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SYSTEMIC BARRIERS TO CIVIL REGISTRATION AND IDENTITY DOCUMENTATION IN HOPLEY, HARARE

A Legal and Policy Analysis of the Identity
Documentation Crisis Affecting Marginalised
Communities





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1.0

EXECUTIVE SUMMARY

The right to a legal identity is not merely a bureaucratic convenience; it is the juridical gateway through which every other constitutional right is exercised. Without a birth certificate, a child cannot sit for public examinations or apply for a national identity card. Without an identity documentation (ID), an adult cannot vote, open a bank account, enter into a formal employment contract, register a cell phone SIM card, own immovable property, obtain a passport, or access justice through the formal legal system. Hopley, an urban settlement on the southern periphery of Harare, was forged largely through urban displacement. Established in the aftermath of Operation Murambatsvina in 2005 and subsequent waves of urban evictions, it is home

to an estimated 300,000¹ residents, many of whom were relocated without the state extending commensurate civil registration services. Through sustained community engagement in Hopley, ActionAid Zimbabwe (AAZ) has documented a pervasive and intergenerational identity documentation deficit that cannot be attributed to individual negligence. It is, rather, the product of systemic exclusion.

This policy brief provides a legally grounded analysis of the problem, maps the specific vulnerability pathways through which individuals fall outside the civil registration system, and advances concrete, constitutionally consistent recommendations for legislative and administrative reform.



2.0

CONSTITUTIONAL AND LEGAL FRAMEWORK



Zimbabwe's constitutional and statutory framework is, on its face, robust. The real challenge lies in the gap between normative aspiration and operational reality.

2.1 CONSTITUTIONAL PROVISIONS.



(a) Right to Recognition as a Person before the Law

Section 60 of the Constitution of Zimbabwe (Amendment No. 20 of 2013) guarantees every person the right to recognition as a person before the law. This provision is grounded in the international norm articulated in Article 6 of the Universal Declaration of Human Rights and Article 16 of the International Covenant on Civil and Political Rights (ICCPR), to which Zimbabwe is a party. In the modern administrative state, legal personhood depends in practice on documentary proof of identity. A person who cannot prove their identity to the satisfaction of the state is, functionally, a legal non-entity, and therefore unable to invoke the rights the Constitution otherwise confers.



(b) Right to a Name and Nationality from Birth

Section 146 of the Constitution, read together with Section 35, affirms citizenship by birth and entitles every Zimbabwean child to a name and nationality from birth. Section 81(1)(f) specifically guarantees every child the right to a name and family identity. These provisions impose a positive obligation on the state to create conditions in which birth registration is accessible, affordable, and universal.



(c) Children's Rights

Section 81 of the Constitution provides a dedicated bill of rights for children. Of particular relevance is the guarantee under Section 81(1)(f) of every child's right to a name and family identity. Read together with Section 81(1)(c), which guarantees the right to basic healthcare and nutrition, and Section 81(1)(d), which guarantees the right to education, it is clear that these rights are practically unrealisable in the absence of documentary proof of identity. The constitutional rights of children in Hopley are therefore being systematically violated not by isolated administrative failures, but by structural deficiencies in the civil registration system.



(d) Right to Administrative Justice

Section 68 of the Constitution guarantees every person the right to administrative action that is lawful, prompt, efficient, reasonable, proportionate, impartial, and both substantively and procedurally fair. Where the Registrar-General's Office refuses or delays registration of births or identity documents without adequate justification, or imposes requirements that effectively exclude the poor, such conduct is susceptible to constitutional challenge under Section 68.



(e) Equality and Non-Discrimination

Section 56 of the Constitution prohibits unfair discrimination on grounds including birth, social origin, and economic status. A civil registration regime that, by reason of its fee structure, documentary requirements, and geographic inaccessibility, systematically excludes the urban poor from registration constitutes, at minimum, indirect discrimination on the grounds of social origin and economic status, and is accordingly constitutionally suspect.

2.2 CIVIL REGISTRATION LEGISLATION



(a) Births and Deaths Registration Act [Chapter 5:02]

The Births and Deaths Registration Act (BDRA) is the primary legislative instrument governing civil registration. Section 9 of the BDRA imposes an obligation on the informant, ordinarily a parent or guardian, to register a birth within a prescribed period. The Act vests the Registrar-General with the power to accept late registrations, though such late registrations are subject to more onerous documentary requirements. Critically, the BDRA does not adequately address scenarios in which the informant is unable to meet registration requirements due to factors beyond their control, including the death of a parent without documentation, the mental incapacity of a parent, or a birth occurring outside a medical facility. The Act's silence on these contingencies translates, in practice, into systemic exclusion.



