice of naturalised persons is published in the official gazette of the Republic of Rwanda.⁹⁴

4. New Developments, Reforms and Current Debates on Rwandan Nationality

4.1 Addressing the question of ‘origin’ under Rwandan law

The notion of ‘nationality of origin’ is well documented in the Constitution, in nationality laws and in electoral laws. This notion is central in the law on belonging in Rwanda as it provides a layer of preferential treatment to its holders compared to other nationals by acquisition. The law grants nationals by origin the exclusive privilege of eligibility to hold the top offices in Rwanda, namely the Presidency of the Republic and the Presidency of the Judiciary.⁹⁵

For foreigners who originate in Rwanda, Rwandan origin allows easy recovery of Rwandan nationality as it grants them a strong sense of entitlement, regardless of the time elapsed or other nationalities held. However, enforcement of it is problematic as the law offers little to no clarity on (a) what constitutes origin in Rwanda, (b) who has origin in Rwanda and (c) the time base for establishing origin in Rwanda.

⁹¹ See Article 25 of the 2008 Nationality Law.

⁹² The cabinet is the highest executive forum of government. It is chaired by the President of the Republic and composed of the Prime Minister, Ministers, State Ministers and other members determined by the President of the Republic where necessary.

⁹³ See Article 26 para. 2 of the 2008 Nationality Law.

⁹⁴ See Articles 35 and 36 of the 2008 Nationality Law. The local leaders concerned are the mayors of the district where the person resides in Rwanda, or the representative of the Rwandan embassy or high commission of the applicant’s country of residence, in the case that he/she is not present in the country.

⁹⁵ Article 99 and Article 153 of the Constitution of the Republic of Rwanda (Version 2015) reserves the positions of President of the Republic and President of the Supreme Court to holders of Rwandan nationality by origin.

In the law of 1963, nationality by parental descent was part of nationality of origin. A child born to a Rwandan father was automatically Rwandan and therefore a national by origin.⁹⁶ On the basis of this law, a blanket status of origin was granted to children born from Rwandan fathers, regardless of whether they possessed other origins or not.⁹⁷ This was the standard terminology in Belgian and French law at the time, and with less movement there was an assumption that Rwanda would continue to be only populated by people who originated there.

In the Arusha Peace Accords and the nationality laws of 2004 and 2008, a new understanding of nationality of origin emerged. Nationality of origin was reserved for those whose ancestors had no other origin but Rwanda. Illustrative of this is a person's belonging to social clans, also known as '*Ubwoko*,'⁹⁸ whose members are considered to have a common mythical Rwandan ancestor.⁹⁹ In other words, origin is innate, permanent and cannot change over time so long as it can be proven. This status is conserved even if the holder has subsequently acquired nationalities of other countries.

This change blurred the terms 'nationality of origin' and 'nationality by parental descent,' since neither of the laws provided a transitional mechanism to address the issue. It is necessary to clarify the difference because the two terms are substantially different when it comes to the levels of rights and privileges. As discussed above, the law provides no mechanism for those who have acquired nationality and their descendants to enjoy equal rights as nationals by origin. Leaving this question unanswered risks jeopardising national unity efforts as it places those with acquired nationality in a perpetual state of inequality.

From the point of view of rights, this problem is further narrowed down to those born to parents who acquired Rwandan nationality after 2004 as according to the predominant interpretation of the law they are not nationals of origin but are descendants of nationals by acquisition. People born before 2004 to parents with acquired nationality may be taken as having origin in Rwanda by virtue of the 1963 law. However, the implementation of this is problematic, especially when the applicant has physical traits or a skin complexion that is distinct from what is common to those who originate in Rwanda.

4.2 Addressing the problem of recovery of Rwandan nationality

The current Rwandan laws categorise applicants for nationality recovery, and the categories emanate from the 2003 constitution. However, the revised constitution of 2015 left out these categorisations. It instead considers those who have renounced their nationality as foreigners with Rwandan origin and grants them entitlement to nationality if they apply for it. Legal clarity is needed on the status of those who did not renounce their Rwandan nationality and have not confirmed their interest in Rwandan nationality either by returning to settle in Rwanda or through registration at Rwandan embassies, and this puts them at higher risk of statelessness.

For this category of people, the only practice that complies with the current Constitution is to consider them as having intentionally extinguished their right to Rwandan nationality and therefore as having renounced nationality. This status would put them in a position of

⁹⁶ See Article 3 of the 2008 Nationality Law.

⁹⁷ See Article 12 of the 1963 Nationality Code.

⁹⁸ The term '*Ubwoko*' may mean ethnic group as well as clan. Contextually, this term is used to mean 'clan.'

⁹⁹ Office of the President of the Republic (1999), *The Unity of Rwandans: before the colonial period, under the colonial rule and under the First Republic* (1999:6). See also Newbury D (1980: 390).

entitlement to Rwandan nationality if they ever apply for it. In the spirit of Article 25 of the Constitution, applicants falling in this category should for the time being be facilitated in the acquisition of nationality and where possible be requested to make a simple application at the entry point.

