**DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP**

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**A THESIS SUBMITTED IN FULFILLMENT OF THE REQUIREMENTS FOR THE DEGREE OF DOCTOR OF PHILOSOPHY**

**DEPARTMENT OF CONSTITUTIONAL AND INTERNATIONAL LAW**

**THE OPEN UNIVERSITY OF TANZANIA**

**2020**

# **CERTIFICATION**

The undersigned certifies that he has read and hereby recommends for acceptance by the Open University of Tanzania a thesis entitled: Determination and Proof of Tanzanian Citizenship in partial fulfillment of the requirements for the award of Degree of Doctor of Philosophy (PhD).

......................................................................

Prof. Dr. Alex Boniface Makulilo

Supervisor

........................................

Date

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Date

# **DEDICATION**

To my beloved mother Magreth, in *memoriam.*

# **ACKNOWLEDGEMENT**

Unless one decides to be boastful and indifferent, no remarkable achievement can be said to be reached without the assistance and company of others. Even the Great Messiah, Jesus of Nazareth had a company of the twelve in accomplishing His mission. This achievement, I dare to name, was a chemistry of assistance of numerous individuals. I fear I might not be able to name them all. Those whom I won’t mention, I sincerely and equally accord them my humble thanks. Beforehand, however I thank the Most Divine High, God. My breath, health, strength, thinking and the entire venture was wielded and generously guided and protected by Him. To Him is glory. The following comprises a corpus of those I render my thanks.

My mentor and supervisor, Prof. Dr. Alex Boniface Makulilo: He deserves my most heartedly felt thanks. His critical eye in whatever I did say and write contributed much in whatever looks worth valuable in this thesis. Enormous thanks to him.

I also thank my employer through the Commissioner General of Immigration, Dr. Anna Peter Makakala for granting me a study leave. Without her, I would have not managed to pursue this high academic activity, my sincere thanks to her.

My special thanks to Commissioner of Immigration for Legal services, Hannelore Morgan Manyanga. As the head of Legal Services Section where I have been working under her for two years and a half, I have had a sharpening and practical “class” to learn. Notwithstanding her busy schedules, she has always been readily available to guide, advise and assist. She generously responded to my research inquiries. To her, I accord my heartfelt gratitude.

I also thank Dr. Bronwen Manby Senior Policy Fellow at the London School of Economics (LSE) who has researched and written extensively on nationality and statelessness in Africa. Dr. Manby accepted and reviewed my work from its initial stage and continued to review it as it progressed and supplied me with relevant literature and resource links on matters of citizenship which I couldn’t have accessed. To her, I also sincerely say thank you.

To my colleagues in the Legal Services Section, “the Legal family” so to name, I owe my heartfelt gratitude. These compose of Iraeneus Kasimbazi, Juma Kalunga, Lucy Nyaki, Khadija Maunda, Thomas Sanira, Alton Chaula, Salum Othman and Matilda Rutagwelera Mugyabuso. This “family” encouraged me from the inception of my study journey and all along, but more remarkably, their generous financial support from their hard-earned income. Their support counted much in mitigating my self-sponsored financial burden that a student normally sails through. Suffice to say, thank you my dear colleagues.

My thanks also to Fr. Philip and my colleagues in the Catholic Parish Lay Council at Mbagala Kuu who bore most of my responsibilities as the Secretary to the Council during my studies. These are Godfrey Ferdinand (Chairperson), Emmanuel Pius Mikongoti (Deputy Chairperson), Agripina Charles Kimario (Assistant Secretary) and Flavian Semberi Chacha (Treasurer). To them I also send my word of gratitude.

My sincere thanks also go to all my generous respondents. With great honour and humility, I thank Hon. Joseph Sinde Warioba, Retired Judge, former Prime Minister and Attorney General. It was indeed a privilege to respond to my inquiries and learn a lot from him. To him and all other respondents I also say thank you.

Lastly but not in the order of importance, my beloved wife and children. Theirs is intangible and hard to describe. Suffice to say, however my three years’ self-sponsored study leave sounded terrific as it added heavily on the long list of family and socio-economic obligations and made them to go through an ordeal of financial constraints, among others. Despite of all this, they managed to endure the ordeal and continued to encourage me. Without their warmth comfort, endurance and encouragement, my study leave would equal to a gaol!

To all I say *Aksanteni Sana!*

# **ABSTRACT**

This study analyses as to what connection should be entitling a person to citizenship given the context of Tanzania. It points out discrepancies existing both in law and practice in determining Tanzanian citizenship by birth. It also revisits aspects of proof of Tanzanian citizenship thus disclosing their respective inherent shortfalls and recommends for strategies to be considered in creating an effective legal framework for matters of determination and proof of citizenship. In order to reach its objectives, the study employed doctrinal and empirical research methods. Doctrinal method became the dominant method while empirical method complemented the former. The study has found that the modalities of determining as to what connection should be entitling a person to Tanzanian citizenship to a large extent subject the right to a nationality to fragility and accompanying risk of statelessness particularly to individuals originating from border regions and those with cross border affinities. It has also found out that the position of law on what constitutes Tanzanian citizenship by birth on and after independence of Tanganyika is actually pegged on *jus soli* mode, that is, birth alone in the United Republic without regard to citizenship of parents contrary to what is interpreted in practice. It has further found that the available means of proof of Tanzanian citizenship in both documentary and non-documentary have inherent shortfalls, thus inadequate in themselves in proving Tanzanian citizenship. The study thus recommends for law reform, human power development, enhancement of civic education, enhanced technological considerations, strengthening of institutional capacity and coordination, policy considerations and enhancement in international cooperation in matters of determination of citizenship.

***Key words:*** *Citizenship, determination, proof, right of a nationality.*

# **LIST OF ABBREVIATIONS**

AG Attorney General

AIR All India Reporter

ASEAN Association of Southeast Asian Nations

BMC Border Management and Control

BNA British Nationality Act

Cap Chapter

CUKC Citizen of the United Kingdom Colonies

Ed(s) Editor/Editors

*et al* And others

HESLB Higher Education Students’ Loans Board

IACtHR Inter-American Court of Human Rights

ICAO International Civil Aviation Organisation

*ibid* ibidem (in the same place)

ICGLR International Conference of the Great Lakes Region

ICJ International Court of Justice

ILC International Law Commission

IRRI International Refugee Rights Initiative

KHRC Kenya Human Rights Commission

KLR Kenya Law Reports

LSE London School of Economics

NB *nota bene*

NEC National Electoral Commission

NIDA National Identification Authority

No. Number

OIC Organisation of the Islamic Conference

OUP Oxford University Press

OUT Open University of Tanzania

PCIJ Permanent Court of International Justice

PCO Passport Control Officer

R.E Revised Edition

Rep Reports

RSC Regional Service Centre

s section

Ser Series

SIM Subscriber Identification Module

*supra* previously cited

TATAKI Taasisi ya Taaluma za Kiswahili

TBC Tanzania Broadcasting Corporation

TIN Taxpayer Identification Number

TLR Tanzania Law Reports

TPDF Tanzania People’s Defence Forces

TUKI Taasisi ya Uchunguzi wa Kiswahili

UN United Nations

UNHCR United Nations High Commissioner for Refugees

U.S United States

v *versus*

Vol Volume

ZLR Zambia Law Reports

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Convention on the Rights of the Child, 1989.

