

**AN EXPLORATION OF STATELESSNESS IN NAMIBIA: THE SIGNIFICANCE OF
LEGAL CITIZENSHIP**

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ABSTRACT

*This exploratory study looks at statelessness in Namibia, focusing on citizenship as a legal status. The study uses the theory of politics of citizenship to assess how the issue of statelessness fits into citizenship discourse in Namibia. It defines the problems presented by statelessness and highlights the urgency of addressing it. The study draws upon qualitative data like documentary analyses, books, journals and semi-structured interviews. Despite provisions on protection against statelessness, this study found that Namibian citizenship contains some grey areas. The findings of the study point to many cases of lack of legal documentation and indicate no significant number of statelessness cases. Evidentiary bureaucratic practices and primacy of *ju sanguinis* (descent) over *ju soli* (birth on the territory) in Namibian citizenship law act as obstacles for people in obtaining legal documentation. The findings suggest that the Angolan diaspora is primarily the population at high risk of statelessness or lack of documentation. However, a proposed legislation is being discussed to grant citizenship to the said population. The findings also suggest that Namibian politics of citizenship is dominated by policy-makers and that in their debates, statelessness avoidance has not been central. The findings of this investigation show that most people that lack legal documentation are excluded from many formal processes. Conversely, Namibian electoral law makes conditional provision for undocumented persons to vote but the same law prevents them from being appointed as elected office-bearers. The study recommends that further research be done to establish cases of statelessness within the undocumented population, focusing on lived experiences of undocumented persons. The study provides an important opportunity to advance our understanding of statelessness in Namibia.*

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Table 1: Break down of participants

LIST OF ABBREVIATIONS AND/OR ACRONYMS

- CA**- Constituent Assembly
- CRAI** - Citizenship Rights in Africa Initiative
- ENS** - European Network on Statelessness
- ERRC** - European Roma Rights Centre
- IDs** – Identity Cards
- IPPR** – Institute of Public Policy Research
- ISI** - Institute on Statelessness and Inclusion
- ISPO** - International Stateless Persons Organisation
- LAC** – Legal Assistance Centre
- MHAI** – Ministry of Home Affairs and Immigration
- NA** – National Assembly
- NSA** – Namibia Statistics Agency
- OHCHR** - Office of the United Nations High Commissioner for Human Rights
- PRP** - Permanent Residence Permit
- SWAPO** – South West People’s Organisation
- SWATF** - South West Africa Territorial Force
- UN** – United Nations
- UNHCR** - United Nations High Commissioner on Refugees
- UNHRC** - United Nations Human Rights Council
- UNICEF** - United Nations Children's Fund is a United Nations
- USA** - United States of America
- GRV** – General Registration of Voters

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DECLARATIONS

I, Johannes Ndeshimona Shekeni, hereby declare that this study is my own work and is a true reflection of my research, and that this work, or any part thereof has not been submitted for a degree at any other institution.

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CHAPTER 1

INTRODUCTION

1.1 Background of the study

Citizenship, a legal relationship between a person and state, gives membership status through legal instruments. In a system of modern states, states retain sovereign right on determining citizenship. Historically and epistemologically, exclusion has been central to the ideas of modern citizenship and for inclusion to take place, the initial exclusionary element should be addressed (Bhambra, 2015). Bhambra (2015; p 106) elucidated how our understanding of citizenship as inclusionary overlooks the exclusionary perspective:

Given that our dominant understandings of citizenship see it as a mechanism for producing *inclusion*, we fail to understand its beginnings as an institution fundamentally based on *exclusion*. Such exclusion cannot be regarded as a mere contingency. As a consequence, those who are excluded are doubly disavowed. Their exclusion is not properly acknowledged at the point of the emergence of the idea of citizenship, and the continuation of that exclusion in the context of the resources that citizenship provides is often seen as an aspect of their own flawed subjectivity, or their lack of modernity.

Although modern citizenship can be understood within four interconnected dimensions (membership; legal status; rights and participation), only two of these dimensions are relevant to this study. These two dimensions are: citizenship as a legal status and citizenship as a right. In the context of Namibia, the former is important as it is easy to

identify from the existing legal framework and the latter because it is also expressed in the prevailing literature, and because of the methodology chosen.

The United Nations High Commissioner on Refugees (UNHCR, 2014a, p 3) defines a stateless as a person “who is not considered as a national by any state under the operation of its law.” Statelessness can either be in a form of *de jure* (legally recognized) or *de facto* (in practice). The right of citizenship or nationality is important in the prevention of statelessness, and its negation can deprive people of the civil and political rights that amass from citizenship status (Chipepera and Ruppel-Schlichting, 2009).

There are various causes of statelessness. According to the UNHCR (2012), people become stateless through an incomprehensible series of sovereign, political, legal, technical or administrative directives or oversights such as administrative or procedural problems, and renunciation of one nationality without first acquiring another citizenship. Other causes of statelessness are: a failure to register children at birth, misunderstandings or conflicts of law, arbitrary deprivation of nationality of either individuals or groups by a government, and the transfer of territory or sovereignty which alters the nationality status of some citizens of the former state(s) (UNHCR, 2012).

Statelessness is increasingly recognised as a serious, world-wide problem and has affected many people globally. Manby (2011) asserts that most stateless persons never crossed any border. That tells us that we should not necessarily view statelessness as an immigration issue between and among different states. The effects of statelessness takes place at three levels (individual and the family, society and the state, and at the level of the international

community). As such, stateless people are often unable to enjoy basic rights leaving them marginalized, vulnerable and voiceless.

In spite of the adverse consequences associated with statelessness, the issue remains under researched (Tucker, 2013). The reasons for a lack of research on statelessness vary. Whereas contemporary researchers have not been direct in defining the problem of statelessness, its causes, patterns and consequences, previous academic work on statelessness has been more on statelessness laws and that on many occasions, researchers from other disciplines working on the same issue did not treat it as a statelessness issue (Manly and van Waas, 2014; Blitz and Lynch, 2011). It is this growing recognition of studying statelessness from multidisciplinary fields other than law that also inspired this study. Other reasons for the lack of comprehensive research are limited common understanding and solutions, as well as lack of political will (Kingstone, 2013).

The UNHCR received a global mandate in 1995 by the UN General Assembly to identify and protect stateless people, and to prevent and reduce statelessness. That is an expansion of its mandate from its initial responsibility to protect stateless persons who were refugees. The extension of its mandate is in pursuance of the 1954 Convention relating to the Status of Stateless Persons as well as the 1961 Convention on the Reduction of Statelessness. Such instruments provide minimum guidelines on how to treat cases of statelessness. The Conventions also make provisions for the deprivation of citizenship, even if that would result in a person becoming stateless. At continental level of Africa, important legal instruments relating to citizenship include the African Charter on the Rights and Welfare of the Child.

In 2014, the UNHCR launched the decade planned “#IBelong Campaign to End Statelessness” that is scheduled to run until 2024. During the campaign's duration, the UNHCR aims to eradicate statelessness by resolving existing situations and preventing the occurrence of new cases of statelessness. Governments are thus urged to form partnerships to contribute to the campaign. Further, states are urged to accede to and implement the international legal instruments on statelessness but few states have thus far complied (UNHCR, 2014a). Namibia is one of those that did not accede to the international legal instruments on statelessness. At various platforms, Namibia has been urged to agree to the international legal instruments on statelessness. Being a member of the UN, Namibia is supposed to render assistance to the UN in overcoming the global phenomenon of statelessness.

Non-governmental organisations such as the International Stateless Persons Organisation (ISPO), Institute on Statelessness and Inclusion (ISI), Citizenship Rights in Africa Initiative (CRAI), and the European Network on Statelessness (ENS) spearhead various efforts on awareness, promotion and protection of human rights of the stateless and are leading researchers on this phenomenon. Academically, Tilburg University in the Netherlands initiated an academic programme on statelessness which was later transformed into the ISI. The new Peter McMullin Centre on Statelessness at the Melbourne Law School aims at undertaking research, teaching and engagement activities aimed at reducing statelessness and protecting the rights of stateless people.

Statelessness in Namibia has been generally overlooked in the broader discourse on citizenship and particularly in empirical enquiries on cases of people with undetermined citizenship or that lack national identity documents. The cases of undocumentedness are

notable in the media and official reports, with some cases regarded as statelessness. The lack of citizenship is observed to have effects on how people access and/or exercise certain rights or public goods or services (Liswaniso, 2009; Tjihenuna, 2015; Dieckmann, Thiem, Dirx and Hays, 2014; Danielsson, 2015). However, a weakness with such analyses is that the link between the lack of legal documentation and the risk of statelessness is not examined in much detail. But it is important that we begin to consider the implications of paying too little attention to statelessness, as well as the inherent value of implementing policies that address it.

According to the UN Department of Economic and Social Affairs (1998), documents that are produced from the civil registration such as birth registration provide individuals with legal proof of identity, age, nationality and parentage. Such records further help decide the right to certain services and goods. It is, therefore, important for us to highlight the correlation between statelessness and civil registration by singling out birth registration. Although birth registration does not result in the conferment of citizenship and that lacking it should not be equated with statelessness, it is important for the prevention of statelessness as it acts as a basis to establish a legal record of where a child was born and who his or her parents are (UNHCR, 2013; ENS, n.d.). Thus, the lack of birth registration increases the chances of statelessness as it leaves them without nationality.

Harbitz and Tamargo (2009) suggest that the lack of documentation can be explained in two ways: as absolute and relative types. The former pertains to cases in which the person's birth has not been registered, and consequently has no birth certificate or identity document issued in his or her country of origin. The latter relates to circumstances in which the person's birth has been registered but he or she has lost the registration

document or did not receive it due to a registration error, and, therefore, never obtained a national identity document. Therefore, the undocumented population should not be viewed as stateless in whole, but that statelessness should be regarded as a sub-set of that population and based on the above difference, absolute lack of documentation is the most relevant to this study.

To understand statelessness in Namibia, it is necessary to review various aspects of Namibia's citizenship law. Namibian citizenship is entrenched in the country's Constitution, and augmented by the Namibian Citizenship Act, 1990 (Act 14 of 1990). While the two instruments contain provisions on protection against statelessness, such provisions only apply in certain circumstances. Further, neither of them contain a definition of who is to be categorised as a stateless person nor provide a framework on how to approach statelessness such as a determination and identification mechanism. As such, the instruments appear ambiguous around statelessness.

Several attempts have been made to amend Namibian citizenship law. For instance, two statutes conferring Namibian citizenship to specific descendants of persons who fled Namibia before 1915 owing to persecution by the colonial government, and an amendment to the Constitution to extend the waiting period for acquiring Namibian citizenship by marriage. Another attempt is the Namibian Citizenship Amendment Bill 2016 aimed at overriding a Court judgment on the right to acquire Namibian citizenship. But even with such developments, there seems to be little consideration of statelessness. Such omissions have far reaching implications on the stateless as they are not able to obtain their citizenship status. In return, lack of citizenship deprives stateless people access to other rights that are accessible to those with citizenship status.

Namibian citizenship law is viewed unusual in that detailed provisions are contained in the constitution (IPPR, 2011; Erasmus, 2010; Chiopera & Ruppel-Schlichting, 2009). Thus, if there is a conflict between the Constitution and any other subordinate law, the constitution prevails. Consequently, it could translate into limitations on the innovation of the legislators owing to the fear of contradicting the supreme law. Despite the nature of Namibian citizenship, debates from the Hansards indicate that statelessness was discussed in some of the debates, but was not placed at the centre of such debates.

The current study is exploratory in nature and it combines theoretical investigations of statelessness and citizenship with empirical field research on the policy environment of citizenship in Namibia. Through qualitative documentary analyses and in-depth interviews, a theory of politics of citizenship is used to help us understand and situate how the issue of statelessness fits in Namibian citizenship discourse.

1.2 Statement of Problem

Statelessness often results from the framing and implementation of citizenship laws (UNHCR, 2014c). According to Manby (2011), Namibia has made several once-off efforts to address the gaps in the citizenship law, and that about 900 people were granted Namibian citizenship in 2011 after they were found to be at risk of statelessness. Despite such findings, the country's citizenship legal framework appears to lack a comprehensive protection against statelessness and thus it calls for our attention. Further, the perspective of statelessness is often under-researched in the existing citizenship literature (Dieckmann, Thiem, Dirkx & Hays, 2014; Erasmus, 2010; UNICEF Namibia, 2012; Chiopera & Ruppel-Schlichting, 2009; IPPR, 2011; Liswaniso, 2009; Danielson, 2015).

Given the gaps in both the literature and citizenship approach, our goal in this study is, therefore, to address them by defining the problems that statelessness presents and demonstrating why it is a serious concern.

1.3 Research Questions

This study aimed to address the following research questions:

1. What extent is and/or magnitude of the problem of statelessness in Namibia?
2. What can politics of citizenship in Namibia tell us about the creation and perpetuation of statelessness in the country?
3. How does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented in/from essential public services and political processes in the country?