4.3 Nationality based on the location of birth

Despite the progress made in the nationality laws of 2004 and 2008 on the possibility of acquiring Rwandan nationality based on birth in Rwanda, the current law unnecessarily conditions a child's right to acquire nationality by birth on the regularity of stay of his or her parents. Thus, those born to foreigners with no lawful residency in Rwanda are unable to acquire nationality by birth and over time they run a risk of becoming stateless. The law should consider facilitating these children, who are punished for an offence they did not commit.¹⁰⁰

4.4. Further protection of vulnerable groups: long stayers, refugees and people at risk of statelessness

Rwandan nationality law should open up to provide protection to vulnerable groups of people, in particular long stayers, refugees and other people at risk of statelessness. Their special circumstances and their economic status do not allow them to meet the criteria for naturalisation.

Starting with long stayers, Rwanda has for years accommodated foreigners originating from neighbouring countries such as Uganda, Burundi and the Democratic Republic of Congo. Even with no proper documentation, these people have permanently settled in Rwanda and have no plan to return to their home countries. Although the majority are already eligible for permanent residence through other modes of acquisition, there is a need for a comprehensive framework to integrate them as they are part of Rwandan society. Rwanda is yet to estimate the number of stateless persons and those at risk of statelessness in the country – a step required for their integration through naturalisation.¹⁰¹

Regarding refugees, under the 1951 Refugee Convention Rwanda is obliged to provide refugees with a durable solution, the most effective being local integration with refugees being naturalised to become part of the citizenry. In addition to its demonstrated sympathy and commitment to address the problems of refugees, Rwanda should include in its national law a specific provision facilitating the naturalisation of refugees wishing to do so.

¹⁰⁰ Denying a child his or her birth right because of a parent's irregularity is punishing him or her for a crime he/she did not commit. Moreover, if lawful stay is material in establishing presence on the Rwandan territory, other factual evidence may remove any doubt. These include hospital statements or testimony by the local government that the parents lived in the Rwandan territory regardless of their inability to acquire resident permits.

¹⁰¹ Ministers (2019), "Item 4: Pledges for Rwanda," *Outcome document of Ministerial Conference on the eradication of statelessness in the Great Lakes Region*, 18 April 2019, Nairobi, Kenya.

4.5. The fate of foreigners with Rwandan origin: time for a backdoor?

The history of Rwandans as people on the move has caused them to settle everywhere in the region. This has made them one of the language-based tribes in the eastern Africa region. Unfortunately, not all host countries give them the acceptance they deserve, partly because of the openness of the Rwandan nationality law of 2004, which opened room for recovery if people return to settle. In 2008, this window was closed in recognition of the problem faced by persons with Rwandan origin. This was further reinforced in the revised constitution of 2015, which adopted one form of nationality recovery: *by application*.

Illustrative of this is the case of Congolese Banyarwanda, comprising *de facto* Congolese citizens whose land was demarcated as part of the Congo Free State in 1885 and immigrants who originate from Rwanda. Among them is a group of Tutsi nomads, also known as *Banyamulenge*, who left Rwanda in the 17th Century.¹⁰² Since they settled, recognition of them as Congolese has been on and off, putting them in regular confrontations with other indigenous communities who never accepted them as Congolese. With the change of government in Rwanda in 1994, those who decided to return to Rwanda automatically recovered their Rwandan nationality without further ado. When the Rwandan nationality law of 2004 opened room for nationality recovery for people with Rwandan origin, the Congolese officials used this provision to further sideline those who had decided to remain in the Congo.¹⁰³

A similar case is that of the *Banyarwanda* of Uganda, who migrated and settled in Uganda a long time before independence in 1962. Of this population of close to 2 million people, about half are descendants of migrants who came to Uganda in search of a better life between 1920 and 1960. Slightly more than a third became Ugandan as a result of land demarcation in 1910, while the smallest group, which accounts for less than 15%, is composed of refugees and their descendants who arrived after 1959.¹⁰⁴

Despite being a recognised tribe under the Ugandan Constitution and listed as the sixth largest ethnic group, the Banyarwanda are still looked on as illegitimate and associated with Rwanda.¹⁰⁵ During the regime of Obote,¹⁰⁶ the Banyarwanda were continually reminded that they were not Ugandans. In 1982, thousands of them were expelled and their properties were looted. After 1994, many returned to Rwanda to settle while others decided to stay permanently in Uganda, enduring a life of non-acceptance and fear of being expelled at any time.¹⁰⁷ Those who returned to Rwanda to settle before the adoption of dual citizenship in Uganda automatically lost their Ugandan citizenship. Similarly, very few of those who returned to Rwanda to settle after the enactment of the 2009 Citizenship and Immigration Control Act fulfilled the notification requirement to maintain their Ugandan Citizenship.