International Covenant on Civil and Political Rights, 1966.

Universal Declaration of Human Rights, 1948.

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**Asia - Pacific Region**

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**European Region**

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**TABLE OF CONTENTS**

[**CERTIFICATION i**](#_Toc56199526)

[**COPYRIGHT ii**](#_Toc56199527)

[**DECLARATION iii**](#_Toc56199528)

[**DEDICATION iv**](#_Toc56199529)

[**ACKNOWLEDGEMENT v**](#_Toc56199530)

[**ABSTRACT viii**](#_Toc56199531)

[**LIST OF ABBREVIATIONS ix**](#_Toc56199532)

[**LIST OF STATUTES AND CONVENTIONS xi**](#_Toc56199533)

[**LIST OF CASES xv**](#_Toc56199534)

[**CHAPTER ONE 1**](#_Toc56199535)

[**INTRODUCTION 1**](#_Toc56199536)

[1.1 Background 1](#_Toc56199537)

[1.2 Statement of the Problem 8](#_Toc56199538)

[1.3 Research Objectives 11](#_Toc56199539)

[1.3.1 General Objective 11](#_Toc56199540)

[1.3.2 Specific Objectives 11](#_Toc56199541)

[1.4 Research Questions 11](#_Toc56199542)

[1.5 Literature Review 12](#_Toc56199543)

[1.6 Research Methodology 26](#_Toc56199544)

[1.7 Scope and Limitation of the Study 32](#_Toc56199545)

[1.8 Organisation of the Study 33](#_Toc56199546)

[**CHAPTER TWO 34**](#_Toc56199547)

[**THE RIGHT TO A NATIONALITY AND STATELESSNESS UNDER UNIVERSAL AND REGIONAL FRAMEWORKS 34**](#_Toc56199548)

[2.1 Introduction 34](#_Toc56199549)

[2.2 Historical backdrop 35](#_Toc56199550)

[2.3 Nationality and the Ideal of Connection 37](#_Toc56199551)

[2.3.1 *Jus soli, Jus sanguinis* and Residence as Routes of Connection 38](#_Toc56199552)

[2.3.2 Statelessness 41](#_Toc56199553)

[2.4 Universal and Regional Frameworks 43](#_Toc56199554)

[2.4.1 Universal Framework of the Right to a Nationality and Statelessness 43](#_Toc56199555)

[2.4.2 Regional Framework of the Right to a Nationality and Statelessness 49](#_Toc56199556)

[2.5 Conclusion 60](#_Toc56199557)

[**CHAPTER THREE 62**](#_Toc56199558)

[**LEGAL FRAMEWORK AND ADMINISTRATION OF CITIZENSHIP IN 62**](#_Toc56199559)

[**TANZANIA 62**](#_Toc56199560)

[3.1 Introduction 62](#_Toc56199561)

[3.2 Evolution of Tanzanian Citizenship Law 62](#_Toc56199562)

[3.2.1 Zanzibar 63](#_Toc56199563)

[3.2.2 Tanganyika 65](#_Toc56199564)

[3.3 Legal Framework of Tanzanian Citizenship 68](#_Toc56199565)

[3.4 Citizenship Administration in Tanzania 94](#_Toc56199566)

[3.4.1 Tanzania Immigration Services Department 94](#_Toc56199567)

[3.4.2 Other Institutions 97](#_Toc56199568)

[3.4.3 The Powers of the Minister and Commissioner General of Immigration in Citizenship Administration 101](#_Toc56199569)

[3.5 Conclusion 103](#_Toc56199570)

[**CHAPTER FOUR 104**](#_Toc56199571)

[**DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP 104**](#_Toc56199572)

[4.1 Introduction 104](#_Toc56199573)

[4.2 How Determination and Proof of Tanzanian Citizenship is Undertaken? 104](#_Toc56199574)

[4.2.1 Circumstances Calling for Determination and Proof of Tanzanian Citizenship…………………………………………………………………….105](#_Toc56199575)

[4.3 Proof of Tanzanian Citizenship 121](#_Toc56199576)

[4.4 Determination of Tanzanian citizenship and Discrepancies between letters of 154](#_Toc56199577)

[law and actual interpretation 154](#_Toc56199578)

[4.5 Determination of Citizenship and the Notion of Origin of an Individual 167](#_Toc56199579)

[4.6 Determination and Proof of Tanzanian Citizenship to Persons Originating from Border Regions 173](#_Toc56199580)

[4.7 Strategies for Consideration 176](#_Toc56199581)

[4.8 Conclusion 180](#_Toc56199582)

[**CHAPTER FIVE 182**](#_Toc56199583)

[**STATELESSNESS IN TANZANIA 182**](#_Toc56199584)

[5.0 Introduction 182](#_Toc56199585)

[5.1 Peculiarities of Statelessness in Tanzania 182](#_Toc56199586)

[5.2 Groups at Risk of Statelessness 183](#_Toc56199587)

[5.2.1 Persons Born in Tanzania to Parents from Non-Commonwealth Countries 183](#_Toc56199588)

[5.2.2 Long term migrants, refugees and their children 186](#_Toc56199589)

[5.2.3 Children born outside Tanzania to parents who are citizens by descent and 192](#_Toc56199590)

[those Presumed to have dual nationality 192](#_Toc56199591)

[5.2.4 Foundling and Abandoned Children 193](#_Toc56199592)

[5.2.5 Adopted Children 194](#_Toc56199593)

[5.2.6 Persons Originating From Border Regions and Those with Cross Border Affinities 194](#_Toc56199594)

[5.3 Conclusion 195](#_Toc56199595)

[**CHAPTER SIX 197**](#_Toc56199596)

[**CONCLUSION AND RECOMMENDATIONS 197**](#_Toc56199597)

[6.1 Introduction 197](#_Toc56199598)

[6.2 Key Findings 197](#_Toc56199599)

[6.3 Conclusion 200](#_Toc56199600)

[6.4 Recommendations 200](#_Toc56199601)

[6.5 Future Research Agenda 207](#_Toc56199602)