1.4 Significance of the study

The findings from this study provide an important opportunity to advance our understanding of statelessness in Namibia for different levels. Firstly, for policy making as they are meant to be a constructive contribution to the search for practical solutions for a comprehensive citizenship regime by considering statelessness in the making of citizenship policies. Secondly, for scholars that may embark on conducting studies related to the topic. Lastly, for the general readership aiming to gain insight on the subject.

1.5 Limitations of the study

The study does not claim to be exhaustive because some of the identified respondents did not avail time to meet up with the researcher, hence the views are not comprehensive. The

study benefited from the information obtained from the Hansards. However, the researcher could only access information from the National Assembly as the information from the National Council is not available publicly.

1.6 Delimitations of the study

The study was exclusive of stateless people because the focus of the research was meant to look at the policy environment of citizenship which stateless people might have little understanding. Additionally, the researcher considered methodological challenges associated with the topic as outlined by the ISI (2014), such as determining and identifying those that are stateless, unwillingness or lack of awareness to self-identify as stateless, and protection considerations in the identification of statelessness, amongst others.

Unlike the definition of *de jure* statelessness, which is provided for in the international instrument on statelessness (the 1954 Convention), *de facto* statelessness proves difficult to identify (Buitrago, 2011). The study was thus undertaken looking mainly at *de jure* statelessness instead of *de facto* statelessness because of the weakness associated with the latter.

As citizenship and nationality are often used interchangeably, citizenship took prominence in this study as defined in the following chapter. The use of nationality in the study was made necessary when citing sources. For the purposes of this study, citizenship is conceived mainly as a legal status and also as rights despite its broad understanding of other interconnected dimensions such as membership, and participation. This choice is motivated by the limited information related to statelessness that was available to the researcher at the time of proposing the research.

1.7 Ethical consideration

The researcher obtained information from participants by devising an instrument with brief information about the research, a breakdown of how the participants would partake in the study and the implications thereof. The brief information was communicated in a timely manner to the majority of the participants. The devised instrument did not involve participants signing it to affirm their consent. For the purpose of anonymity, the researcher used pseudonyms for the research participants. Information obtained from the interviewees was digitalized in password-protected computer files and would be deleted once the requirements of the study are met and when the study is complete.

CHAPTER 2

LITERATURE REVIEW

2.1 Introduction

This chapter surveys the writings on the deprivation of citizenship which could result in people not being recognised as citizens of any state or being stateless. The literature contributions offer an insight into the problem of statelessness globally by illustrating some key themes and debates to highlight the importance of addressing statelessness. The reviewed literature also provides an understanding of the theory underlying the study (the politics of citizenship). Finally, this chapter interrogates discourses on Namibian citizenship to further probe how statelessness has been accommodated.

2.2 What is citizenship?

Citizenship and nationality are often conflated in international law to describe the legal relationship between the state and the individual (Tucker, 2013; Manby, 2015). However, for the purpose of this study, we consider a difference between the two concepts. On the one hand, citizenship is defined as the status conferred to a member of a political community through legal instruments for the fulfilment of civil rights, thus used as a legal tie (within the confinements of the international law) between an individual and the state through political participation which forms the basis for a person to access certain rights (Carvajal, 2013; Tucker, 2013, Niikondo, 2008).

Conversely, nationality refers to features, a bond or to membership that links people with commonalities such as descendants, language, culture, territory, religion, customs,

identity, and traditions to a common purpose through actions established by the state (Carvajal, 2013; Tucker, 2013; Assal, 2011; Niikondo, 2008). Moreover, Carvajal (2013); Tucker (2013) maintain that the meaning of nationality presents some difficulties as it tends to be dependent on individuals' self-definitions. Although there are overlaps in the meanings of the two concepts, citizenship took prominence in the current study because of the weaknesses in the concept of nationality. However, the term nationality is used in instances where sources of information are quoted or directly cited.

Scholars such as Tonkiss and Bloom (2015); Krasniqi (2010); Stokke (2017); Stoke (2013), identify three interconnected aspects of citizenship. Firstly, citizenship is based on *membership* which implies that citizenship confers on an individual the identity of membership in the citizenry. Secondly, citizenship as a *legal status* denotes formal state membership and rules to access it. It is also regarded as the 'right to have rights' as it gives access to civil, political and social rights, and it dictates the responsibilities of the holder towards the state. Thirdly, citizenship is viewed as a set of *rights* that are connected with membership and formal citizenship status. The last aspect is *participation*, which symbolises the active participation of the citizenship holder in the governance of the state. Within the scope of the current study, citizenship as a legal status and as rights is considered.

2.3 The politics of citizenship

The politics of citizenship as a theory is underlying this current study. Pinson (2008) defines politics of citizenship as a "...discussion of, and a struggle over, the meaning of scope of the community in which one lives" (p. 202). It has its genesis in the issue around

membership (who belongs and who does not). Similarly, Ní Mhurchú (2014) considers politics of citizenship as a trade-off between the exclusive and inclusive perspectives of citizenship. Pinson (2008) maintains that the citizenship regime is both exclusionary (particularistic) and inclusionary (universalistic). That is, because it promotes principles of universality by implying that all people should be given citizenship, yet the process of determining who is a citizen and who is not entails an exclusionary mechanism.

Cole (n.d.) asserts that it is the space and content of citizenship that defines the space and content of statelessness. Blitz & Lynch (2011); Blitz (2009) note that there are elements of direct and indirect discrimination and inequality, on the basis of nationality, in all forms of statelessness, and hence the need to understand the mechanisms which create statelessness and perpetuate deprivation. Direct discrimination is formally recorded in law which results in the denial and deprivation of citizenship based on grounds such as gender, race, ethnicity or religion.

Indirect or structural discrimination relates to the settings of how national citizenship policies are designed and implemented, as well as to administrative barriers which continue to create new cases of statelessness and deny people an opportunity to benefit from citizenship. Said differently, indirect discrimination refers to requirements such as language proficiency, political restructuring, a registered address, ownership of property, or a specific document, that place a particular group at a disadvantage of acquiring a citizenship (Kochovski, 2013, Blitz, 2009).

Stokke (2013) claims that common politics of citizenship are political agendas and strategies by non-elite forces [such as migrant or human rights groups] for inclusion in

communities of citizens and for citizenship rights. Stokke (2013) further opines that there are two intertwined modalities of citizenship politics. That is, the politics of membership (the politics of meaning in identity discourses) and politics of rights (the organizational dimension of citizenship politics). Therefore, the ways in which states determine membership and access are not always constant as they are continuously opposed and reshaped through political struggles (Blitz and Lynch, 2009; Glenn, 2011).

Shevel (2009) found that when legislating citizenship laws, policymakers in new states lack knowledge about the issue which inhibits their choices in sourcing citizenship policies. Unlike Shevel (2009), Manby (2011; 2009) contends that some new states adopted citizenship laws based on models from the various colonial powers, but using tailor made models focusing on accommodating their own citizens (colonial powers) rather than the colonies'. According to Nkambule (2012), when the first democratic government assumed power in South Africa, given that country's historical past of apartheid, its approach to citizenship was meant to be universal in an attempt to create a new citizenry which would accord everyone equal access to citizen rights.

Generally, two principles are used as a basis to confer citizenship. Whereas citizenship can be conferred or acquired on a basis of *ju soli* (whereby an individual is granted citizenship on a basis of being born in a particular country which may be conditional or automatic), citizenship can also be conferred on principles of *jus sanguinis* (whereby an individual qualifies for citizenship because his parents are or were citizens) (LAC, 2017; Manby, 2015). However, different scholars note an increase of autochthony (which implies that one is entitled to citizenship because of ancestral connection to the soil) in the discourse of citizenship (Bøås and Dunn, 2013; Manby, 2015; Geschiere, 2011).

Blitz (2009), argues that the extent to which race and ethnicity are given prominence over civic criteria, or vice-versa, in the design of exclusive nationality and citizenship laws is one of the chief concerns for the avoidance and reduction of statelessness. Consequently, nationality policies built on *jus sanguinis* rather than on *jus soli* have made the incorporation of minorities difficult. For instance, due to the common adoption of *jus sanguinis* over *jus soli* citizenship among many European Union member states, being born in Europe does not automatically lead to citizenship entitlement (Sturkenboom and van Waas, 2016). As such, children that are born to stateless parents or to those that hold citizenship, but are unable to pass it on to them, are at risk of statelessness.

Stoke (2013) suggests that the degree and content of citizenship has come to be regarded as a matter of politics and power. To illustrate, citizenship law in Africa has been used as an instrument by rivals to delegitimize or exclude potential challengers by depriving them of citizenship as a result of strict requirements to run for presidency or other political office (Honig, 2016; Manby, 2015; Bøås & Dunn, 2013; Manby, 2009). For example, to be eligible to run for presidency, one should be a citizen by birth, or descent or that both his/her parents should be born in that specific country. Notable cases of political exclusion are those of Alassane Ouattara in Côte d'Ivoire, John Modise in Botswana, and Kenneth Kaunda in Zambia.

Additionally, the passing of the Nationality Act 1 of 1957 and Deportation Act 19 of 1957 in Ghana resulted in citizenship deprivation to some people of foreign origin (people of Zongo) and to cases of deportation (Kobo, 2010). That was out of concerns by the ruling politicians that the vote of the Zongo community could result in them losing

power. At the same time, some people of Zongo were elevated to high positions as a way of seeking to win their support.

2.4. International legal framework on statelessness

There are two international legal instruments guiding the issue of statelessness. The first one is the 1954 Convention relating to the Status of Stateless Persons which establishes the international protection of stateless persons and is described as being the most comprehensive in the classification of the rights of stateless persons (UNHCR, 2014a). Of utmost importance in the 1954 Convention is the definition of a statelessness, which refers to a situation whereby a person “is not considered as a national by any State under operation of its law” (UNHCR, 2014a, p. 3). The Convention also prescribes the minimum treatment that stateless people could be afforded such as that they should be allowed to access and exercise some of the rights enjoyed by citizens or other groups of non-nationals in order to lessen the burden of challenges they encounter daily. Nonetheless, the 1954 Convention is clear that individuals considered to have committed certain crimes should be excluded from gaining protection. These crimes are, amongst others, crimes against peace, serious non-political crime abroad and crime against humanity.

The second international legal instrument is the 1961 Convention on the Reduction of Statelessness. It established rules relating to the conferral and non-withdrawal of citizenship to prevent cases of statelessness and thus giving effect to Article 15 of the Universal Declaration of Human Rights which calls for the right to a nationality to be extended to everyone (UNHCR, 2014b). The 1961 Convention recognises that while states retain the right to decide their nationality laws, with exception in cases where, for

instance, children would be rendered stateless (Manby, 2009), it should be done in accordance with international standards of nationality, including the assertion that statelessness should be avoided. Therefore, the adoption of the 1961 Convention by states allows them to contribute to the reduction of statelessness.

Despite the importance of these Conventions, the lack of accedence by many states is bemoaned (UNHCR, 2014a; Manly, 2012; Blitz & Lynch, 2011). The UNHCR is tasked with the role to promote and strengthen the relevant international legal instruments and promote accession to them. Countries thus need to accede to and implement those instruments.

2.5 *De jure* and *de facto* statelessness

There are two forms of statelessness. Under the 1954 Convention on statelessness, *de jure* (legally recognized) statelessness occurs when people are not considered as nationals under the laws of any country (Blitz, 2009). The second one, which is not catered for in the 1954 Convention, is *de facto* (in practice) statelessness which is when a person is formally granted a citizenship but such citizenship is ineffective (Buitrago, 2011; Massey, 2010; Tucker, 2013). For Buitrago (2011), *de facto* statelessness proves difficult to identify.

The view that *de facto* statelessness is difficult to identify is supported by Balaton-Chrimes (2009). She found that refugees, residents in a weak or failed states, and rural dwellers in Africa seems to lack fulfilment of rights (citizenship test failure). According to Balaton-Chrimes (2009), instead of limiting ourselves to the concepts of either citizen or stateless, we should re-conceptualise the politics outside of the state-citizen mold,

which might discover non-state based identities such as clans in Somalia, the Karretjie in South Africa or the Tuareg in West Africa.

2.6 Consequences of statelessness

Harbitz & Tamargo (2009) contend that a common and determining factor of exclusion is the lack of an identity document. The identity document verifies one's identity to be able to access rights, benefits, and services. Similarly, Blitz (2009) argues that the lack of an effective nationality protracts obstacles to the stateless people such as being unable to work in the formal economy, have legal residence, travel, hold elected office, access basic health services, vote, and enjoy the protection and security of a country, among others. Apart from the consequences at an individual level, the UNHCR (2012) adds that statelessness impacts on society, the state, and international community. In society and state levels, social exclusion breeds desperation, violence and crime and as such, it could escalate into national instability and internal conflict.