(b) National Registration Act [Chapter 10:17]

The National Registration Act (NRA) makes it mandatory for every citizen and permanent resident over the age of sixteen years to register and obtain a national identity card. Section 7 of the NRA prescribes the documentation required for registration, with a certified copy of a birth certificate as the primary requirement. This creates a circular dependency: without a birth certificate, no ID can be obtained, and without an ID, replacement of a lost birth certificate becomes practically impossible for those without financial resources.



(c) Marriages Act [Chapter 5:11] and Customary Marriages Act [Chapter 5:07]

The marital status of parents has legal implications for the registration of a child's birth. The father's particulars are entered on the birth certificate only where both parents are married or the father voluntarily acknowledges paternity. Where parents have separated, are divorced, or are in conflict, the registration of the child's birth and the attribution of a surname may become legally contentious, creating further barriers to timely registration.



(d) Mental Health Act [Chapter 15:12]

Section 30 of the Mental Health Act provides for the appointment of curators and administrators for persons certified as mentally ill and incapable of managing their affairs. No corresponding provision exists to ensure that the civil registration obligations of mentally ill parents in respect of their children are discharged by state-appointed agents. This legislative gap results in children of parents with mental health conditions falling outside the civil registration system through no fault of their own.



(e) Public Health Act [Chapter 15:17]

The Public Health Act, and regulations made thereunder, prescribe conditions for the notification of births. The Act places an obligation on medical officers and facility administrators to notify the Registrar-General of births occurring in medical facilities. It does not, however, adequately regulate home births or births facilitated by traditional birth attendants, which constitute a substantial proportion of births in informal settlements such as Hopley.

2.3 RELEVANT INTERNATIONAL INSTRUMENTS

Zimbabwe is a party to or signatory of the following international and regional instruments that bear directly on the right to identity documentation:

- ▶ **UN Convention on the Rights of the Child (CRC), 1989, Articles 7 & 8:** Guarantees the right of every child to be registered immediately after birth, to have a name from birth, and to acquire a nationality. The state is obligated to ensure implementation and to assist children who are at risk of being deprived of their identity.
- ▶ **International Covenant on Civil and Political Rights (ICCPR), Article 24(2):** Provides that every child shall be registered immediately after birth and shall have a name.
 - **African Charter on the Rights and Welfare of the Child (ACRWC), 1990, Article 6:** Mirrors the CRC by obligating state parties to ensure birth registration as a matter of right, not as an administrative privilege.
 - **African Charter on Human and Peoples' Rights (Banjul Charter), Article 5:** Guarantees the right to dignity and recognition as a person before the law.
 - **Sustainable Development Goal 16.9, Target 16.9:** Commits state parties to providing legal identity for all, including birth registration, by 2030.

3.0 VULNERABILITY PATHWAYS: AN ANALYSIS OF SPECIFIC CATEGORIES



The identity documentation deficit in Hopley is not monolithic. It manifests through distinct, though frequently overlapping, vulnerability pathways. Through sustained community engagement, ActionAid Zimbabwe has identified the following principal categories, each presenting unique legal and administrative challenges.

3.1 INTERGENERATIONAL UNDOCUMENTATION: THE FOUNDATIONAL PROBLEM

The most pervasive and intractable dimension of the crisis is its intergenerational character. Where a parent does not possess a national identity document, they are, in the overwhelming majority of cases, unable to register the birth of their child. The Registrar-General's administrative requirements mandate the production of the parents' identity documents as a condition for birth registration. A parent who was themselves never registered cannot satisfy this requirement. The child of an undocumented parent is, therefore, condemned to the same documentary statelessness as their parent, absent deliberate intervention. This is not a failure of individual responsibility; it is a systemic failure that the state has an affirmative obligation under Section 81 of the Constitution to remedy.

3.2 DEATH OF PARENT WITHOUT DOCUMENTATION

Where a parent dies without having obtained a national identity document, the registration of that parent's death is itself problematic, because registration of death requires proof of the deceased's identity. In the absence of a death certificate, surviving children face compounded evidentiary challenges in establishing their parentage for the purposes of birth registration. This problem is particularly acute in communities such as Hopley, where poverty-related mortality is elevated and where a significant proportion of the adult population was displaced without documentation.

The lacuna in the BDRA is manifest: the Act does not provide an alternative evidentiary pathway for children whose parents died undocumented. Community attestation, which is recognised in some civil registration systems, is not formalised under Zimbabwean law as a substitute for documentary proof of parentage.

3.3 PARENTAL DIVORCE, SEPARATION, AND CONTESTED PATERNITY

The dissolution of a marriage or the breakdown of a customary union frequently has adverse consequences for the civil registration of children born to or during the union. Where parents are in dispute, neither may be willing to present themselves jointly for birth registration, or the absent parent may withhold cooperation. Under the BDRA, where paternity is disputed or the father refuses to acknowledge a child, registration may be delayed indefinitely. The Act does not adequately empower a single parent, ordinarily the mother, to register a birth unilaterally without the father being treated as unknown, which itself has implications for the child's surname and family identity under Section 81(1)(f) of the Constitution.