[**BIBLIOGRAPHY 209**](#_Toc56199603)

[**APPENDICES 216**](#_Toc56199604)

# **CHAPTER ONE**

# **INTRODUCTION**

## **Background**

Citizenship[[1]](#footnote-2) is not always clear and easily determinable.[[2]](#footnote-3) This phenomenon is notable when citizenship status of an individual is called to be determined and proved, especially during applications of state documents that are issued to citizens such as passports and national identity cards and in exercises that involve identification of citizens against non-citizens. Defaults in mechanisms of determining and proving citizenship may render persons who would have regarded themselves to be citizens to a status of being non-citizens and at an extreme case rendered to statelessness.[[3]](#footnote-4)

Statelessness is an antithesis of the right to a nationality.[[4]](#footnote-5) The latter is a fundamental human right[[5]](#footnote-6) which creates a benchmark for entitlement to shared rights, privileges and liberties in a given polity. In Tanzania, for example a non-citizen is not allowed to vote or contest for a political post[[6]](#footnote-7) and not allowed to be allocated or granted land except for investment purposes,[[7]](#footnote-8) among other rights.[[8]](#footnote-9) In fact denial of the right to a nationality has far reaching repercussions, more particularly when an individual finds oneself not qualifying to be citizen while one might have been doubtlessly counting oneself to be citizen. Effective protection of this right is thus essential.[[9]](#footnote-10)

Challenges of determination and proof of Tanzanian citizenship have been observable during application for passports and are now emerging far more with the roll out of National Identity Cards. Zakaria notes in his article “When a Tanzanian is not Tanzanian:”[[10]](#footnote-11)

“I got a shock of my life this week when officials of the Ministry of Home Affairs told me that possessing a Tanzanian passport did not mean I was a Tanzanian. I can assure you if you cut my veins, as the blood starts to flow out, the red blood cells will be singing, “Tanzania nakupenda (Swahili word meaning I love you) with all my heart.” How dare, not one person but three of them, suggest that just because I had a Bongo land ‘pasi’ (Swahili word to mean passport) did not automatically or manually make me a Tanzanian?.............My first passport was issued in October 1986. It was so bulky one needed a bag to carry it. It did no (*sic)* fit in any ordinary pocket so it was a relief when government decided to change it in 1992. In 2000 the authorities changed the Tanzanian passport again and another change in 2004......more painfully, we had to apply afresh as if we never owned passports before. We had to present evidence of birth of self, parents and provide sworn testimony that we were original Bongo flesh (Bongo is used to mean Tanzania) or original stock, eh I mean parents......Am I not Tanzanian enough? If a passport is not sufficient proof of nationality, why should the planned Bongo identity card be any different? Will the attitudes change in the offices where visas and passports are issued...Any visa or passport laws that are responsible for unduly inconveniencing the public should be scrapped. A passport like nationality are not privileges but rights that should be readily given and respected.”

On 14 November 2019 it was reported by the Tanzania Broadcasting Corporation (TBC)[[11]](#footnote-12) that amongst six thousand three hundred and seventy residents of Bugango in Kakunyu Ward of Misenyi District in Kagera Region in North Western Tanzania who had registered as Tanzanians for National Identity Cards in 2018, only three hundred and nineteen qualified to have passed the test of being undoubtedly citizens of Tanzania. This implied that ninety five percent of the applicants did not qualify to be Tanzanian citizens.[[12]](#footnote-13)

Given the fact that Tanzania has a long land and coastline border and a composition of a medley of people with more than one hundred and twenty tribes; borders that remained open during and immediately after independence; the Open Door Policy and ideal of Pan Africanism under the rhetoric of the First President of Tanzania and Father of the Nation Mwalimu Julius Kambarage Nyerere; an inflow of refugees from neighbouring countries, some being self settled; inflow of freedom fighters such as those from Mozambique, irregular migrations and descendants of all these groups, it follows that any exercise involving determination and proof of Tanzanian citizenship is likely to render persons who would have been regarding themselves Tanzanian citizens to be non-citizens and at an extreme case being rendered stateless. Unfortunately, this situation is likely to continue unless an enhanced reconsideration of the framework of determination and proof of Tanzanian citizenship that goes in tandem with realities is done.

It is the contention of this research that the Tanzanian mode of determination of citizenship is largely attached to the notion of origin of an individual as a factor of connection that should be entitling a person to be considered citizen. This can be aptly demonstrated by the response by the Commissioner General of Immigration[[13]](#footnote-14) to the residents of Bugango (above mentioned) on a meeting held with them and their complaints about being regarded as illegal immigrants while they considered themselves Tanzanians:

“Citizenship begins from your generation. Where your grandfather and grandmother were born and originated. Isn’t it? Then follows your parents, where was your father born? Where did he originate? Where was your mother born? Where did she originate? There are persons who have forty or sixty years here in Tanzania who are not though Tanzanians. It is not guaranteed that because you were born and lived here in Tanzania for years and thus thought that you are Tanzanian. And because another has lived here for so long wants to go to get various documentations and indeed fights for them.”[[14]](#footnote-15)

Determination of citizenship by reference to origin of an individual renders the right to a nationality to fragility. It increases the risk of statelessness and creates an avenue for discrepancies between letters of law and actual interpretation. The reasoning behind this argument is that such attachment goes against the realities related to citizenship, more particularly on cross-border populations. Karugendo[[15]](#footnote-16) had this to note:

“Nimekuwa nikiandika makala juu ya wahamiaji haramu, lengo langu si kupinga zoezi zima, bali baadhi ya njia zinazotumika, na hasa namna ya kuwatambua wahamiaji haramu. Nimekuwa nikitoa mfano wa Mkoa wa Kagera ambao karibu kila mwananchi wa mkoa huu ni lazima awe na chimbuko Uganda, Rwanda au Burundi. Hii ni historia ambayo ni vigumu kuipinga, hivyo kutumia kigezo cha pua ndefu au lugha za nchi hizi jirani kuwatambua wahamiaji haramu ni kwenda kinyume na historia na wakati mwingine ni kukiuka haki za binadamu.”