Statelessness' consequence on the international community highlights its nexus with displacement. According to Albarazi and van Waas (2016), discrimination faced by stateless persons may coerce them into fleeing their places of habitation and cross into other countries. Likewise, the UNHCR (2012) holds the view that the failure of one state to grant nationality to a person or group, becomes a potential problem for other states. Consequently, displacement circumstances increase the risk of statelessness owing to inconsistencies or conflict in citizenship laws of the country of origin and the country of refuge. Further, Albarazi & van Waas (2016) argue that the displaced community could be at risk of statelessness as a result of an absence of a [an effective] civil registration

system in the country hosting it, lack of civil documentation prior to displacement and/or loss during displacement, and forged documentation.

2.7 Stateless persons in the national statistics and why statelessness is overlooked in citizenship policies

Manly (2012), found that globally, stateless persons are generally not accounted for in national statistics chiefly because countries do not have statelessness determination procedures or other mechanisms. Also, criteria used in the registration of stateless persons are inconsistent with the international definition of a stateless person or are distorted to cater for other non-citizens such as stateless refugees. Thus, stateless people remain unaccounted. By the end of 2015, it was estimated that about 10 million people were stateless compared to 3.7 million that were reported by individual countries (UNHCR, 2016). In 2014, about 721,303 persons in sub-Saharan Africa were stateless, but many remained unmapped and thus the number of persons affected could be higher (ISI, 2014). In the absence of population figures and information on the profiles and protection needs of stateless persons, Manly (2012) argues that it becomes difficult to develop effective responses.

Previous research has indicated that the study of statelessness emerged as a study of nationality law focusing on different interpretations of international and national standards and norms related to statelessness (Manly & van Waas, 2014). However, human conditions are central to statelessness as stateless people are not only affected on their legal status but also their ability to exercise their rights. Manly & van Waas (2014) thus

suggest that there is a need to explore statelessness from interdisciplinary perspectives and evolve beyond the study of statelessness law in order to broaden our understanding.

For Blitz & Lynch (2011), the issue of statelessness has not been directly addressed among contemporary authors. To promote a better understanding of the nature and scope of the problem of statelessness, the UNHCR has called for actions such as, conducting and sharing research at different levels such as academic institutions, among policy experts, and government institutions (Manly, 2012).

Kingstone (2013) found that statelessness is unclear to many people because of heterogeneity: it lacks commonly recognized global solutions, and the necessary political will. Similarly, the ISI (2014) attributes the inattention of statelessness to challenges associated with identifying the stateless. Amongst others, is the vagueness of the definition of statelessness, gaps in data collection tools: lack of comprehensive or reliable data, and the unwillingness or lack of awareness to self-identify as stateless.

2.8 Birth registration, and politics of evidence as an obstacle to lack of access to civil registration and documentation

It has been established that statelessness and birth registration are inextricably linked. According to the UNHCR (2013); ERRC, ISI and ENS (2017), children who are not registered for birth or undocumented are at risk of becoming stateless as they may have difficulties proving their links to a state, as birth registration establishes a legal record of where a child was born and who his or her parents are (the child's identity). Cody (2009) claims that a birth certificate confirms a child's age, nationality, place of birth and parentage, and that many countries treat it as a primary identity document, prevailing over

any other. When applying for a passport, driving license or national identity card, a birth certificate is often a requirement. Thus, when displacement occurs, birth registration acts as an important protection tool.

For ERRC, ISI & ENS (2017), birth registration is the leading legal requirement for citizenship registries and that undocumented parents are often prevented from registering their children's births, thereby risking statelessness to be passed on from generation to generation and perpetuated. However, it is also important to recognise that lack of birth registration itself is not synonymous with statelessness, but it enhances the risk of becoming stateless (UNHCR, 2013; ESN, n.d.; ERRC, ISI, & ENS, 2017).

Harbitz and Tamargo (2009) show a fine distinction between two types of lack of documentation (absolute and relative). The former pertains to cases in which the person's birth has not been registered, and consequently has no birth certificate or identity document issued in his or her country of origin. The latter relates to circumstances in which the person's birth has been registered but he or she has lost the registration document or did not receive it due to a registration error, and, therefore, never obtained a national identity document.

In their recent study on statelessness on the Romani (one of Europe's largest minority groups and also known as the Roma) population, ERRC, ISI, & ENS (2017) found that "one of the main causes of (risk of) statelessness amongst the Roma was and continues to be the lack of birth registration, or lack of proof thereof." (p. 22). The main factor influencing such lack of birth registration is the intergenerational lack of documentation and statelessness.

Recent evidence suggests that evidentiary obstacles prevent undocumented persons from accessing civil registries, thereby producing statelessness rather than citizenship (ERRC, ISI, & ENS, 2017; Bhabha, 2017; Flaim, 2017). For instance, in the states where the Roma lives, the first burden is embedded in the process of verifying the statelessness of a person, in line with the UNHCR's description of evidence of personal circumstances. That include, amongst others, identity documents; travel documents; applications to acquire nationality; naturalization certificates; nationality renunciation certificates; medical certificates/records; and documents pertaining to residence (Bhabha, 2017).

The other barrier relates to stereotypes or anti-Roma policies, a practice that resulted from populist xenophobia in the West combined with the recent economic downturn. Flaim (2017) associated the failure of the undocumented persons to fulfil the evidentiary requirements to some of the findings by Albarazi & van Waas (2016) above, among others.

2.9 Contextualising politics of citizenship and statelessness in Namibia

2.9.1 An assessment of Namibian citizenship legal provisions in relation to statelessness

To enhance our understanding on matters surrounding statelessness and citizenship, it is worthy to assess the legal provisions. Article 4 of the Namibian Constitution regulates the acquisition and the loss of citizenship. According to that Article, citizenship is conferred by birth, descent, marriage, registration, naturalisation, and through legislation that confers citizenship on grounds of someone with special skills or experience. The Constitution also spells out conditions under which a person loses their citizenship. Article

15 of the Constitution affirms the country's position on citizenship by declaring citizenship acquisition as a right for children. Details on citizenship are augmented by the Namibian Citizenship Act, 1990 (Act 14 of 1990) to further regulate the acquisition or loss of Namibian citizenship in pursuance of the provisions of Article 4 of the Namibian Constitution.

Both the Constitution and Namibian citizenship legislation have important provisions on the protection against statelessness. The Constitution, under Article 4 (1) (d), provides that Namibian-born children (after the date of Independence) whose fathers or mothers are ordinarily residents in Namibia but do not qualify for citizenship by birth [under Sub-Article (c)], should not be deprived of Namibian citizenship. That is if their fathers or mothers are not then persons: enjoying diplomatic immunity in Namibia, career representatives of another country; members of any police; military or security unit seconded for service within Namibia by the Government of another country; or illegal immigrants [Sub-Articles (aa), (bb), (cc) and (dd)]. However, Sub-Articles (aa), (bb), (cc) and (dd) would not apply if such children would otherwise be stateless.

Conversely, Section 9 (1) of the Namibian citizenship legislation empowers the Minister of Home Affairs to deprive, by order, any Namibian citizen by registration or naturalisation his/her Namibian citizenship. Amongst others, citizenship deprivation takes place if the citizenship was obtained illegally; or if the person has been sentenced outside or in Namibia to imprisonment for a year without an option of a fine. The person may also be deprived of citizenship if he/she was a prohibited immigrant prior to assuming Namibian citizenship or a citizen of a foreign country who has been deprived of that country's citizenship or when outside Namibia has shown to be disloyal towards Namibia

and has assisted an enemy during any war. However, the legislation provides that deprivation of citizenship should not take effect if the person would be rendered stateless.

Some authors observe that Namibian citizenship is dealt with in much detail in the Constitution, an extent usually found in separate legislation (Erasmus, 2010; IPPR, 2011; Chipepera & Ruppel-Schlichting, 2009). The reasons for greater details in the Constitution are attributed to the sensitivity pertaining to citizenship at Independence as all Namibians were linked to South African statehood, thus such details are meant to guarantee citizenship as a right since Namibia was a new state, and that it had no citizens. The provisions on citizenship is thus seen as a trade-off between the historical links Namibians had to South Africa and Germany on the one hand, and an aspiration for a new state (Namibia) on the other.

Manby (2011) singles out Namibia as one of the countries which made an effort to integrate pre-independence migrants or displaced communities that could not be catered for at independence. One of them is a joint identification exercise with Angola, South Africa and Zambia, which started in 2010 and ended in 2011 among undocumented populations at risk of statelessness in its border regions. The exercise resulted in the granting of Namibian citizenship by naturalization to more than 900 persons. This finding was supported by the LAC (2017) which recognises that the exercise was reported as successful and recommends that it should be regularised as a standard procedure for identifying stateless persons.

To fill the gaps in Namibian citizenship, several attempts have been made to amend both the Constitution and supplementary legislation. Firstly, the Namibian Constitution's

Second Amendment Act (2010), which included the extension of the waiting period of acquiring Namibian citizenship by marriage to a period of not less than ten years from a period of not less than two years of ordinarily residing in Namibia. The Second Amendment also extended the waiting period required for non-Namibian citizens to acquire citizenship from a period of not less than five years to not less than ten years of continuous residence in Namibia before applying for Namibian citizenship by naturalisation.

Secondly, the Namibian Citizenship Special Conferment Act, 1991 (Act 14 of 1991) and Namibian Citizenship (Second) Special Conferment Act, 2015 (Act 6 of 2015) were enacted to confer Namibian citizenship upon certain descendants of persons who fled Namibia before 1915 owing to persecution by the colonial government. Lastly, the Namibian Citizenship Amendment Bill 2016 meant to amend the citizenship legislation, following a court ruling that children born in Namibia by foreign parents are entitled to Namibian citizenship. The 2016 Bill was meant to exclude children of non-Namibian parents who live in Namibia on temporary permits from acquiring Namibian citizenship by birth (Immanuel, 2016a; Muraranganda, 2016).

Further, under the Namibian Citizenship Amendment Bill 2016, children born in Namibia to non-Namibian parents would only be entitled to Namibian citizenship if their parents had permanent residence, but it was widely rejected and eventually withdrawn (Menges, 2016; Immanuel, 2016b; 2016c). In all the above mentioned legal instruments, there is no specific stateless determination mechanism to identify and assist the stateless. Instead, the mechanism in place is for establishing the identity and citizenship status of the applicant

for the purpose of birth registration and applying for the IDs, a view maintained by LAC (2017).

Chipepera & Ruppel-Schlichting (2009) criticise the manner in which Namibian citizenship preoccupies itself with determining children's citizenship status based on their parents'. They question the rationale of provisions such as Section 10 (1) in the Namibian Citizenship Act, 1990 (Act 14 of 1990) which stipulates that unmarried children under the age of 18 that obtained Namibian citizenship by naturalisation or registration would lose the citizenship the moment their parents lose or are deprived of their Namibian citizenship. Thus, they note uncertainty in the meaning of the word ordinarily resident in the citizenship legal framework as it appears to be inconsistent in that respect, and that it might result in the inconsistent application.

A detailed examination of statelessness in Namibia by the LAC (2017) draws our attention to gaps in Namibian citizenship law. Under citizenship by birth, the first possibility of statelessness arises when a Namibian born person cannot be recognised as a Namibian citizen other than the four exceptions to ordinary residence in Article 4 (1) (d) of the Namibian Constitution. Second, potential statelessness exist because of gender discrimination in other countries' citizenship laws that limit women in transferring nationality to their children. For instance, a child born in Namibia to a mother (who is not an "ordinarily resident") holding a citizenship of Libya, Somalia, Algeria, Liberia, Malaysia, and Lebanon, amongst others, may only obtain citizenship of such countries if the father is a citizen.

According to the LAC (2017), the third gap relates to instances where parents cannot pass on citizenship to their children because they are also stateless. For instance, a person not of “negro descent” born in Liberia or Sierra Leone would likely be stateless and as such, his or her children born in Namibia would also be stateless if she or he is not an ordinary resident. Fourth, a Namibian born child could be stateless if his or her parents are also born outside their country of origin such as Lesotho, Gambia, Tanzania, Malawi and Zimbabwe (if the birth was not registered in Zimbabwe), if none of the parents was an “ordinarily resident” in Namibia. The last case under citizenship by birth that gives rise to statelessness is when non ordinary resident parents did not successfully register their child’s birth at their country’s consular for citizenship.

Other than gaps identified under citizenship by birth, Namibian citizenship law is silent on foundlings who are in no capacity to account for the identity of their parents or their place of birth (LAC, 2017). However, to address this problem, there is a draft National Population Registration Bill underway, meant to provide birth certificates to abandoned children which is compliant with Article 2 of the 1961 Convention (LAC, 2017).

2.6.2 Namibia’s commitment to international instruments

It has been observed that Namibia has committed to some international and regional instruments that have relevance on statelessness or that advocate for right to nationality. According to the MHAI and NSA (2015); OHCHR (n.d.), Namibia has ratified the Convention on the Rights of the Child; African Charter on the Rights and Welfare of the Child; International Convention on Civil and Political Rights; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the

Elimination of All Forms of Racial Discrimination; Convention on the Rights of Persons with Disabilities; and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa.