3.4 PARENTS WITH MENTAL HEALTH CHALLENGES

Individuals living with severe mental illness, psychosocial disabilities, or intellectual impairments may be incapable of navigating the civil registration system. The registration of a birth requires an informant who is capable of providing accurate information and completing the prescribed administrative process. A parent with a severe psychosocial disability may be unable to fulfil this role. The legal framework does not provide a mechanism by which the state, a social welfare officer, or a community-based organisation may act as a de facto informant in such circumstances. Children in this situation are structurally excluded from registration through no fault of their own, in potential violation of Section 81 of the Constitution.

3.5 CHILD MOTHERS

Adolescent girls who become mothers, many of whom are themselves without identity documents, face compounded barriers. As undocumented individuals, they are unable to present the required parental documentation for the registration of their own children. Moreover, child mothers frequently face social stigma, lack family support, and have limited awareness of registration obligations and processes. Where the father of the child is unknown or unwilling to participate, the burden of registration falls entirely on a minor mother who lacks both the legal documentation and, frequently, the institutional capacity to navigate bureaucratic processes. This situation raises acute concerns under Sections 81 and 26 of the Constitution.

3.6 HOME BIRTHS AND TRADITIONAL BIRTH ATTENDANTS

A significant proportion of births in Hopley occur outside medical facilities, either in the home or attended by traditional birth attendants. Births in licensed medical facilities automatically generate a notification to the Registrar-General. Home births and TBA-assisted births generate no such notification. The burden of registration therefore falls entirely on parents who may be unaware of their obligation, lack the means to travel to a registration office, or be deterred by the documentation requirements. The BDRA's reliance on facility-based notification as the primary mechanism for triggering registration is structurally ill-suited to informal urban settlements where home births are prevalent.

3.7 LOSS OF BIRTH CERTIFICATE AND THE POVERTY TRAP

The loss of a birth certificate, an event that is common in contexts of displacement, flooding, fire, and domestic violence, triggers a replacement process that is subject to fees, which are prohibitive for households in extreme poverty. The inability to afford a replacement birth certificate prevents the individual from applying for a national identity card, which in turn prevents the registration of their own children's births. The system thus creates a poverty trap: economic deprivation begets documentary statelessness, which begets further economic deprivation, which is then visited upon the next generation. This trap is structurally unjust and potentially violates Section 56 of the Constitution's prohibition on discrimination on grounds of economic status.

4.0 IMPACT OF DOCUMENTARY STATELESSNESS: RIGHTS DENIED

The consequences of lacking identity documentation are not merely administrative inconveniences. They amount to substantial violations of constitutionally and internationally guaranteed rights across multiple domains:



- ▶ **Education:** Section 75 of the Constitution guarantees every person the right to a basic state-funded education. Schools require birth certificates for enrolment, so undocumented children are effectively excluded from formal education. This constitutes a direct violation of Sections 81(1)(d) and 75 of the Constitution.
- ▶ **Access to Justice:** The ability to institute legal proceedings, appear before a court, or access formal legal aid often requires identification. Undocumented individuals therefore face structural barriers to accessing the courts, including in domestic violence proceedings, inheritance disputes, and child maintenance applications.
- ▶ **Civic Participation:** Section 67 of the Constitution guarantees the right to vote and stand for election. Electoral registration requires a national identity card, which means undocumented adults are disenfranchised in violation of this foundational democratic right.
- ▶ **Economic Participation:** Formal employment, banking, mobile money services above threshold levels, property ownership, and entrepreneurial formalisation all require identity documentation. As a result, undocumented individuals are confined to the informal economy, with all its attendant vulnerabilities.

5.0 RECOMMENDATIONS

ActionAid Zimbabwe advances the following recommendations, which are grounded in Zimbabwe's existing constitutional and legislative framework and do not require a radical departure from established legal architecture. What is required is political will and administrative reform.

5.1 LEGISLATIVE REFORMS AMENDMENT OF THE BIRTHS AND DEATHS REGISTRATION ACT [CHAPTER 5:02]

- ▶ Introduce a provision permitting community-based attestation by two or more credible community witnesses, including village heads, headmen, ward councillors, or religious leaders, as an alternative or supplementary evidentiary basis for late birth registration where parental documentation is unavailable due to death, mental incapacity, or original non-registration. Enact a specific provision empowering a single custodial parent to register a birth unilaterally where the other parent is deceased, missing, mentally incapacitated, or persistently uncooperative, without prejudicing the child's right to family identity under Section 81(1)(f) of the Constitution.
- ▶ Introduce an absolute waiver of registration fees for births registered within sixty days, and a sliding-scale fee reduction or waiver for late registrations involving households below the ZIMSTAT poverty datum line.
- ▶ Introduce a mandatory obligation on traditional birth attendants, in collaboration with the Ministry of Health and Child Care, to file notification of births within fourteen days, with appropriate support structures and immunities to encourage compliance.