Literally translated by the researcher;

“I have been writing articles on illegal immigrants with a purpose not to object the whole exercise, but on some mechanisms used especially on how to identify/determine illegal immigrants. I have been giving an example of Kagera Region in which almost every person[[16]](#footnote-17) (belonging to this region) must have his/her origin from Uganda, Rwanda or Burundi. This is undisputed history. Therefore determination of illegal immigrants by having a long nose or by similarity in neighbouring vernacular languages is contrary to history and sometimes a breach of human rights.”[[17]](#footnote-18)

It is further argued that attachment to this notion is what at moment reaped bizarre labeling (by the late Christopher Mtikila[[18]](#footnote-19) ) of the Tanzania’s first President and Father of the Nation Mwalimu Julius Kambarage Nyerere and the third President Benjamin William Mkapa as non-citizens.[[19]](#footnote-20) It is the contention, contrary to what Kamazima[[20]](#footnote-21) argues that problems related to citizenship shaking contemporary Tanzania are due to failure to take into cognizance of the former territorial history of Tanganyika-Rwanda-Urundi as a single composite under the German colonial power during formulation of who would qualify to be Tanganyikan citizen at independence. It is rather argued that attachment to the notion of origin of an individual, discrepancies in law and practice, pervasive discretions in determination of citizenship to a large extent are what continue to subject the right to a nationality to fragility.

Literature dealing with the question of what should be a connection entitling a person to citizenship and what constitutes statelessness at national level have their part to contribute. The literature largely associates challenges connected to the right to a nationality and statelessness with such factors like arbitrary denial or deprivation of the nationality of persons on grounds of race, ethnicity, language, religion, gender discrimination, non-compliance with rules on the prevention of statelessness pursuant to transfers of territory between states and failure of many African states (in particular) to ensure that all children are systematically registered at birth.[[21]](#footnote-22)

While this view is true in understanding the challenges related to determination of citizenship and associated statelessness impact, this research adds a new perspective of the contribution of attachment to the notion of origin of individuals as an adverse criterion that has been used as a factor determining a connection entitling a person to citizenship.

Proof of citizenship is also challenging, particularly under the Common law system where there is no single document to prove citizenship.[[22]](#footnote-23) It even becomes more challenging particularly when citizenship is contested by state and the burden of proof incumbent upon one who claims to be citizen.[[23]](#footnote-24) It is further made more complicated when the modalities of proof are subject to discretions by authorities. Especially where production of documents that purport to prove citizenship (in the absence of single proof) such as birth certificate, passport and national Identity Card is at times rejected in practice and the incumbent required to provide more proof(s). This is reflected in the Kenya National Commission on Human Rights (KNCHR),[[24]](#footnote-25) Smile Education and Development Foundation and Justice Base, [[25]](#footnote-26) Research and Advocacy Unit.[[26]](#footnote-27)

By and large, literature on the question of what should be a connection entitling a person to citizenship and its associated effect lack these important aspects of consideration which are argued to have adverse repercussions within the international law discussion around nationality and statelessness.

## **Statement of the Problem**

Effective legal framework in determining and proving citizenship is optimum in protecting the right to a nationality and avoidance of statelessness. There must be clear legal safeguards in determining citizenship; legally accepted and followed guidelines for proof of citizenship status.

The Tanzanian citizenship legal regime has gaps in matters of determination and proof of citizenship both in law and practice. Of particular reference is citizenship by birth.[[27]](#footnote-28) The question as to what connection should be entitling a person to be Tanzanian by birth remains challenging despite the law in place. This is particularly evident when one applies for state documents such as a passport and national identity card and in exercises that involve identification of citizens against non-citizens. In such cases processes to decide on whether an individual is really Tanzanian and requirements to provide evidence of Tanzanian citizenship are initiated. Particularly to persons born in border regions and those with cross border affinities, processes of determination and proof of their citizenship have at times subjected them to a condition of being non-Tanzanians and statelessness.

While application of a passport used to be a documentary-acquisition test for one’s citizenship, the roll out of national Identity cards is growing to have more implications in such a test of citizenship. This is due to the fact that a passport is a document issued for only those in needs of travel[[28]](#footnote-29) while a national Identity card is issued for purposes of identification to all Tanzanians (among other groups such as legal residents and refugees) aged eighteen and above. [[29]](#footnote-30) Thus its impact is far more felt by persons who have not even heard of a passport.

The bases or criteria for which an individual is considered Tanzanian undoubtedly qualifying to be issued a national Identity card are critical, more particularly to persons originating from border regions or those with cross border affinities. An example of ninety five percent of residents of Bugango who were found to be unqualified for national identity card is startling. [[30]](#footnote-31) Being just a portion of Kagera region, this phenomenon signifies how thousands of those who consider themselves Tanzanians are actually not when subjected to citizenship test in practice.

In this context, the right to a nationality is subjected to fragility and statelessness is imminent. This is possible due to lack of safeguards and existing discrepancies in both law and actual interpretation of what connection should be entitling a person to Tanzanian citizenship by birth. Letters of law do not always tally with actual interpretation. Unfortunately there is no judicial interpretation that sets a standard interpretation. As such, while some secondary sources interpret the letters of law on what constitutes Tanzanian citizenship by birth after independence to mean any person born in the United Republic without a need of regard to citizenship of parent(s),[[31]](#footnote-32) authorities[[32]](#footnote-33) interpret it to a requirement of citizenship of a parent (s) in addition to being born in the United Republic. In the latter case it even goes beyond to multi-generation by considering the origin of a person.[[33]](#footnote-34)

The lack of safeguards above highlighted advances further when an individual is required to prove that she or he is a Tanzanian. As it is to other Common law countries, there is no single document that proves Tanzanian citizenship by birth.[[34]](#footnote-35) Nowhere in the laws and regulations is it stated as to how citizenship should be proved. Instead it is only a requirement of law that one who claims to be Tanzanian is incumbent to prove such a claim.[[35]](#footnote-36) As such, approvals of such claims have been a discretional measure where authorities may choose to accept or reject evidence(s) provided for proof of citizenship and even multiply it with other non-documentary means of proof such as by looking at physiological features of a person, her or his tribal links and ability to general knowledge (for example, ability to sing the national anthem).

Given the historical realities related to African nationality law and Tanzania in particular, the above matters need to be cogently addressed. Failure of this renders the right to a nationality (which is held to be a fundamental human right) to fragility and prevalence of statelessness.

## **Research Objectives**

### **General Objective**

The main objective of this research was to analyse as to what should be a connection entitling a person to citizenship and who is stateless in Tanzania given the application of the law in practice.

### **Specific Objectives**

1. To analyse how Tanzanian citizenship is determined and proved.
2. To examine the extent to which the mechanisms of determination and proof of Tanzanian citizenship safeguard the right to a nationality and avoidance of statelessness.
3. To explore strategies that should be considered and employed in formulating an effective legal framework for determination and proof of Tanzanian citizenship.

## **Research Questions**

1. How is Tanzanian citizenship determined and proved?
2. To what extent do the mechanisms of determination and proof of Tanzanian citizenship safeguard the right to a nationality and avoidance of statelessness?
3. What strategies should be considered and employed in formulating an effective mechanism for determination and proof of Tanzanian citizenship?