Despite the above commitments, Namibia has not acceded to any of the international statelessness Conventions, despite being encouraged to do so at various platforms, both locally and internationally (Hubbard and Cooper, 2017; UNHRC, 2016, 2013, 2011; Nakuta, 2012; UNICEF Namibia, 2012; Manby, 2011). The reluctance is despite the country's pledge to work towards the eradication of statelessness, especially for those who were brought in the country through historical facts (Nunuhe, 2013). If Namibia was to accede to the international instruments, only some minor adjustments to Namibian law are needed (LAC, 2017).

2.6.3 Causes of undocumentedness and/or statelessness

Much of the available literature related to statelessness in Namibia deals with the question of undocumentedness. Despite the progress made regarding civil registration, concerns have been raised about the risk of statelessness among the children of undocumented migrants (UNICEF Namibia, 2012). Investigations into barriers to birth registration by MHAI (2010); MHAI & NSA (2015); UNICEF Namibia (2012) discovered various factors. Among others, non-birth registration occurs due to absent fathers; lack of identification documents by parents (especially those in areas bordering with other countries); populations that live in remote areas and nomadic populations that are far from registration points; MHAI administrative and financial constraints. Other factors are abandoned or orphaned children; fear of being investigated, lack of knowledge on the

importance of a birth certificate; and unclear guidance from the existing legislation and unclear standard operating procedures.

Another cause of undocumentedness or statelessness in Namibia emanates from apartheid laws and practices that were in place before independence:

This is in part a continuing legacy of the apartheid system which exercised racial discrimination in the birth registration system. It can also be a problem for children born to parents in isolated rural areas who never acquired documents, or to parents who hold only pre-independence identity documents which do not suffice to indicate citizenship (LAC, 2017, p. 5).

Up until independence in 1990 it was not compulsory for the black population groups to register births and deaths...During the 1990s, mass registrations were done, to ensure that the births of all adults and children were registered. Unfortunately, many children are today still registered late (MHAI & NSA, 2015, p. iii).

2.6.4 Risk of statelessness in the Angolan diaspora

Danielsson (2015) asserts that many Angolans have migrated to Rundu, Namibia during the 1970s and after independence in 1990. Danielsson (2015) found that “migrants acquiring Namibian citizenships and thereby rights, did redefine their national identity to a greater extent than those denied documentation as their agency has become curtailed, leaving this group in an identity-limbo” (p. 86). Dieckmann, Thiem, Dirx & Hays (2014) found that a high number of San people living in Nǃa Jaqna are not recognised as

Namibians since they originate from Angola, some of whom moved to Namibia in 1975. Tjihenuna (2015); Liswaniso (2009) claim that hundreds of elderly persons living in Divundu and Opuwo and surrounding areas were at risk of statelessness as they were not recognised as citizens of either of the countries. The elderly migrated from Angola to Namibia while they were children.

In the report of its Special Rapporteur on extreme poverty and human rights, the UNHRC (2013) raises concerns with the status of orphan children born in Namibia to parents of Angolan origin. Often, such children are not registered at birth and have no proof of parentage and therefore rendering them to be at risk of becoming stateless because of their inability to demonstrate that they are Namibian or have acquired Angolan or another nationality.

The UNHRC (2013) claims that orphans born in Namibia to parents of Angolan origin are unable to receive any benefits or have access to public services. Additionally, because of their lack of citizenship and documents, some migrants from Angola “feel discriminated and marginalized, deprived of the opportunities that other citizens have, even those of Angolan origin that were fortunate to acquire Namibian citizenship” (Danielsson, 2015, p. 59).

2.5.5 Other cases of undocumentedness, risk of statelessness, and their impact

The Namibian law on electoral matters presents us with inclusion and exclusion scenarios for undocumented persons. In terms of Section 22 (2) (a) of the Electoral Act, 2014 (Act No. 5 of 2014), a person who is not a Namibian citizen is not entitled to be registered as a voter. The legislation stipulates that any applicant as a voter should submit proof of his or

her identification and that he or she must be a Namibian citizen. Conversely, the same law allows for applications for registration as a voter to be accepted on a basis that statements under oath or affirmation be made by two other registered voters furnishing the proof of the identity of the applicant [Section 26 (4) (a) (iv)]. The provision allows for potential voters that would have been excluded from being registered as voters on the basis of not being a Namibian citizen to be registered. The Electoral Commission of Namibia (2016) indicates that of the total number (1,162,366) of registered voters on the country's general registration of voters (GRV) in 2014, 106,313 of them registered through sworn statements in respect of citizenship.

Amupanda (2017) announced a discovery of community members of Otanana Village of the Eengodi Constituency, some of whom were as old as 78 year old, that did not possess national identity documents, yet some of them were in possession of voters cards. The same observation was made in Mukwe Constituency when it was reported that because there were witnesses to testify that such people are indeed Namibian, they were eligible to apply for voters cards (Tjihenuna, 2015).

The lack of identity documents proves to have negative effects on those that do not have them. For instance, a man believed to be a Namibian citizen was detained by immigration officials (Tjihenuna, 2016). The man was detained without charges laid against him or court appearance, on the grounds that his name was not on the civil registration but was in possession Namibian voter's card. Another effect is that as a result of not possessing identity documents, many old people that cannot prove that they are Namibians are unable to receive pension grants because only Namibians are eligible for the pension (Dieckmann, Thiem, Dirkx & Hays, 2014; Tjihenuna, 2015; Liswaniso, 2009). Further, a

study by Kiremire (2010) on human trafficking for sex in Namibia found that many victims of human trafficking for sex lacked formal travel documents. In that study, only 15 (22.1%) of the women and young adolescent girls had formal travel documents compared to 53 (77.9%) who had none.

2.10 Conclusion

The evidence presented in this chapter suggests that the problem of statelessness is a global phenomenon that has affected many people. It is further noted that statelessness cannot be understood outside the politics of citizenship. The chapter demonstrated that citizenship is contested and that it keeps changing. Such ways have both elements of exclusion and inclusion in them. The significance of focusing on statelessness is that whereas attempts are made to exclude some people from accessing a specific citizenship, it should not leave them stateless either and that mechanism should be established to protect them.

Despite the strides made in addressing the gaps in Namibian citizenship law, statelessness avoidance appears not to have been central to them and that there is no permanent mechanism dealing with possible cases of statelessness. The literature points to weaknesses in the legal framework and in its application, especially in the cases of lack of documentation, which poses risks of statelessness. Cases of people being denied access to services such as social grants due to lack of citizenship documents are some of the consequences noted. Interestingly, some people that lack citizenship are able to register to become voters thus exercising their right to vote.

CHAPTER 3

METHODOLOGY

3.1 Introduction

This chapter discusses the methodology used in conducting the study. The chapter defines the research design employed, the sample which informed the study and the population to which the outcome would apply. The research instruments used to obtain the data are explained, the procedure followed to obtain the data, and how the data was analysed. An account of the ethical principles employed is also given in this chapter.

3.2 Research Design

This study takes the form of a case study of statelessness in Namibia. The methodological approach taken is a qualitative methodology which is exploratory in nature.

3.3 Population

On grounds of confidentiality, the researcher devised an instrument of allocating letters to describe the group from which the participant is, or working on behalf of, and the type of organisation they are working for. The following letters refer to the type of organisation/individual:

***NONO** = Nongovernmental organisation; **AC** = Academic Community; **LGP** =
Local government politicians; **GAOM** = Government Agency/Office/Ministry*

At some points, these letters are further broken into sub units to differentiate individual views from the same organisation. For example, GAOM-1(A) (ii) indicates that the view

is from the first Government Agency/Office/Ministry approached (1), the first individual approached (A) and, the second person approached, found at the same place as the first individual (*ii*). In instances where a direct quotation from a participant is referenced, the above letters are used as sources. Approximately, the total population of the study is 2848 (1744 - GAOM, 33- NONO, 950- AC, and 121 – LGP).

3.4 Sample

The study utilised purposive sampling. The chosen sample was drawn to increase the chances of answering the research questions. A wide range of actors and organisations were considered for participation in this study. Table 1 below provides an overview of actors and organisations interviewed for the reader to appreciate the range of participants.

Table 1: Break down of participants

☺ = One interview	
Nongovernmental organisation	☺ ☺
Individual Academic	☺
Local government politicians	☺ ☺ ☺ ☺
Government Agency/Office/Ministry	☺ ☺ ☺ ☺ ☺ ☺ ☺ ☺ ☺ ☺ ☺

Table 1 only reflects those that took part in the study. A total of nineteen (18) people participated in the study. The participants were based in Khomas (8), Omaheke (1), Oshana (1), Kunene (1), Otjozondjupa (1), Kavango East (3), Omusati (1) and Erongo (2) regions.

3.5 Research Instruments

The researcher employed documentary analysis to collect data from books, academic articles and journals, working papers, newspaper reports, legal documents, and official reports, as one of the research instruments. The data was also collected through semi structured interviews.

3.6 Procedure

The researcher made use of data found in various information resources centres, offices and Internet pages. Further, the researcher made direct arrangements, either telephonically or through email, with the respondents for personal interviews. Where direct arrangements was not possible, permission was sought to interview the targeted people as stipulated by different respective institutions' procedures. The researcher thus met with those that agreed to face-to-face interviews.

Most interviews were conducted in person and for those that could not be available for face-to-face interviews, telephonic interviews were conducted and/or questions were emailed to them. The interviews were not recorded. The researcher wrote down as much information as possible during the interviews, followed by detailed written notes after the interviews.

3.7 Data analysis

Data was analysed using content and thematic analyses to categorise the data, to note areas of interest and test the relationship between sub themes. The data sources were also subjected to triangulation to test them for validation purposes.

3.8 Research Ethics

The researcher obtained information from participants by devising an instrument with brief information about the research, a breakdown of how the participants would partake in the study and the implications thereof. Such information was communicated in advance to the majority of the participants. The devised instrument did not involve participants signing it to affirm their consent. Information obtained from the interviewees was digitalized in password-protected computer files and would be deleted once the requirements of the study are met and when the study is complete.

For the purpose of anonymity, the researcher used pseudonyms for the research participants (see 3.3 Population). Some interviewees mentioned the geographical locations of the country where people at risk of statelessness could reside but for ethical reasons (to avoid causing harm), names of such places have been deliberately omitted from this study.

3.9 Conclusion

This case study was conducted using an exploratory qualitative research framework to provide insights into the problem of statelessness in Namibia. Desk top review and semi-structured interviews were used to obtain data for the study and data was analysed using content and thematic analyses. The data was obtained from a policy environment and the sample that had informed the study is outlined in this chapter. Participants were informed about the research and their participation through an instrument which addressed the ethical implications.

CHAPTER 4

FINDINGS

4.1 Introduction

This chapter presents the findings of this study. The findings are discovered from both interviews and written materials. The information in this chapter is placed into themes or categories which emerged from the collected data.

4.2 The extent of the problem of statelessness in Namibia

4.2.1 Prevalent challenges

Interviewees identified common challenges that complicate the issue of statelessness in the country. The first challenge relates to shortcomings in the legal framework. Talking about this issue, NONO-2, (personal communication, November 01, 2017) said that there are no provisions in Namibian citizenship on foundlings, or children whose proof of parentage cannot be established. Further, despite the protection against statelessness under Article 4 (1) (d), possibilities of statelessness arise when the person affected is not a child as the exception does not apply to adults. Another gap relates to:

The requirements of citizenship by descent is also a cause for concern as a person born to a parent who is a Namibian citizen and a person who is a prohibited immigrant may not acquire Namibian citizenship in terms of [S]ection 2 (3) of the [Namibian Citizenship Act 14 of 1990] rendering that person stateless. (NONO-2, personal communication, November 01, 2017)

Other interviewees supported the view about the gaps in the legal framework by suggesting that statelessness is overlooked. They also suggest that there is a need to review Namibian citizenship to address the matter of statelessness. The second prevalent challenge in Namibian citizenship is the inability to establish evidence linking the applicants of citizenship to the country or place of origin. One interviewee mentioned that:

...Such people's cases are difficult to treat since even if they are referred to the Angolan embassy they are not on that country's civil register or when they are sent to the areas of origin in Angola to collect information as required, it is difficult to find people that know them to provide such information. (GAOM-1(C) (i), personal communication, October 23, 2017)

Similarly, Parliamentary debates acknowledge the above challenge:

I would like to stress that this group considers Namibia as their country, although legally they cannot furnish proof of citizenship that they are Namibians. Some of these people, though born in their countries of origin, there were no records in those countries providing that they were ever registered as citizens of those countries. (NA Deb, 2010a, 159)

The third challenge relates to the administration of citizenship law. For example, the supremacy of the Constitution is said to impact on the administrative or enforcement processes. Talking about the challenge, an interviewee said: "You might end up doing nothing because you fear contravening the supreme law" (GAOM-1(D), personal communication, October 23, 2017). Other interviewees considered that the main challenge faced in implementing the citizenship law relates to cheating. When people are applying

for their citizenship documents, they are required to submit supporting documents that establish their backgrounds or origins. Such documents, particularly affidavits from village headmen/women, the interviewees indicate, are susceptible to manipulation.