Dual nationality has been allowed in Uganda since the amendment of its constitution in 2005, and the Citizenship and Immigration Control Act of 1999 was amended to reflect this feature in 2009. It enables Ugandans who have acquired foreign nationalities to retain their

¹⁰² See Ruhimbika, M. (2001: 45). See also Manby (2018: 223).

¹⁰³ See Vlassenroot, K. (2002: 505).

¹⁰⁴ Watson, C. (1991: 6).

¹⁰⁵ Winter, R. (1983: 54).

¹⁰⁶ Milton Obote served as Prime Minister of Uganda from 1962 to 1966 and as President of the Republic of Uganda from 1966 to 1971 and from 1980 to 1985. He was replaced by Yoweri Museveni following a 5-year struggle which ended in 1986.

¹⁰⁷ See Adisa, J. (1996: 17). See also Jason C (1984: 29).

Ugandan Citizenship and foreigners who lost their citizenship through becoming Ugandans to retain their nationalities of origin.¹⁰⁸

Having handled the lion's share of refugees from Rwanda in 1959, Uganda's Citizenship and Immigration Control Act of 1999 clearly bars refugees and their descendants from acquiring citizenship by registration.¹⁰⁹ Many Banyarwanda refugees, however, have acquired it through marriage.

Another case of former nationals by origin worth mentioning is that of Rwandans taken to work in sugarcane and tea plantations in Kericho, Kenya in the 1940s by the British colonists.¹¹⁰ In 1945, they were allowed to live in Kenya permanently by the British and were subsequently issued with identity cards (IDs). Unfortunately, this status was short-lived as it was unjustifiably withdrawn in 1975 following Kenya's implementation of the East African Community (EAC) regulations on the management of foreigners. They were instead given a three-month identification document called Alien Identity Card.¹¹¹ At the time of writing, their claims for Kenyan citizenship are still outstanding despite the intervention of the Rwandan government informing them of their right to reacquire their Rwandan nationality if they request it. Unfortunately, many do not entertain the idea as Rwanda remains a country they have barely known. The failure of the Government of Kenya to respond positively to their claims continues to leave them with a serious risk of statelessness.¹¹²

What is common in the above cases is that the persons concerned are targeted as a group and are likely to be subject to collective measures such as group expulsion. Tanzania expelled Rwandans as a group in 2013 and Uganda did so during the reign of Milton Obote in 1982. To stay a step ahead, Rwanda should consider legislating the practice of granting Rwandan nationality *en masse* in order to bridge gaps that if unaddressed may pave the way for statelessness.

5. Conclusion

Rwandan nationality is an evolving concept that changes with the political and demographic demands of the country. In recent years, Rwanda has unprecedentedly opened its borders to people from all walks of life who have not only established themselves in Rwanda but settled. Thousands have already completed the length of stay required to be naturalised, but the law is still restrictive as the majority fail to meet the requirements relating to having durable activities.

In addition, Rwandan nationality law applies typologies that must be clarified. Looking at the way the current law is written, there is no difference between nationality of origin and parental descent, and yet the terminologies are self-explanatory. Taking nationality of origin as

¹⁰⁸ See Section 19 (1) and (2) of the Uganda Citizenship and Immigration Control (amendment) Act, 2009.

¹⁰⁹ See Article 14 of the Uganda Citizenship and Immigration Control Act of 1999. See also Zakaryan, T. (2020: 18).

¹¹⁰ The New Humanitarian, 'Former Rwandan Tea-pickers to be expatriated,' *The New Humanitarian of 24 July 2000*, available at www.thenewhumanitarian.org/report/3445/rwanda-former-rwandan-tea-picker-be-repatraited

¹¹¹ The New Times, "After 70 years in Kenya, 500 Rwandans appeal for Naturalisation," *The NewTimes* 14 February 2017, p. 6.

¹¹² Matoke, T. 'The plight of 'lost' Rwandans in Kenya' *The East African*, 24 June 2017, available at <https://www.theeastafrican.co.ke/magazine/The-plight-of-Rwandans-in-Kenya/434746-3985280-b9ygpzyz/index.html>

a category, then parental descent is nothing other than a mode of acquisition of Rwandan nationality.

Moreover, nationality law must enforce the constitutional principle of equality of all by removing all aspects of inequalities in its provisions. A common playing field must be put in place to enable nationals by acquisition to have full rights like those reserved for nationals by origin. Likewise, the categorisation of applicants for recovery of Rwandan nationality should be removed to align with the current Constitution.

Finally, the provisions in the law should apply direct language to reduce excessive discretion on the part of competent authorities. They must act decisively to enhance fairness in the handling of applications for acquisition, renunciation and recovery of Rwandan nationality. By doing this, there is no doubt that Rwanda will be hospitable enough to attract the right people to help it achieve all its future aspirations.

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