## **Literature Review**

The question as to what should be a connection entitling a person to citizenship and the latter’s proof as well as what constitutes statelessness at national level has received divergent scholarship and policy treatments. Birth and residence of a person, birth and residence of her/his parents, grandparents, children or spouse; similar connections to former political units that have been reconfigured to make up the new state in existence and in the case of citizenship by naturalisation or registration, habitual residence of the individual, her/his family ties, her/his participation in public life, attachment shown by her/him for a given country and inculcated in her/his children are commonly held factors considered for a connection entitling a person to citizenship.[[36]](#footnote-37)

With regard to birth, the concept *jus soli* (right of soil applied to mean citizenship by a mere birth in a given territory without regard to citizenship of parent(s)) is applied coupled with parenthood based citizenship in the concept of *jus sanguinis* (right of blood to mean citizenship based on parent(s) citizenship status). Finally, naturalisation/registration for those who do not fall into the two groups of *jus soli* and *jus sanguinis*. These three modes of attainment/acquisition of citizenship account for commonly held modes of determining such forms of connection entitling an individual to citizenship.

On the other hand, while the standard definition for statelessness has been laid down to refer to a condition where an individual is not considered a national of any country under the operation of its law, [[37]](#footnote-38)determination of this status remains a fact of law and practice to be established on a case to case basis.[[38]](#footnote-39) Scholarships in this condition have largely associated statelessness to factors like denial or deprivation of the nationality of persons on grounds of race, ethnicity, language, religion, gender discrimination, non compliance with rules on the prevention of statelessness pursuant to transfers of territory between states and failure of many African states (in particular) to ensure that all children are systematically registered at birth.[[39]](#footnote-40)

Looking at the strands of literature in the debate which can be grouped in the international law discussion around nationality and statelessness, the element of the notion of origin of an individual which constitutes the first strand of literature in this research, has not been given serious thought. When applied in mechanisms of proof of citizenship, this notion has also adverse effects of rendering means of proof of citizenship unacceptable by authorities and the need for further proof (s).

Manby[[40]](#footnote-41) has this to highlight

“[.....] there has been much less intellectual work around the adoption of practical rules for deciding who is a national and how to give recognition of that identity, within the context of the borders of today’s States.”

In general, the author argues that the law can be an instrument of exclusion or inclusion in matters of determining as to who should be considered citizen. While this contention is agreed to, this thesis adds an element of the notion of origin of an individual as a factor that can fall beyond the scope of law that can similarly be adversely used as an instrument of exclusion.

The author also helps to augment this contention when she states thus;

“Many millions of people in Africa live in a country that is not the one where they were born, and many millions more in a country that is not the one their parents were born. Most of them have their origins in another African country; many have established new lives and intend to remain indefinitely in the ‘new’ country, which may be the country of their birth; others are nomadic pastoralists. Despite this, it is very difficult to acquire the nationality of any country through naturalisation; and a number of African countries provide almost no possibility for the descendants of migrants to obtain the nationality of the country where they were born, even over multiple generations.”[[41]](#footnote-42)

The author advances this challenge against questions around legal definitions of citizenship and the procedures to apply them. In this strand of the notion of origin of an individual, this thesis on its part illuminates this challenge as being a result of “marriage” between the notion of origin of an individual and the connection entitling a person to citizenship. It advances an argument that it is until this notion is “divorced” from the mode of determining such connection that the legal definitions of citizenship in this context may prove to be objective and practical.

In line with Manby’s quoted verse above, Kamazima[[42]](#footnote-43) argues that problems relating to citizenship shaking contemporary Tanzania are due to failure to take into cognizance the fact of history of free migrations within the territory of Rwanda-Burundi and Tanganyika under German Colonial Power when defining as to whom the title Tanganyika citizen would be at independence. While this thesis takes note of weight of such historical factors, under this strand it shows how the continuance of combining or attaching the notion of origin of an individual continues to generate adverse repercussions in deciding as to who should be entitled to be considered citizen. It is further shows that this notion is not regionally limited as Kamazima advances his argument, rather it is a catch-all notion in the context of history of citizenship to most African countries.

The African Commission on Human Rights[[43]](#footnote-44) highlights on matters of determination of nationality for those born after independence particularly those in border regions. The Report notes:

“In certain countries, people originating from certain regions, particularly border areas, must have their inclusion in the human capital of the nation approved by local organisations in addition to complying with constitutional and legislative provisions. This is notably the case in Kenya, where people originating from regions bordering on Somalia, South Sudan and Ethiopia must be ‘vetted’ by community leaders before they can apply for national identity papers such as passports.”

The Report however mixes two concepts that this research strives to differentiate in order to shed light to an understanding of the notion of origin. They are ethnicity and “origin.” The term “ethnicity” refers to the fact of belonging to a particular race and the term “ethnic” refers to connectedness with or belonging to a nation, race or people that shares a cultural tradition.[[44]](#footnote-45) But “origin” is associated with the point from which something starts, the cause of something or a person’s social and family background.[[45]](#footnote-46)

In the Report, determination of nationality in the contexts of “ethnicity” and “origin” has been synonymously used to show how they can be used to discriminate individuals or groups of persons. Reference has been made to article 2 of the African Charter and Constitutions of Liberia, Democratic Republic of Congo (DRC), Uganda, Nigeria, Somalia, Ivory Coast, Swaziland and Mali. In the Constitutions of these countries, words “of African origin,” “ethnic groups,” “indigenous communities” and “by origin” are used in setting criterion for citizenship by birth.[[46]](#footnote-47) It is the contention of this thesis that the notion of origin should stand as an independent concept that has adverse repercussions in determination of citizenship including elements of discrimination by the Report associated with the terms ethnicity and indigeneity.

The notion of origin can be exemplified in the case of Tanzania which is not directly implicated in matters of ethnicity. It is argued that the notion of origin as a determining factor as to what connection should be entitling an individual to citizenship has been mixed up with other concepts such as ethnicity thus diminishing its separate effects in matters of determination of citizenship as envisaged in this thesis.

On the other hand the notion of origin has been noted by Gasarasi.[[47]](#footnote-48) The author associates the bizarre labeling of the First President and Father of the Nation of Tanzania Mwalimu Julius Kambarage Nyerere as non-citizen as a result of the Hima Empire pseudo-thesis. In his treatise, the notion of origin of an individual has been taken up by his argument that the non-citizenship of Julius Nyerere (as alleged by Christopher Mtikila) was a move to advocate the Hima Empire pseudo-thesis. This thesis illuminates new perspective in this argument by treating the notion of origin of an individual as a factor that goes beyond Gasarasi’ view. As an example to this, it was the notion which went far to also label the third President Benjamin William Mkapa as non-citizen (by the same Christopher Mtikila). In effect, the notion of origin of an individual is viewed under this thesis as a negative factor used in deciding as to what connection should entitle a person to citizenship.