Further, the interviewees revealed that sometimes when applicants find it difficult registering their children, they resort to giving their children to their relatives who have citizenship to register them on their names. In other instances, the decision to register children under false pretense is influenced by the desperation to benefit from the social grants offered to children. If the officials are not satisfied with the information provided by the applicants, they undertake field trips to verify such information. Some interviewees noted that the process of verifying information is cumbersome and costly, and that it hampers the processing and/or approval of the applications in a timely manner.

Another concern around the administration of the citizenship law is the issuance of non-citizen birth certificate. In the event where a child is born in Namibia to parents whose citizenship status cannot be determined, illegal parents or parents that are on a temporary permit, the child is issued with a 'non-citizen birth certificate' with a rationale that at a certain point later, the child can assume his/her parents' citizenship. However, such non-citizen birth certificate does not qualify a child to obtain a Namibian citizenship identity card:

The issue of non-birth certificate is a burning issue because one cannot get an ID with it automatically. The children are given non-citizen birth certificate but nothing happens because if they go back to Angola, they are not on the civil record.

(GAOM-1(C) (ii), personal communication, October 23, 2017)

The last prevalent challenge is the significant numbers of late birth registration applications and the people that are undocumented. The interviewees expressed their worries that such high number does not seem to decline.

4.2.2 Specific parts of the country or population at risk of statelessness

A common view amongst interviewees stress that the Angolan diaspora is the main group affected by statelessness or at risk of statelessness. Some respondents said that:

We have issues with Angolans. They are staying in Namibia but if you send them back to Angola, they are not known there, and so are their children...Last year we undertook a field trip with senior officials, politicians and office bearers to one identified area and we found an estimate of about two thousand people of Angola origin who did not have IDs. (GAOM-1(C) (ii), personal communication, October 23, 2017)

Particularly those people of Angolan origin that came to Namibia from 1930-1977, should be issued with documents to eliminate statelessness...we need to undertake mobile activities with a main focus on people of Angolan origin as they are the ones affected. (GAOM-1(H), personal communication, October 20, 2017)

Some interviewees mentioned the geographical locations of the country where people at risk of statelessness could reside but for ethical reasons (to avoid causing harm), names of such places have been deliberately omitted from this study.

4.2.3 Confirmed cases of statelessness in Namibia

Despite statelessness avoidance not being central to the debates of the National Assembly, the issue of statelessness was pronounced in the Assembly in 2010. As such, the existence of stateless people was acknowledged and reported to have been receiving the attention of the MHAI in 2010:

I rise to inform the Nation on the ongoing registration of stateless persons who came to Namibia between 1930 and the seventies and have been living here since then. Since these people are undocumented, Cabinet directed the Ministry to register and issue them with citizenships by naturalization...To that effect, we are having a programme to register all those stateless persons. (NA Deb, 2010b, p. 157; p. 135)

The programme was continued into 2011 and about 22 stateless person were given travel documents (NA Deb, 2011). Nonetheless, both in 2010 and 2011, the matter of statelessness was not debated in the Assembly as it was part of the information revealed by the Minister of Home Affairs while motivating the Ministry's budget.

4.2.4 Availability of statistical data

Figures presented in the 2011 National Population and Housing Census show that 109 people did not know their citizenship and that close to 8% (155 367) of the total national population did not possess birth certificates (NSA, 2012). Regionally, Kavango region (now split into Kavango East and West regions) had the highest proportion of people (47 592) without birth certificates. Additionally, 6330 people or 0.3% of the total national population did not know if they had birth certificates. The NSA (2012) maintains that birth

certificates are a necessity in accessing social services, such as social grants and educational services. These figures, however, do not say anything about statelessness.

4.2.5 Causes of possible statelessness and/or undocumentedness

In response to the question on the nature of challenges that makes it difficult to overcome the problem of undocumentedness, a variety of themes was elicited.

(i) Culture and lifestyles

Some cultural practices require that a child should not be given a name in hospitals where the MHAI has established birth registration points but be named after having gone home first. In other cultures, the biological parents give their children to be raised by their relatives thus becoming difficult to register such children in the absence of their biological parents or that, because of nomadic lifestyles, they miss out on registration.

(ii) Remoteness

Long distance or lack of transport prevents people from travelling to registration points. Further, because of remoteness, the outreach teams from MHAI do not reach some areas. Some areas are so remote that even when the officials make prior announcements about their operations on the radio, people do not get such information because of lack of radio frequencies reception.

(iii) Lack of awareness on the importance of national documents

The respondents pointed out that people do not access citizenship documents due to little importance they place on citizenship documents. They identified a lack of awareness and low level of education as the influencing factors. One interviewee commented that:

At independence some people did not acquire citizenship by registration during the time framework stipulated in the Constitution (12 months). Many people did not apply. Some did not understand, hence they didn't apply. Some of those people did not have an idea. (GAOM-1(G), personal communication, October 27, 2017)

(iv) Stateless parents

The citizenship status of the applicants' parents is one of the key requirements when applying for citizenship. Hence, parents whose citizenship status cannot be determined affects the successful application of their children. As one interviewee noted:

Some of the people have stayed in country for long and we don't know what to do because the Immigration Act [citizenship Act] requires that a child's birth registration indicates the citizenship status of the parents but since the parent's legal status is unknown, that information is left out in the birth registration of the children. (LGP-3, personal communication, October 26, 2017)

(v) Unaffordability of permanent residence permit (PRP)

One interviewee pointed out that some people that have resided in the country for a long time yet without citizenship documents are discouraged to apply for PRP as it is pricey [about N\$ 12,000.00]. Another one suggested that in order to ease the process of obtaining

citizenship, perhaps there is a need to “allow for the requirements to be relaxed such to allow people to obtain the PRP for free or at a reasonable price” (GAOM-1(C)(ii), personal communication, October 23, 2017).

(vi) Fear

Some respondents indicated that fear prevents people from availing themselves for registration or assistance: “Majority of people did not register because they thought they will be registered and deported” GAOM-1(C) (ii), personal communication, October 23, 2017). “If the people are told to go back where they come from to obtain supporting documents, they are sometimes scared to travel because immigration officers might detain them” (NONO-2, personal communication, November 01, 2017).

(vii) Absent fathers and prohibition of fathers to register their children

Due to the absence of fathers, some children end up not being registered. The interviewees blamed it on the common practice that children are only registered under their fathers’ surnames. However, the interviewees indicated that people are not aware that the law makes provision for the children to be registered under the surnames of their mothers.

Apart from absent fathers, Section 10 of the Birth, Marriage and Death Act 81 of 1983 prevents fathers from registering their children in the absence of their mothers, unless they are married to the mother. This matter is aggravated in the event where the mother of a child is deceased or cannot be found. Narrating this matter, one interviewee said:

“...as I speak to you, I have a case of children whose father has citizenship documents but the mother doesn’t and she has since disappeared into commercial

farms. They are unable to locate her. She left the children behind and now the children are just hanging there and the father is not permitted to apply for the children without the mother. The children are suffering and they do not longer go to school. (LGP-3, personal communication, October 26, 2017)

(viii) Lack of proper border control

Lack of proper border control was also identified by some interviewees as a factor that is pushing people into undocumentedness.

4.2.6 Some developments underway in addressing statelessness in Namibia

While there appears to be less information in the mainstream on the efforts of combating statelessness, there are processes underway. One recurrent theme in the interviews was a proposed legislation meant to attend to the group of Angolan origin. Some interviewees revealed details of some of interventions: “There is a draft legislation meant to address the problem especially for that group” (GAOM-2, personal communication, November 21, 2017). “The ministry has revisited the Act and the issue is on the table” (GAOM-1(B), personal communication, October 19, 2017). “We are just waiting for a conferment Bill. There is a Bill coming and it is looking at the people, specifically Angolans that came to Namibian between 1978 and 1990” (GAOM-1(C) (ii), personal communication, October 23, 2017).

4.3 Politics of citizenship in Namibia on the creation and perpetuation of statelessness

4.3.1 Historical development on the construct of Namibian Citizenship

A review of the Constituent Assembly (constituted to craft and adopt the Namibian Constitution between late 1989 and early 1990) debates shows that citizenship was one of the key provisions that emerged in the Constitution proposals:

In its endeavour to discharge its work, the Standing Committee, comprising of representatives of all the parties elected to the Constituent Assembly, identified the following issues as enjoying broad agreement in principle, and therefore subject only to minor amendments and discussions of the Constitution, Citizenship, Fundamental Rights, the Electoral System... (CA Deb, 1990, p. 143)

(i) The rationale behind the nature of citizenship explained

Responding to a question whether the constitution drafters had a variety of options on citizenship to choose from, one respondent opined that given SWAPO's exposure on issues of citizenship and the guidance of the UN, it could have meant that there were a variety of options to choose from:

SWAPO established a Legal Department in exile before the country took independence in March 1990. This Department studied matters of citizenship. The incoming SWAPO leadership was thus familiar with the main tenets of citizenship in International Law, while the United Nations (the custodian of the idea of universal human rights and freedoms, inclusive of citizenship, played a formative

role in the transition of the country to independence). (AC, personal communication, November 12, 2017)

Another respondent explained that the Constitution drafters opted to have greater details of citizenship in the constitution as an attempt to redress the practice of arbitrary law making, as it was the case before independence:

Namibia is a democratic country and the Constitution is the supreme law – in the past Parliament was able to make laws that they deemed fit, now these laws have to conform to the framework of the Constitution. I believe that is why some set standard has been laid out in respect of citizenship that cannot be changed or taken away, unless it is for the betterment of the nation.

Our Constitution is quite new compared to many African countries and it incorporates the Bill of Rights extensively, which includes the right to citizenship. Older legislation applicable in Namibia, then the old South West Africa did not. And human rights violations were evident from these pieces of legislative provisions. I suppose the drafter of the Constitution intended to cure this obvious gap. (NONO-2, personal communication, November 01, 2017)

4.3.2 Statelessness avoidance not central in Parliamentary Debates

Perusal of the National Assembly debates, on citizenship, indicate little details of information that speak specifically to the issue of statelessness. Further, during the debates of the Namibian Citizenship Bill in 1990, an opportunity was missed to discuss the issue of statelessness. Although some members of Parliament recognised the difficulties of

being stateless, they instead limited their debates to the context of their exile experiences of being stateless and they viewed the bill as a solution to their predicament:

...I rise to give my wholehearted support to this very important bill in its entirety...

We have all been stateless and consequently we could not claim to be a citizen of any country as much as we had our country...Many of my colleagues...will recall how...we would be turned away from one airport to another, one port to another and one border to another, simple because we did not have a national passport and we could not claim to be a citizen of any country. (NA Deb, 1990, p. 336)

I would like to echo the words spoken earlier last week...when he characterised the experience of many of us who lived for many years in exile, stateless...It is a handicap, it is a particular experience which is not always easy to comprehend,...and it is in that in mind that some of us are delighted and look forward to the adoption of this bill. (NA Deb, 1990, p. 346)

What is interesting in these debates is that there are no further motivations to indicate that the adoption of the bill would deal with the problem of statelessness. If we now turn to the Namibian Citizenship Special Conferment legislation (Act 14 of 1991), it appears to have not lived up to full expectations as it saw a Namibian Citizenship (Second) Special Conferment Bill introduced in 2015. The existence of stateless population in the group targeted by the Namibian Citizenship (Second) Special Conferment Bill was mentioned during the debate. One member appealed to the House to be cognisant of the existence of stateless people of Namibian origin found both in Botswana and Namibia:

...just be aware that there are people of Namibia who are in Botswana, Gam and Windhoek, who are stateless. Since they are stateless, they can also not get jobs, they cannot get scholarships and being stateless, they can also not get passports. They are stateless! (NA Deb, 2015, p. 194)

However, one member contrasted the views that there are stateless people in the group that the Bill was addressing: "...in as much as we know for sure that there are people of Namibian origin elsewhere, there are no Stateless people sitting somewhere" (NA Deb, 2015, p. 230). "We are not legislating for the stateless people sitting somewhere and this must be understood" (NA Deb, 2015, p. 301).

4.3.3 The role of other actors in politics of citizenship

To a greater extent, much of the political agendas and strategies by non-elite forces for inclusion in communities of citizens and for citizenship rights in Namibia have been minimal. Some respondents were asked to reflect on some of the activities their organisations have been involved in respect of statelessness. Much of the information provided by the respondents indicates that their activities have been to refer cases of undocumentedness to the MHAI, the custodian of citizenship matters, while others provide technical support and advocacy.