Amendment of the National Registration Act [Chapter 10:17]

- ▶ Provide an alternative documentation pathway for NID applications where the applicant's birth certificate has been lost and replacement is financially impossible, permitting the use of school records, hospital records, community affidavits, or other satisfactory evidence of identity and age.
- ▶ Eliminate or significantly reduce the fee for replacement birth certificates for applicants who can demonstrate indigence, funded through a dedicated Civil Registration Access Fund.

Amendment of the Mental Health Act [Chapter 15:12]

- ▶ Introduce a provision expressly authorising designated social welfare officers or community-based organisations to act as statutory informants for birth registration purposes where a parent is certified as lacking legal capacity due to mental illness, intellectual disability, or psychosocial impairment.

5.2 ADMINISTRATIVE AND POLICY REFORMS

- ▶ **Mobile Registration Clinics:** The Registrar-General's Office should institutionalise regular mobile registration outreach in Hopley and comparable informal settlements, modelled on the mobile court system. These clinics should be empowered to conduct on-the-spot late registrations using community attestation where parental documentation is unavailable.
- ▶ **Inter-Agency Protocol:** The Ministry of Public Service, Labour and Social Welfare, the Registrar-General's Office, and the Ministry of Health and Child Care should conclude a formal inter-agency protocol to ensure that social welfare beneficiaries without identity documents are referred to registration clinics as a condition of service intake. Such referral must be accompanied by institutional support rather than mere redirection. Dedicated Urban Informal Settlement Registration Programme: The Government of Zimbabwe, in partnership with development organisations including ActionAid Zimbabwe, should develop a time-bound, fully resourced national registration programme targeted specifically at informal urban settlements. This programme should replicate and scale the successes of rural birth registration campaigns.
- ▶ **Public Legal Education:** Sustained, community-level legal education campaigns should be conducted in Hopley to inform residents of their constitutional right to identity documentation, the registration process, available waivers, and

the consequences of non-registration. These campaigns should use accessible language and formats, including local languages, drama, and community radio.

- ▶ **Child Protection Integration:** The Department of Social Welfare should ensure that all children identified through the child protection system, including children in alternative care, children of incarcerated parents, and children born to child mothers, are referred for birth registration as a standard intake procedure.

5.3 Budgetary Recommendations

- ▶ Parliament should require the Registrar-General's Office to present, as part of its annual budget submission to the Public Accounts Committee, disaggregated data on registration rates in urban informal settlements, including Hopley, as a measure of constitutional compliance with Sections 56 and 81.
- ▶ A ring-fenced Civil Registration Access Fund should be established within the Vote of the Ministry responsible for civil registration, specifically to meet the cost of fee waivers, mobile clinic operations, and community attestation processes for indigent applicants.



6.0 CONCLUSION

The identity documentation crisis in Hopley is a constitutional crisis in miniature. It represents the systematic exclusion of thousands of Zimbabwean citizens from the full enjoyment of their constitutionally guaranteed rights due to structural failures in the civil registration system. The crisis is borne disproportionately by the most marginalised: the children of the poor, the bereaved, the mentally ill, the displaced, and the very young.

The legal architecture to address this crisis largely exists. Zimbabwe's Constitution is, on its face, among the most rights-protective in the region. The international instruments to which Zimbabwe

is party impose clear obligations. What is absent is the political will to operationalise these norms at the last mile: in the informal settlement, at the mobile registration desk, in the social welfare office, and before the parliamentary committee. ActionAid Zimbabwe calls upon the Government of Zimbabwe, the Parliament of Zimbabwe, and all relevant state institutions to treat identity documentation not as a bureaucratic formality but as the fundamental right it is. A right whose denial forecloses all others. The recommendations advanced in this brief are technically feasible, legally sound, and morally imperative. We urge their urgent adoption and implementation.







ActionAid Zimbabwe National Office

26 Divine Road Milton Park, Harare
Tel: +263-242-788123/5, 776127
Mobile: +263-772164449

Global Platform Zimbabwe (Youth Empowerment Hub)

87/3 Fernadale Drive
Waterfalls, Harare

Regional Office

281 Chimurenga Street, Rusape
+263-25-3537
+263-772395967

Email: info.zimbabwe@actionaid.org
Website: <https://zimbabwe.actionaid.org/>
Facebook: <https://www.facebook.com/ActionAidZimbabwe/>
Twitter: <https://twitter.com/ActionAidZim>
LinkedIn: <https://www.linkedin.com/company/actionaid-zimbabwe/>