The second strand of literature lies into existing discrepancies between law and actual interpretation. This has been notable under the Tanzanian citizenship regime, particularly on citizenship by birth. There has been a divergence between the actual interpretation by authorities especially the Tanzania immigration authorities and secondary sources. Some of the latter maintain that Tanzania follows the *jus soli* mode while the former maintain that Tanzania follows the *jus sanguinis* mode. [[48]](#footnote-49) Recently in the judgment by the African Court on Human and Peoples’ Rights in the matter of Robert John Penessis v. United Republic of Tanzania[[49]](#footnote-50) the *jus sanguinis* mode has also been followed in the following words:

“The Court further notes that, according to the 1995 Citizenship Act, at the time of the Applicant’s birth, that is 1968, […] a person could acquire Tanzanian nationality by birth if that person was born in the United Republic of Tanzania after Union Day, provided either of his parents is Tanzanian.[….]

Literature in this strand underlines existence of a problem on determination of Tanzania citizenship by birth, but they do not on the same footing provide a firm affirmation of the position followed under the Tanzania Citizenship Act.[[50]](#footnote-51) More particularly, ascertainment as to whether Tanzania citizenship legal regime is pegged to *jus soli* or *jus sanguinis* modes of citizenship determination are lacking. The following are the main authors that fall under this strand.

Manby[[51]](#footnote-52) based on section 5 of the Tanzania Citizenship Act[[52]](#footnote-53) counts Tanzania as a country that follows birthright or *jus soli* citizenship. This position is similarly echoed in her book,[[53]](#footnote-54) Citizenship in Africa: The Law of Belonging[[54]](#footnote-55) and article.[[55]](#footnote-56) In the latter article the author points out that the proposed constitution[[56]](#footnote-57) had changed the *jus soli* mode of attainment of citizenship to *jus sanguinis* mode. While the author finds that Tanzania follows birthright citizenship, it remains uncertain according to its relative provisions whether the position of law regarding citizenship by birth falls under this interpretation or by *jus sanguinis* mode*.*

In a study by the same author[[57]](#footnote-58) she points out that there is a conflict between the wording of section 5 of the Tanzania Citizenship Act and their interpretation on the ground. The author accords interpretation of section 5 of the Act to the commonly held position under the Commonwealth countries which followed *jus soli* mode of attribution of citizenship. However, she admits that there are minor exceptions under the Act compared to those commonly held under the *jus soli* mode of Commonwealth countries. This proposition leaves an unascertained position as to whether the letters of law under the Tanzania Citizenship Act are in consonant with the practice on the ground which accords Tanzania citizenship by birth to a *jus sangunis* model.

Issa[[58]](#footnote-59) takes into dimension both *jus soli* and *jus sanguinis* models as applicable in Tanzania. She does not show how this is possible in Tanzania. As a matter of confusion, while she assets that Tanzania follows *jus soli* mode she does not remain consistent on this. Instead she maintains in her arguments that in order for a person to be considered as a Tanzanian citizen by birth, he must be born in Tanzania to either parent who is also a citizen of Tanzania, a typical *jus sanguinis* mode. Thus the author adds more confusion as to which position of law Tanzania follows specifically on citizenship by birth, whether by *jus soli* or *jus sanguinis*. This research seeks to ascertain as to what position of law constitutes Tanzanian citizenship by birth which the author has not provided amongst the two models.

Following the similar trend is the report of the Right to Nationality in Africa.[[59]](#footnote-60) This report elucidates eight variations in the application of *jus soli* namely; one, to all children born on their territory of birth; two, to all children born on their territory, but only if they belong to a specific ethnic group, three, to children born in the respective country to non-national parents at the age of majority following a period of residence either automatically or by application, four, to children born in the country to a parent who was also born in the country, five, to children born in the country to parents who are legal and habitual residents, six, to children born on the respective territory if they would be stateless if not granted nationality, seven, to all children born to unknown parents and eight, to all those countries that do not grant any citizenship rights based on birth in the respective territories even for foundlings or children of unknown parents. Under this classification, Tanzania is placed in the first category which implies that birthright citizenship exists in Tanzania without qualifications of parentage status under the *jus sanguinis* model. This further reveals the gap in the real position under the Tanzania Citizenship law regime.

In the paper of International Refugee Rights Initiative (IRRI)[[60]](#footnote-61)the legal challenge regarding determination of citizenship by birth is raised. This challenge goes to children of refugees born in Tanzania. Due to this uncertainty, some of naturalised persons born in Tanzania were thought of possibly having had already acquired Tanzanian citizenship by birth. It is further noted how it is not clear as a matter of law whether this group of persons acquire and be recognised as citizens of the countries where their parents originate. In this case the paper shows the existence of the problem of determination of Tanzanian citizenship by birth leaving it without any further ascertainment of the interpretation of the law.

Similarly, in the paper by the Centre for Forced Migration, International Rights Initiative and the Social Science Research Council[[61]](#footnote-62) regarding Tanzania citizenship by birth it is also shown that section 5 of the Tanzania Citizenship Act appears to indicate that those born on the territory of Tanzania after 26th April, 1964 become automatically Tanzanian citizens by birth without due regard to citizenship of their parents (with exception however of a child born to a diplomat or to a parent who is an enemy to Tanzania and if the birth occurs in place under occupation by the enemy). The paper asserts that this position is due to a number of secondary sources that confirm this position. On the other hand, it provides that this is not the approach taken in practice and as such seeks clarifications from Tanzanian experts. It is this uncertainty, among others that this research ventures to ascertain.

Shah[[62]](#footnote-63) examines in detail a controversial 1985 amendment to Kenyan citizenship laws particularly section 2 of the original independence constitution of Kenya. The relevance of the section is that it looks likely similar to section 5 of the Tanzania Citizenship Act. His interpretation, however needs a critical interpretation and reflection given the fact that there has not been an interpretation that analyses critically section 5 of the Tanzania Citizenship Act which is interpreted by practitioners in Tanzanian citizenship law[[63]](#footnote-64) to refer to a *jus sanguinis* model of attribution of citizenship rather than the *jus soli* model that can be compared to it under this article. This research seeks to fill in this gap.

The third strand of literature lies in proof of citizenship and strategies of improvement. Literature in this strand reveals that there is a problem of proof of Tanzanian citizenship. However, treatment of this problem leaves gaps in their modes of analyses. More particularly this strand shows an existence of problem of proof of citizenship but does not provide strategies for improvement. The following are the relevant authors.