4.4 The impact of lack of legal citizenship on the inclusion and exclusion of the undocumented in/from essential public services and political processes

The participants were asked to give their perspectives on how the lack of citizenship documents impacts people in accessing essential public services and political processes in

the country. The majority of those who responded to this question identified the impact to be undesirable. Some interviewees noted that:

They don't have access to the grant systems, school system, you can't move freely (it stops free movements) in Namibia because you get to be asked your nationality documents at check points, you can't have formal jobs because for you to be employed formally, you need to be registered with the Social Security Commission (SCC). If they die, they cannot be buried because they do not have documents...They are basically excluded from the formal economy or processes. (GAOM-2, personal communication, November 21, 2017)

The promotion of the welfare of the people only relates to citizens, so for instance pension grants, social grants and so forth are only available for the citizens of a country and this means that persons who are stateless cannot be entitled to it. (NONO-1, personal communication, October 24, 2017)

Other interviewees narrated that it prevents people from accessing public health or schools, deny them the right to vote or to be voted for, forces them into poverty and that it disqualify them from social grants. An extract from Parliamentary debates (NA Deb, 2010) also highlighted some of the negative effects: "...This result in them not benefiting from grants the Namibian Government renders to its citizens and other citizens who are not from this country" (p. 158).

Some interviewees asserted that undocumented people are unlikely to be detained unless there is enough evidence to support their arrest. Further, those arrested are referred to the tribunal courts to decide what to do with them. One interviewee remarked that:

We only detain people beyond reasonable doubt. Even if those with doubts, we verify through village fellows, social workers in cases of young ones, orphans or letters from headmen. We can only deport or give them fines when people are identified to be illegally in the country or when she/she confesses. We forward them to the immigration tribunal when we are certain that they are staying illegally. (GAOM-1(D), personal communication, October 23, 2017)

Conversely, the findings of this study indicate that, despite their citizenship legal status, undocumented people have access to certain services or that the impact is not always harmful. LGP-1 mentioned that: “The food bank programme food are not denied to people that lack civil documentations because the criteria is the socioeconomic status of people” (personal communication, October 20, 2017). “Some of their children and grandchildren have acquired Namibian citizenship by birth and naturalisation because they were born here” (NA Deb, 2010a, 159).

4.4.1 Access to voting rights for the undocumented

As shown in Chapter 2, people that lack citizenship in Namibia are able to register to become voters thus exercising their right to vote. Respondents were asked to reflect on what could be the rationale behind allowing undocumented people the right to vote, a right generally reserved for citizens, despite their lack of citizenship. Two divergent and conflicting discourses emerged. Some interviewees argued that it makes sense to afford undocumented people the right to vote because the outcomes of the democratic processes have an impact on their settings:

It is fairly standard in most electoral laws and practices to allow persons to vote (subject to positive identification, and some documents of domicile). Inherently there is no contradiction, for a person may for a range of reasons, not be in possession of all documents, but is still directly affected by the outcome of an election. Since Namibia is an electoral democracy, this provision weighs heavily in the body politic. (AC, personal communication, November 12, 2017)

It is important that they are allowed to vote because a person staying in the country should take part in election and also because they are allowed by the electoral legislation. It is a good thing but they should be accorded the right to documents. We should just have a mechanism to give them Namibian documents because they have long stayed in the country. We cannot deny them the right to take part in the elections. They are our people. There is no way we can chase them to say they are not our people. (LGP-2, personal communication, October 23, 2017)

It could be that Government aims to afford persons without legal citizenship the right to, notwithstanding this status, influence the manner in which the country in which they are presently living without taking the responsibility to take care of their standard of living. (NONO-2, personal communication, November 01, 2017)

However, some respondents did not support the approach of granting the undocumented group the right to vote. Some felt that it is political expediency and that it involves some illegal behavior: “It is politics. When politicians want more votes, they made the requirements to be lenient. If you want majority votes, you have to make people happy to vote for you” (GAOM-1(F), personal communication, October 26, 2017). “It is dishonesty

in those that are running the government because they want to be voted for, creating an impression to those without documents to say that they will give them the documents. So it is actually fraud” (NONO-1, personal communication, October 24, 2017). “Those that are registering, those that are being registered and those that are testifying are committing a crime” (LGP-4, personal communication, November 02, 2017).

4.5 Conclusion

Overall, these results indicate that there are grey areas in Namibian citizenship that have created and perpetuated statelessness. The magnitude of the problem of statelessness in Namibia can be found in the undocumented population. The Angolan diaspora is the specific population that is at highest risk of statelessness. However, the findings reveal that there is proposed legislation meant to address the plight of the said group. About 900 statelessness cases have been confirmed in Namibia between 2010 and 2011, and that the identified persons were granted Namibian citizenship by naturalisation.

The politics of citizenship in Namibia is dominated by policymakers. The findings of this study show that statelessness had featured in the debates on citizenship but its avoidance was not central to such debates. The kind of citizenship adopted by Namibia was driven to redress historical issues. The study further reveals that effects of statelessness or undocumentedness are harmful in most cases. However, the stateless people stand a chance of exercising their political right of taking part in elections by voting but not being voted for, as well as receiving food for the vulnerables.

CHAPTER 5

DISCUSSIONS

5.1 Introduction

This chapter focuses on discussions of the findings of the study and themed around the research questions: what extent is and/or magnitude of the problem of statelessness in Namibia?; what can the ‘politics of citizenship’ in Namibia tell us about the creation and perpetuation of statelessness in the country?; and how does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented in/from essential public services and political processes in the country?

5.2 Creating and perpetuating statelessness in Namibia

A key assumption of this study is that the perspective of statelessness is often under-researched in the existing citizenship literature. As mentioned in the literature, it is the space and content of citizenship that defines the space and content of statelessness and that it is in the way in how we construct citizenship that creates the stateless (Cole, n.d.). Therefore, we cannot understand statelessness outside citizenship. To understand what creates and perpetuates statelessness in Namibia, we discuss, in this section, the question: what extent is and/or magnitude of the problem of statelessness in Namibia?

In reviewing the literature, it is found that Namibian citizenship law was meant to guarantee citizenship as a right for all the people that were found in the Namibian territory at independence and to the displaced Namibians, since Namibia was a new state that had no citizens (Erasmus, 2010; IPPR, 2011; Chipepera & Ruppel-Schlichting, 2009). Hence,

it could be hypothesised that, had all people received Namibian citizenship at independence, it would have lessened chances of undocumentedness. In other words, the consideration the law-makers had was to address the problem up until then.

Findings of this study also suggest that numerous attempts have been made to address the gaps in Namibian citizenship law. A very important finding from such interventions is that, through a government cabinet decision, an identification exercise was conducted among undocumented populations at risk of statelessness from 2010 to 2011 and it resulted in over 900 people conferred Namibian citizenship by naturalisation. Nevertheless, the country remains without a specific stateless determination mechanism to identify and assist the stateless in all its legal instruments or regulations.

Another important finding from the current study is that the country does not account for the stateless in its national statistics. A possible explanation for this might be because the country does not have statelessness determination procedures as mentioned above. Also, as mentioned in the literature review, being able to produce statistics of the stateless is important to avoid underreporting and to develop effective counter measures (UNHCR, 2016; ISI, 2014; Manly, 2012).

The protection against statelessness under Article 4 (1) (d) of the Namibian constitution gives an impression that the law-makers understood that possible future statelessness cases would only occur among children. However, that understanding is flawed as the protection is discriminatory where a person is not a child. Importantly, Section 9 (1) of Namibian Citizenship Act, 1990 (Act 14 of 1990), provides for protection against statelessness which applies to adults. Yet again, this protection against statelessness in the

legislation is specific to circumstances around citizenship deprivation through an order by the Minister of Home Affairs. It can thus be suggested that law-makers were aware of statelessness but anticipated it to only occur in those circumstances as provided for in the Constitution and legislation. Hence, the protection against it was deemed adequate.

Notwithstanding, findings of the present study suggest that there are several gaps in the citizenship law that make it possible for statelessness to occur in Namibia. As there exist some level of discrimination and inequality in citizenship which shapes statelessness (Blitz & Lynch, 2011; Blitz, 2009), the gaps or discrimination that exist in the Namibian citizenship cannot be regarded as deliberate or direct (formally recorded in citizenship law) but rather indirect.

Indirect discrimination refers to how the law is implemented or to certain administrative requirements that applicants for citizenship need to comply with, which place particular groups at a disadvantage of acquiring a citizenship. For instance, Section 10 of the Birth, Marriage and Death Act 81 of 1983 prevents fathers from registering their children for birth in the absence of their mothers, unless they are married to the mother. The current study found that Section 10 contributes to undocumentedness in Namibia. Other requirements may include proof of parents' citizenship as discussed below.

A strong relationship between statelessness and lack of documentation has been reported in the literature (UN Department of Economic and Social Affairs, 1998; UNHCR, 2013; ENS, n.d.; Harbitz & Tamargo, 2009; UNHCR, 2013; ERRC, ISI & ENS, 2017; Cody, 2009). It is somewhat surprising that much of the existing literature (MHAI, 2010; MHAI & NSA, 2015; Dieckmann, Thiem, Dirkx & Hays, 2014; Tjihenuna, 2015; Amupanda,

2017; Tjihenuna, 2016; Kiremire, 2010) that investigated cases of people with undetermined citizenship or that lack national identity documents in Namibia did not draw that relationship.

In contrast to earlier findings, the current study identified a link between lack of documentation and statelessness. To illustrate such relationships, the more than 900 stateless person that were granted Namibian citizenship between 2010 and 2011 were part of a group of undocumented persons. Therefore, undocumentedness in Namibia could be both absolute and relative as discussed earlier in the literature. This is an important issue for future research. However, it is absolute lack of document that is relevant to this study.

Establishing the causes of lack of documentation is important to understand statelessness in Namibia. The findings of this study suggest that lack of documentation is caused by culture and lifestyles, remoteness, low level of awareness on the importance of national documents. Other causes are stateless parents, unaffordability of PRP, fear, absent fathers and prohibition of fathers to register their children, and lack of proper border control. Most of the causes identified corroborate the findings of the previous work in this area (see MHAI, 2010; MHAI & NSA, 2015; UNICEF Namibia, 2012; LAC, 2017). The causes of undocumentedness in the current study, therefore, need to be interpreted with caution because some of the data sources both in this study and in the previous work are the same or similar. As such, cause of absolute and relative lack of documentation might have been conflated by the respondents.

One area of importance on the causes of undocumentedness is the politics of evidence embedded in the evidentiary procedures of granting citizenship. Recent evidence suggests

that evidentiary obstacles prevent undocumented persons from accessing civil registries, thereby producing statelessness rather than citizenship (ERRC, ISI, & ENS, 2017; Bhabha, 2017; Flaim, 2017). Findings from this study also demonstrated that the lack of evidence to link the applicants of citizenship documents to the country or place of origin prevents them from accessing the civil registries.

As noted in the literature (ERRC, ISI, & ENS, 2017), lack of access to civic registration could lead to intergenerational lack of documentation and statelessness as parents cannot pass on citizenship to their children. Namibian citizenship law places much importance on the citizenship statuses of parents as a basis to grant citizenship to their children. As a consequence, the lack of citizenship status becomes hereditary to children born in Namibia. It can, therefore, be assumed that prominence is placed on *ju sanguinis* (citizenship by descent) rather than *ju soli* (birth on the territory) when granting citizenship.

A different example of Namibian citizenship law preference of citizenship statuses of parents as a basis to grant citizenship to their children is found in Section 10 (1) of the Namibian Citizenship Act, 1990 (Act 14 of 1990). The provision specifies that children under the age of 18 who obtained Namibian citizenship by naturalisation or registration might lose their citizenship the moment their parents cease or are deprived of their Namibian citizenship.

The current study found that the Angolan diaspora is the group most affected by lack of documentation. A possible explanation for this might be that many adult applicants that moved to Namibia are not able to provide proof of parents' citizenship. In the absence of

such proof, they are thus required to submit documents or information linking them to their areas of origin. However, they find it difficult to obtain records or evidence linking them to Angola. As for their children that have been born in Namibia, they too cannot get Namibian citizenship because of their parents' non-citizen status or lack of citizenship and the pattern of undocumentedness continues. Notwithstanding, this study found that some of the children born to non-citizen parents are issued with a non-citizen birth certificate. The introduction of non-citizen birth certificate is commendable as it is the first step in registering the legal identity of children. However, it is not sufficient as it does not guarantee citizenship.

The findings on Angolan diaspora are consistent with those of Sturkenboom & van Waas (2016); Albarazi & van Waas (2016) who stress the importance of civil registration and highlight the relationship between statelessness and displacement. The findings are also in agreement with UNHCR's (2012) findings which show that statelessness can have spill-over effects between states. The displacement of Angolans resulted in them moving to Namibia. The lack of effective civil registration in Angola, at the time of moving, led to a situation where the displaced cannot provide proof of Angolan citizenship. Subsequently, their predicament has become Namibia's responsibility as they now reside in Namibia.

Findings of the present study suggest that a proposed intervention (in a form of a 'conferment Bill') aimed at granting citizenship to the affected Angolan diaspora is a subject of discussion. The intervention, if implemented, will bring relief to the affected population. However, it will only ease part of the statelessness problem given that other loopholes exist in the citizenship law that make it possible for statelessness to occur. Another possible explanation for why citizenship conferment Bill to the Angolan diaspora

will not bring a comprehensive solution due to the porous borders or lack of proper border control. Further research should be done to investigate the link between porous borders or lack of border control (between Namibia and its neighbouring countries) and statelessness.

5.3 What can politics of citizenship in Namibia tell us about the creation and perpetuation of statelessness?

As mentioned in the literature (Shipper, 2010), citizenship politics highlight the role of various actors. The findings of the current study suggest that to a greater extent, politics of citizenship in Namibia is dominated by policy-makers. It is difficult to explain this finding, but it could be related to what is highlighted by ISI (2014); Kingstone (2013) on why statelessness is not prominent. This study has been unable to demonstrate why this has been the case. Further work is required to establish it.

The results of this study indicate little details of statelessness in the primary debates on Namibian citizenship. One possible explanation is given by Shevel (2009) that when legislating primary citizenship laws, policymakers lack knowledge about the issue which inhibit their choices in sourcing citizenship policies. However, Shevel (2009) was contradicted by AC (personal communication, November 12, 2017) who argues that given the exposure of the party with majority of members in the Constituent Assembly (SWAPO) on issues of citizenship and the guidance of the UN, it could have meant that there were a variety of options to choose from.

Perusing through parliamentary debates of the Namibian Citizenship Bill, Namibian Citizenship Special Conferment and the Namibian Citizenship (Second) Special Conferment Bills, it is interesting to note that statelessness, to some degree, was discussed.

However, the most important finding is that statelessness avoidance has not been central in such debates. What is also interesting is that during the Namibian Citizenship (Second) Special Conferment Bill debates, one legislator mentioned that he was aware of stateless people in Namibian and Botswana. However, that view was played down by another legislator that there are stateless people in the group that the Namibian Citizenship (Second) Special Conferment Bill was addressing. Further studies, which assess statelessness in this group of Namibians that were the target of the Namibian Citizenship (Second) Special Conferment Bill, will need to be undertaken.

5.4 The impact of lack of legal citizenship on the inclusion and exclusion of the undocumented in/from essential public services and political processes

Generally, the lack of legal citizenship places a burden on those without citizenship as they face many obstacles in accessing their rights, benefits, and services that are afforded to the citizens (Harbitz & Tamargo, 2009; Blitz, 2009; Chipepera & Ruppel-Schlichting, 2009; UNHRC, 2013). Against that backdrop, we ask the research question of this study: how does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented in/from essential public services and political processes in the country?

The findings of this study show that in the context of lack of legal documentation, most people are excluded from the formal economy or processes thereof. A probable explanation is that because the promotion of the welfare of the people only relates to citizens or that the construct of legal citizenship is directly tied to that of voting, social choice, access to social benefits and national documents. To be specific, findings of this study suggest that people who do not have legal documentation or that are stateless are

ineligible to access welfare services such as social grants, school system, healthcare, or exercise free movement. The findings further support the hypothesis that the problem of statelessness or lack of legal documentation has an adverse effect on those that lack it, and that mechanisms should be found to accommodate those that are marginalised or excluded on the basis of their lack of legal citizenship.

As noted in the literature, in terms of the Electoral Act of 2014, Section 26 (4) (a) (iv), potential voters that would have been excluded from being registered as voters, on the basis of not being a Namibian citizen, can be registered as voters on one condition. The condition is that statements under oath or affirmation be made by two other registered voters in respect of the applicants' citizenship. In terms of being voted for, it is surprising that the same electoral law prohibits non-Namibian citizenship holders from being appointed or accept to be appointment as an elected office-bearer of a political party or an organisation.

Such contradiction raises questions on why it is difficult to access citizenship as a right which acts as a basis of accessing other rights. There are several possible explanations. The current study suggests that the inconsistency may be due to the body politic since the country is an electoral democracy. Findings of the present study suggest that perhaps it is the intention of electoral policy makers to afford undocumented people an opportunity to influence how the country is governed because they are directly affected by the election outcomes. In contrast, some interviewees deem that practice as an expedience by politicians aimed at increasing their votes.

Contrary to earlier studies that undocumented people are subjected to arbitrary detentions, little evidence was detected from the present study. However, a case of arbitrary detention of a Namibian man was reported in 2016 (Tjihenuna, 2016). The reason for detention was because his name was not on the civil registration but he was in possession of a voter's card. Another finding of the current study is that the provision of food through the Food Bank programme is found not to be affected by the recipients' citizenship status.

It is important to bear in mind the possible partiality in the findings of this study. That is because the perspectives presented are mainly from a policy environment than the lived experience to characterize the living conditions of the population affected by the lack of citizenship. However, the current study's findings match those of an earlier study by Danielsson (2015), which exposes the lived experience of people without legal documentation or citizenship. A further study focusing on lived experiences of people without legal citizenship is therefore suggested. Moreover, a comparative research could be done to probe the life experiences before acquiring citizenship and after acquiring it.

5.5 Conclusion

This chapter discussed the findings of the study by reflecting them against the research questions of the current study. It was argued that the findings may help us understand the significance of legal citizenship as its negation leaves some people unrecognised as citizens of any state (stateless). Consequently, stateless people are left marginalised and face difficult conditions. It was discussed in this chapter that recognising and paying attention to statelessness would position us to begin to understand the implications of not paying attention to it.

CHAPTER 6

CONCLUSIONS

The purpose of this study was to define the problems that statelessness presents and demonstrating why it is a serious concern by studying Namibian politics of citizenship from a perspective of statelessness. An attempt was made to understand how being without legal citizenship impacts people in accessing possibilities and opportunities for full participation in social, political, and economic life from a perspective of policy environment.

While answering the research questions on *what extent is and/or magnitude of the problem of statelessness in Namibia?*, the study has shown that with the creation of Namibian citizenship law at independence, it was probably deemed to have solved statelessness as it was meant to guarantee citizenship as a right for all the people that were found in the Namibian territory at independence. The citizenship law was also meant to guarantee citizenship for the displaced Namibian diaspora. In light of the protection against statelessness in the Namibian constitution, Article 4 (1) (d) and the Namibian Citizenship Act, 1990 (Act 14 of 1990), Section 9 (1), Namibian citizenship law anticipated that possible future statelessness cases would only occur under those two provisions.

Notwithstanding, several gaps in the law on citizenship make it possible for statelessness to occur in Namibia. The findings of this study do not indicate many cases of statelessness but those of lack of legal documentation. The primacy of *ju sanguinis* over *ju soli* of Namibian citizenship law prevents people from obtaining legal documentation. Indirect discrimination in the implementation of the citizenship law through evidentiary

bureaucratic practices and procedures, further pushes people into undocumentedness. The findings of the current study suggest that the population at high risk of statelessness or lack of documentation are Angolan diaspora. However, there is a planned legislation to grant citizenship to the said population. Despite the once-off exercise in 2011 to grant citizenship to stateless persons, the country remains without a stateless determination mechanism and does not account for the stateless in its national statistics.

On the second question of *what can politics of citizenship tell us about the creation and perpetuation of statelessness in the country*, the findings of the present study suggest that Namibian politics of citizenship is dominated policy-makers. A major finding is that statelessness avoidance has not been central to the debates of the policy-makers.

The last question revolved around *how does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented in/from essential public services and political processes in the country?* The findings of the present study has shown that most people lacking legal documentation are excluded from the formal economy or processes. It was also shown that the electoral law makes a conditional provision for undocumented persons to vote but the same law prevents them from being voted for. Undocumented persons are also found to be unlikely arrested arbitrarily, and they are eligible to receive food through the Food Bank programme.

CHAPTER 7

RECOMMENDATIONS

7.1 Recommendations for further research work

This study uncovered many issues in need of further investigation. To that end, further research in the following areas is needed. There is room for future studies to assess how, individually, the gaps in the citizenship law contribute to lack of documentation or cases of risk of statelessness. Findings of the study also pointed out that there are many cases of lack of legal documentation. As such, further work needs to be done to establish if the undocumentedness is absolute or relative. Ultimately, further work should investigate cases of statelessness within the undocumented population.

A risk of statelessness was found to be high in the Angolan diaspora. A further study with more of a focus on intergenerational lack of documentation and statelessness in the Angolan diaspora is suggested. Lack of proper border control was found to be contributing to the lack of documentation. Further research should be done to investigate the link between porous borders or lack of border control (between Namibia and its neighbouring countries) and statelessness.

This study relied on perspectives from a policy environment. Therefore, further studies focusing on lived experiences of people that lack of legal citizenship is suggested. Further, a comparative research could be done to investigate the difference in the life experiences before acquiring citizenship and after acquiring it.

Findings from this study suggest that there are stateless people among the Herero descendants that resided in Botswana. Further studies that assess statelessness in this

group of Namibians that were target of the Namibian Citizenship (Second) Special Conferment Bill, need to be undertaken. There is also a need for a study to establish why politics of citizenship in Namibia is dominated by policy-makers.

7.2 Recommendations for practice or policy

Until statelessness avoidance is embedded in Namibian citizenship, statelessness might not be overcome. Findings from this study suggest that the once-off intervention on citizenship did not eliminate cases of statelessness. There is, therefore, a definite need for permanent measures. Namibia should heed the call to accede to both 1954 Convention Relating to the Status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

Namibia should consider reviewing its citizenship law, especially the dominance of *ju sanguinis* over *ju soli*, with a view to eliminate possible cases of lack of documentation. Other measures could be to establish statelessness determination procedures and identification mechanisms. With such procedures and mechanisms, the government will not only be able to produce national statistics on stateless population but also initiate effective targeted measures.

In the absence of permanent measures, government should expedite the Bill aimed at conferring citizenship to the affected Angolan diaspora. Through its diplomatic relations and cooperation, Namibia should consult with the Angolan government to discuss matters related to cross border migration, border management and share synergies on civil registration.

An exhaustive assessment should be done across the country to identify cases of lack of documentation, with the intention of resolving them. If cases of statelessness are confirmed, they should be attended to. Relevant actors should initiate various campaigns to raise awareness about the importance of legal documentations and disseminate clear information on how they could be obtained.

The government should ensure it secures its borders with its neighbours and that the movement of people in and out of the country is properly regulated. Failure to do so would defeat counter measures to curb statelessness.

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APPENDICES

Appendix 1 - Permission Letter to Conduct Research

CENTRE FOR POSTGRADUATE STUDIES

University of Namibia, Private Bag 13301, Windhoek, Namibia
 340 Mandume Ndemufaya Avenue, Pioneers Park
 ☎ +264 61 206 3275/4662; Fax +264 61 206 3290; URL: <http://www.unam.edu.na>



RESEARCH PERMISSION LETTER

Student Name: JOHANNES NDESHIMONA SHEKENI

Student number: 200744054

Programme: MASTERS OF ART IN POLITICAL STUDIES

Approved research title: AN EXPLORATION OF STATELESSNESS IN NAMIBIA: THE SIGNIFICANCE OF LEGAL
 CITIZENSHIP

TO WHOM IT MAY CONCERN

I hereby confirm that the above mentioned student is registered at the University of Namibia for the programme indicated. The proposed study met all the requirements as stipulated in the University guidelines and has been approved by the relevant committees.

The proposal adheres to ethical principles as per attached Ethical Clearance Certificate. Permission is hereby granted to carry out the research as described in the approved proposal.

Best Regards

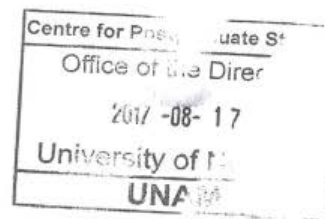
Dr. Marius Hedimbi

Director: Centre for Postgraduate Studies

Tel: +264 61 2063275

E-mail: directorpgs@unam.na

17 Aug 2017



Appendix 2 – Sample: Instrument- brief information about the research and participation



Page 1(2)

AN EXPLORATION OF STATELESSNESS IN NAMIBIA: THE SIGNIFICANCE OF LEGAL CITIZENSHIP

1. The purpose of the research project

The purpose of this project is to better understand how the Namibian citizenship relates to statelessness. A stateless person is an individual 'who is not considered as a citizen by any State under the operation of its law' (UNHCR, 2010). In other words, a stateless individual is a person who does not legally belong to any state/country and thus no government is responsible for his or her rights, survival or existence.

Statelessness often results from the framing and implementation of nationality laws (UNHCR, 2014). About 900 people were found to be at risk of statelessness in Namibia and ad hoc efforts have been made to address the gaps in the citizenship law (Manby, 2011). Despite such finding, the country's citizenship appears to lack a permanent solution on statelessness and thus it requires our attention. The perspective of statelessness is often left unexamined in the existing citizenship literature, with the focus being more on setting out who is or is not a citizen. To broadly understand the Namibian citizenship, we need to understand the context of exclusion of statelessness in the politics on citizenship.