Mubanga[[64]](#footnote-65) expounds challenges and limitations attached to mechanisms relied upon in determining and proving as to whether a given individual is a citizen of Tanzania or not. In his treatise, it can be deduced that at the moment of preparing the article, there were no standing documents to prove Tanzania citizenship without inherent weaknesses or doubts, especially to citizens born in border zones. While showing inherent weaknesses and pitfalls in the mechanisms used by Immigration officials in discerning as to whether a given person is a citizen of Tanzania, the author gives room for further research on whether issuance of National Identity Cards would cure the problem of proof of citizenship. The author did not go further to provide solutions to the problem at hand. On the other hand, the author associates the problem of proof of Tanzanian citizenship to the general partition of the African continent. While he left an open up discussion regarding proof of Tanzanian citizenship by national Identity cards, the latter’s context still needs further research.

Kamwaga[[65]](#footnote-66) pinpoints flaws attendant to proof of Tanzania citizenship during the exercise of round up and expulsion of illegal immigrants famously known as “*Operesheni Kimbunga*.”[[66]](#footnote-67) Notwithstanding the fact that the exercise was, among others geared at clearing the state of insecurity that was prevailing in border regions in forms of murder, armed robberies, cattle theft, poaching of wild game, attacking vehicles on highways, unlawful possession of arms and armaments, illicit trade in arms and environmental degradation caused by overgrazing, [[67]](#footnote-68) the exercise was carried out through first proving citizenship status.

The exercise as advanced by the author revealed the fact that, clear and effective means to evident Tanzanian citizenship are lacking. Contradictions that touched both the officers implementing the exercise and the citizenry are noteworthy. It is noted that birth certificates, voters’ registration cards and passports were commonly used as evidence to prove one’s citizenship. The said contradiction arose when some of these evidences were rejected from being evidence to prove one’s citizenship.

The author notes how the exercise went beyond proof of citizenship by requiring one to sing the National Anthem, failure of which purportedly meant that one was not a citizen of Tanzania. He further pinpoints how a person was regarded to be a citizen of Tanzania if only he or she had a smallpox vaccination scar on his or her left side shoulder. The author goes on to show how names were used to determine one’s citizenship. A name that bore similarity in names of Burundians or Rwandans or Congolese purportedly implicated the bearer as being not a Tanzanian. While this shows how the practice with regard to proof of citizenship is challenging, the author finds solution for improvement in issuance of national identity cards. While this proposition may seem to be a panacea to the problem, a research in the idea needs to be done. It is yet to be specifically held that under the current system of issuance of national identity cards proof of one’s citizenship will be solved.

In the report by the Kenya Human Rights Commission[[68]](#footnote-69) it is pointed out that at times a Kenyan may hold necessary documentation that shows him or her to be a citizen but still rejected and the documentation counting non useful. While this may also happen in other countries including Tanzania, the report assumes this practice as a discriminatory one without highlighting as to what exactly comes behind these kind of practices. It is important to find out if these practices do exist also in Tanzania with a focus; however of finding what might lead to such subjection of documentation of proof of citizenship to non-usefulness. This is due to the fact that it will be of no use if individuals will be given documentation for proof of their citizenship while at the same juncture their documents prove non-useful.

Finally, Goldstone[[69]](#footnote-70) in proposing for strategies of improvement against related citizenship denial as well as ill-treatment of non-citizens three thoughts are advanced: one, documentation and public education; two, clarification and distillation of legal standards related to citizenship and three, enforcement of existing norms, including those that prohibit racial discrimination. With regard to documentation, the author only points out that states should ensure that adequate documentation capable of establishing citizenship is afforded to all persons within their jurisdictions. While this position seems to be sound, under country level it needs a critical research as to how it can be brought into practical reality.

In conclusion, the above literature does not in the first place show the contribution of the notion of origin of an individual in determining an entitlement to citizenship, in the second place do not provide for an ascertained position of law that constitutes Tanzanian citizenship by birth whether by *jus soli* or *jus sanguinis* modes and in the third, shows existence of problems of proof of Tanzanian citizenship without however pinpointing for strategic mechanisms of improvement thus a need for contribution of new knowledge.

## **Research Methodology**

Overall, this research was approached through mainly qualitative legal research. It is a research that involved description. Descriptive design which seeks to describe the state of affairs, fact findings, formulation of important principles of knowledge and solution to significant problems[[70]](#footnote-71) was embarked on. The choice of this research design was due to its appropriateness in the area under research.

Research methods used were two: doctrinal legal research and empirical legal research. The choice of doctrinal legal research was due to the fact that it is the basic and essential method in legal research. Particularly under this research it was used in matters that involved analysis of statutory and case law.

Under doctrinal legal research, main data was obtained from primary sources of law namely legislation and case law. Secondary data on the other hand was collected from information that has already been collected and examined, for example from books, journals, newspapers, magazines, reviewed papers, dissertations, theses, archival documents and reports. The internet was of a great source to collect both main data (from primary sources of law) and secondary data. Rigorous criteria for the quality of retrieved internet sources were adopted. This was aimed at mitigating the challenges of authority, authenticity, accuracy, currency and relevance of the data.[[71]](#footnote-72) Collection of main and secondary data also involved physical libraries at the Open University of Tanzania (OUT), Dar Es Salaam Regional Library, and the University of Dar Es Salaam School of Law Library while in Dar Es Salaam region and Kigoma Regional Library while in Kigoma region.

Data analysis of information gathered in doctrinal legal research was through rules of statutory interpretation and some forms of legal reasoning appropriate to the circumstances of this study such as analogical, deductive and inductive reasoning. Documentary analysis complemented those documents that were not directly related to statutory and case law.

Complementary to the above doctrinal legal research, empirical legal research was used. This is a research that involves direct observation of the real world. In other words, it is a research that involves direct observations of some matters under research. The choice of this research method was due to the fact that it did complement some data obtained from primary and secondary sources under the above doctrinal legal research. It also helped to obtain data in their actual and practical realities.

Population under this research involved immigration officers, officials from National Identification Authority (NIDA), applicants for Tanzanian passports, applicants for national identity cards, local leadership, Ward Executive officers, individuals that were involved in *Operesheni Kimbunga*, officials from Registration Insolvency and Trusteeship Agency (RITA), applicants for birth certificates from the latter and attorneys in the Attorney General’s Chambers (AG).

Research sites under the empirical legal research involved Dar Es Salaam and Kigoma. These are regions from which the above population was extracted from. Population that is stationed in specially located offices was in the following forms in brackets: Immigration Officers (Immigration Headquarters and Regional Immigration office in Kigoma, NIDA officials [Temeke District Office], officials from RITA (at headquarters) and attorneys in the Attorney General’s Chambers.