Therefore, this research attempts to explore the politics of citizenship in Namibia, by drawing our attention to the perspective of statelessness. This inquest will be done by using the theory of politics of citizenship to help us understand and locate how the issue of statelessness fits in the Namibian citizenship discourse.

2. Your possible participation in the study

You have been selected as a possible participant in the study because you are an academic in the Law Faculty at UNAM. During the interview, you will be asked a set of questions. Only discuss things that you are familiar with. Your participation in this study is completely voluntary and anonymous. If you later wish to clarify a certain aspect of the interview, you are at all times encouraged to contact the student in order to make an additional comment or revision to your statements. If you choose to participate, the interview will begin as soon as you have given your consent to participation. You may choose to withdraw your participation. Upon your request, all information collected from you will be destroyed.

3. How the study will proceed

The information collected will be stored and analyzed by the student. During the interview the researcher will take notes in order to remember the information you provide. **If given your consent, the interview will be recorded.** After the interview, the researchers will type these notes on the computer and add the information to already existing information collected from other interviews. The information provided will be used for academic purposes only, and results might be published in academic books and journals by the researcher or UNAM. In the published material, the interviewees will remain anonymous, unless otherwise agreed.

Student: Johannes Shekeni (#200744054) | +264 81 304 5972 | jnshekeni@gmail.com

4. Risks and benefits of participation in the study

Participation in this study ought not to entail any particular risks to the participants. The information collected in the interviews will be carefully handled and protected.

The benefits of participating in this study are modest, but important. Your participation will contribute towards improving both academic research and policy making involved as it pertains to inclusive citizenship.

5. Information management and confidentiality

All people participating in this study will remain anonymous except to the researcher. The information you provide will only be available to the researcher in its original content. Research material will be digitalized in password-protected computer files and it is only the researcher who will have access to the original data. The transcripts and sound files will not contain your name. The data collected will be disposed of once the requirements of the study are met and the study is complete.

6. How will you learn about the results of the study?

You are always entitled to access the results for the study, when such results have been produced. The results of the study will be disseminated to participants only upon their request.

7. Responsible for the project

The student (researcher) is responsible for the project under the supervision of Associate Professor Lesley Blaauw (main) and Mr Phaniel Kaapama (co-supervisor) both from the University of Namibia. The project is carried out solely for academic purposes (as partial fulfilment of the requirements of the Degree of Master of Arts in Political Studies) and the cost is born by the student.

8. Consent to participation

By participating in this study you give your consent that you have understood the purpose of your participation, as well as the potential risks and benefits of participating in the study.

Please contact my supervisors if you have questions or concerns relating to this study:

Associate Professor Ralph Blaauw
Department of Political and Administrative
Studies
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Appendix 3 – Permission to conduct research with MHAI



REPUBLIC OF NAMIBIA

MINISTRY OF HOME AFFAIRS AND IMMIGRATION

Enquiries:

Private Bag 13200
WINDHOEK

Tel.: (061) 2922111

Fax: (061) 2922185

Our Ref.:

Your Ref.:

20 September 2017

Mr. Johannes Shekeni
P O Box 40822
Ausspannplatz
Windhoek

Dear Mr. Shekeni

RE: REQUEST FOR PERMISSION TO CONDUCT INTERVIEWS WITH SENIOR OFFICIALS AND OBTAIN INFORMATION FOR ACADEMIC RESEARCH PURPOSE

1. Your letter dated 18 September 2017 is acknowledged with thanks.
2. Kindly be informed that the Ministry of Home Affairs and Immigration has no objection for you to conduct your research as requested.
3. You can therefore feel free to contact the following persons for confirming their availability, taking into consideration the tight schedules placed on their shoulders:
 - a) Ms. Elizabeth Negumbo, Deputy Permanent Secretary: Immigration Control and citizenship, contact detail: [REDACTED]
 - b) Mrs. Anette Bayer-Forsingdal, Acting Deputy Permanent Secretary: Civil Registration, contact detail: [REDACTED]
 - c) Mr. Allison Hishekwa, Director: Visas, Permits, Passports and Citizenship, Contact detail: [REDACTED]
 - d) Mr. Likius Valombola, Commissioner for Refugees, contact detail: [REDACTED]
 - e) Mrs. Tulimeke Munyika, Deputy Director: Legal Support Services, contact detail: [REDACTED]

1

All official correspondence must be addressed to the Permanent Secretary

I hope these staff members will be more than willing to help supply the required information for the intended research paper.


Ms. Elizabeth Negumbo
ACTING PERMANENT SECRETARY



CC: Mrs. Anette Bayer-Forsingdal
Mr. Allison Hishekwa
Mr. Likius Valombola
Mrs. Tulimeke Munyika

Appendix 5 – Research Questionnaires

QUESTIONNAIRE 1- NONO-2

1. **Looking at the Namibian citizenship law and its implementation, are there some gaps you have noted with regards to the issue of statelessness?**
2. Compared to other countries, there are many details in the Namibian Constitution on citizenship instead of them being left to legislation. **What are the reasons do you think explain that?**
3. I am aware of the two opinion pieces which were co-authored by [NONO 2] staff members. **Apart from that, what other efforts has the [NONO 2] made in addressing the issue of statelessness or lack of legal citizenship?**
4. There are many people in Namibia that do not have legal citizenship, thus at risk of statelessness or risk their rights being unprotected. However, there is little activities from the NGOs. **What do you think are the challenges for the NGOs to pick out this issue?**
5. At various platforms (local and international), Namibia has been urged to accede to the international legal instruments on stateliness. There seems to be lack of political will to do so. **In understanding the possible challenges or reservations, what are the possible implications for a country acceding to such instruments?**
6. **In your views, how does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented people in or from essential public services and political processes in the country?**
7. In terms of the Namibian Electoral Act, No. 5 of 2014, 26 (4) (a) (iv), people without legal citizenship are allowed to obtain their voters' cards through affidavits to enable them to vote, thus allowed to exercise this political right. However, they find it difficult when obtaining their legal citizenship which enables them to access public goods/services or to exercising their rights such as occupying a political offices. **Are there reasons to explain this difference?**
8. In 2013, you worked with the Ministry of Home Affairs by providing technical assistance for the revision of the Births, Marriages and Deaths Act. **To what extent to did you factor in the issue of statelessness, especially with the registration of births?**
9. Thank you for your time. **Do you have any information you want to add that you think I left out or do you have any questions that you would like to ask of me?**

QUESTIONNAIRE 2- NONO-1

1. **How often have you or organisation came across complaints of people that lack documents? Probing question. To what extent have you assisted such people?**
2. Having citizenship is considered to be a human right. With it, a person is able to access other rights. **In what ways do you think people without legal citizenship have been or will be denied access to their full rights?**
3. There are many reports of people suffering due to lack of legal citizenship. There has not been much promotion from civil society organisations to assist people who are in need of citizenship. **What are the challenges for civil society in getting involved in the issue of lack of citizenship or statelessness?**
4. You have added your voice to a call for Namibia to accede to the international legal instruments on statelessness. **Namibia has not yet acceded to them. What do you are the reasons for that?**
5. Thank you for your time. **Is there anything that you might want to add that you think I might have missed?**

QUESTIONNAIRE 3 - GAOM-2

1. **How often have you or your organisation came across complaints of people that lack identity documents?**
 - (a) **If there are such cases? How did you treat such cases?**

2. Having citizenship is considered to be a human right. With it, a person is able to access other rights. **In what ways do you think people without legal citizenship have been or will be denied access to their full rights?**
3. There are many reports of people suffering due to lack of legal citizenship. **What are the challenges for your organisation to get involved in the issue of lack of citizenship or statelessness?**
4. It was recommended that Namibia should accede to the 1954 Convention relating to the Status of Stateless Persons and to the 1961 Convention on the Reduction of Statelessness in the 2013 Baseline Study on Human Rights. Similar recommendation was made elsewhere but Namibia has not yet acceded. **What do you think are the reasons why Namibia appears to be reluctant to accede to such legal instruments?**
5. In terms of the Namibian Electoral Act, No. 5 of 2014, 26 (4) (a) (iv), people without legal citizenship are allowed to obtain their voters' cards through affidavits to enable them to vote, thus allowed to exercise this political right. However, they find it difficult when obtaining their legal citizenship which enables them to access public goods/services or to exercising their rights such as occupying a political offices. **Are there reasons to explain such difference?**
6. Thank you for your time. **Do you have any information you want to add that you think I did not ask or any question you would want to ask of me?**

QUESTIONNAIRE 4 - LGP

1. **How often your office has come across complaints of people that lack citizenship documents? Probing question. How did you assist such people?**
2. **In what ways do you think people without legal citizenship have been or will be denied access to their full rights? In what ways does the lack of citizenship affect people that do not have legal citizenship?**
3. The Ministry of Home Affairs mentioned that they join constituency meetings to spread information about what people should do if they find themselves in such situations. **Does the Ministry of Home Affairs also join the community meetings in your constituency?**
4. Thank you for your time. **Any question you have about the study or information you want to add you think I need to know?**

QUESTIONNAIRE 5 - AC

1. One of the arguments is that in new states, when policy makers are making citizenship laws, law makers might have little knowledge or options. **To what extent do you think this was the case for Namibia when the citizenship law was being drafted?**
2. At various platforms (local and international), Namibia has been urged to accede to the international legal instruments on statelessness. **What do you think are the challenges or reservations?**
3. Research has been done on stateless elsewhere, and it has also formed part of academic debates globally. In Namibia, however, statelessness is a topic that has not received any academic interrogation. **Why in your view is that the case?**
4. **In your views, how does the lack of legal citizenship impact on the inclusion and exclusion of the undocumented people in or from essential public services and political processes in the country?**
5. In terms of the Namibian Electoral Act, No. 5 of 2014, 26 (4) (a) (iv), people without legal citizenship are allowed to obtain their voters' cards through affidavits to enable them to vote, thus allowed to exercise this political right. However, they find it difficult when obtaining their legal citizenship which enables them to access public goods/services or to exercising their rights such as occupying a political offices. **Are there reasons to explain this difference?**
6. **Do you think the issue of statelessness is a problem of the citizenship law or its implementation? Please motivate your answer?**
7. Thank you for your time. **Do you have any information you want to add that you think I left out or do you have any questions that you would like to ask of me?**

QUESTIONNAIRE 6 - GAOM-1(2)

1. **What mechanisms does the ministry use in determining stateless people?**
2. **How frequent have you come across stateless people?**
3. **In the event where you find a person who is stateless, how do you treat such case? (this question is dependent on the answer of #1)**
4. **How frequent do you detain and/or deport people who do not have documents to stay in the country legally?**
5. **In its current form, do you think the legal framework is adequate to deal with the issue of statelessness?**
6. In its Operational Framework for 2012-2013, the Ministry indicated that many of its legal instruments are outdated, and hence fail to address the contemporary challenges in Namibia. **In the context of citizenship, could you please share more light on what those challenges were?**
7. Thank you for your time. **Do you have any information you want to add that you think I left out or do you have any questions that you would like to ask of me?**

QUESTIONNAIRE 7 - GAOM-1(1)

1. **In the citizenship registration process, what verification mechanisms do you have in place to identify stateless people?**
2. Of utmost importance is the issue of late birth registration. There are many reports across the country of people who are unable to obtain either birth certificates or identity cards. **What are the challenges faced by the ministry in overcoming this problem?**
3. **What measures have you put in place to ensure that people have access to such documents?**
4. One of challenges faced by many people in accessing national documents is that they are required to provide proof of identity of their parents. **In the absence of proof of identity of their parents, what are the procedure followed in assisting such people?**
5. **Do you verify if such people could be stateless or that their parents are stateless, hence they cannot produce proof citizenship?**
6. There appears to be rules that if the person cannot provide proof of parents' citizenship, he/she should get an affidavit from village headman, church priest or councillor. **Could you kindly elaborate on weather this is provided for by law, directive or any policy in the ministry?**
7. **To what extent does the ministry accept such affidavits?** (this could be a probing question depending on a positive answer at number 8)
8. **To what extent do you think the public is aware of this?** (this could be a probing question depending on a positive answer at number 8)
9. **Are there specific areas/places in the country that the ministry has identified where the problem of people without national documents is high compared to other areas?**
10. Given the magnitude of this problem of people unable to register for birth certificates or identity cards. **What will be the best permanent solution to the problem of people not accessing citizenship documents?**
11. Unlike obtaining citizenship documents, in Namibia when people register for elections voters' cards, if they do not have citizenship documents, they are allowed by law to register with an affidavit from a registered voter. **What is the possibility of registering people for their citizenship documents using a similar arrangement of using a deponent?**
12. **In its current form, do you think the legal framework is adequate to deal with the issue of statelessness?**
13. In its Operational Framework for 2012-2013, the Ministry indicated that many of its legal instruments are outdated, and hence fail to address the contemporary challenges in Namibia. **In the context of citizenship, could you please share more light on what those contemporary challenges were?**
14. Thank you for your time. **Do you have any information you want to add that you think I left out or do you have any questions that you would like to ask of me?**