Population and research sites above mentioned were chosen since they form a group of persons and places where matters of citizenship determination and proof are practically considered. Further, a highlight on *Operesheni Kimbunga* was due to its involvement in practical matters related to determination and proof of Tanzanian citizenship. In the similar trend, scenarios of applications for Tanzanian passports and national identity cards were involved since they also call for applicants’ determination and proof of Tanzanian citizenship.

Officials involved in issuance of birth certificates from RITA were chosen because of the weight carried by a birth certificate in both determination and proof of Tanzanian citizenship. As such complementary information from them was crucial. Attorneys from the Attorney General’s Chambers were selected due to their involvement in drafting of statutes and prosecution of matters related to citizenship. Finally, the local leadership was chosen since it is largely involved in introducing its local populace in matters related to citizenship, among others.

Due to the nature of challenges involved in determination and proof of citizenship amongst persons with cross border affinities, the region of Kigoma was chosen. [[72]](#footnote-73)The choice of this region was due to its historical interactions with bordering countries of Burundi, Rwanda and the Democratic Republic of Congo, countries that have had, among others been affected by volatile historical state of affairs and as a result the region being a host to a number of refugees. Individuals born or originating from this region are in no less moments subjected to rigorous tests to further proof and determination of their Tanzanian citizenship. Thus the choice of the region was expected to provide rich information regarding practicalities of determination and proof of Tanzanian citizenship. The researcher wanted to also involve Kagera region, especially in the village of Bugango in Misenyi District which was noted in the background on failure of ninety five percent of its residents to pass the test of application for National Identity card, but due to budgetary constraints the region was not visited.

In undertaking the choice of population and its accompanied research sites, purposive sampling was used. The choice of this sampling technique was due to the fact that the nature of the research needed persons who possess rich information in matters of citizenship or who ever encountered practical examinations on matters of determination and proof of Tanzanian citizenship. This further affected the choice of research sites as noted in the preceding paragraph.

It is worth noting that qualitative research tends to focus on a smaller number of observations or data sources which are considered to be data rich and worth of study and to examine them in-depth, and that qualitative researchers are not (usually) concerned that the people or situations should be statistically representative as they do not seek to reach findings that are generalisable to an entire population.[[73]](#footnote-74) In this regard, the choice of research sites and the sample sizes were all not aimed at forming a generalisation, rather an extract of in-depth information. As such the following formed the sample size in undertaking empirical research method: Two persons involved in *Operesheni Kimbunga* from Kigoma region; four passport applicants at regional immigration office in Kigoma and six from Immigration headquarters; four applicants for national identity cards; two officials from RITA; two applicants for birth certificates from RITA; eight immigration officers; two high ranking retired officials; three NIDA officials; five local leaders from Kigoma and two from Dar Es Salaam and two attorneys from the Attorney General’s Chambers thus forming a total of forty two (42) respondents.

Under empirical legal research, data collection was largely through the use of questionnaires and focused interview. The choice of these research instruments was due to the fact that they befitted the type of research and served budgetary constraints while continuing providing necessary data required. Questionnaires were divided into two components namely, authorities and the general public. Questionnaires intended for authorities cross-cut officials from Immigration Services Department, NIDA, RITA, Attorney General’s Chambers and Local Government Authorities while questionnaires for the general public served persons who obtained relevant services from the authorities. With exception of high ranking officials in the authorities’ component, questionnaires constituted the largest data collection tool in this group. A few others were used for the general public. Collection of data through interviews was largely done to high ranking officials and the general public. The researcher wanted to hear directly and obtain opinions from these groups through focused interviews.

Data analysis of information gathered under empirical legal research were analysed under quick impressionist summary. The latter, among others summarizes key findings, explains, interprets and concludes. It is a method of analysis that does not require data transcription, key issues of discussion with respondents are recorded and a narrative report is written, enriched with quotations from key informants and other respondents.[[74]](#footnote-75)

In undertaking empirical legal research, ethical issues were taken care of. Among the main ethical issues considered were maintaining of confidentiality, ensuring that respondents participate voluntarily, adherence to agreements with the respondents on what to be collected and reported and full explanations of the details and results of the research to respondents.

### **1.7 Scope and Limitation of the Study**

The study is concerned with determination and proof of citizenship and the consequential effects of statelessness in the case an individual fails to satisfy the requirements (of determination and proof of citizenship). It covers the United Republic of Tanzania due to the scope of application of the Tanzania Citizenship Act.[[75]](#footnote-76)

Empirical evidence to illustrate the practical experience are drawn from the regions of Dar Es Salaam and Kigoma. Particularly in Dar Es Salaam, Temeke district is chosen. The choice of the district of Temeke is influenced by a preliminary research which found complex and problematic issues regarding citizenship compared to other districts in Dar Es Salaam.[[76]](#footnote-77)

On the other hand, Kigoma has been chosen as an example of border regions in Tanzania, but with complex and peculiar problems when compared with other regions.[[77]](#footnote-78) Notwithstanding these two major illustrations, this study uses secondary evidence in the form of reports from other regions in Tanzania. Overall, the scope of this work is the United Republic of Tanzania because interpretation of the Tanzania Citizenship Act by the Immigration Department and Courts are not restricted to particular regions.

## **1.8 Organisation of the Study**

This study is structured by beginning with this introduction chapter which sets the context of the study. Chapter two provides the general universal and regional framework on the right to a nationality and statelessness. Chapter three explores the legal framework and administration of citizenship in Tanzania. Chapter four provides for determination and proof of Tanzanian citizenship. This chapter covers practical analysis of the duo. It is the most extensive in this study and synthesizes matters covered in preceding chapters. It provides for a critical analysis on matters pertaining to determination and proof of Tanzanian citizenship. Chapter five provides for Statelessness in Tanzania where groups at risk of statelessness are shown and finally chapter six provides for conclusion and recommendations.

# **CHAPTER TWO**

# **THE RIGHT TO A NATIONALITY AND STATELESSNESS UNDER UNIVERSAL AND REGIONAL FRAMEWORKS**

## **2.1 Introduction**

The right to a nationality and statelessness are important aspects to explore before embarking on analysis of matters of determination and proof of Tanzanian citizenship. In all matters of nationality, the notion right to a nationality is indeed like an ocean touching islands. In fact this work would be of no impact if not attached to the right to a nationality. Consideration of this right at international and regional levels places Tanzania in context of the state of the art at international and regional levels with regard to the right to a nationality. Further, Tanzania is not an isolated island with regard to matters of nationality at the global level. Much more, Tanzania is a contracting party to various international instruments touching matters of nationality. It is thus imperative that the entire framework be brought up into perspective of this thesis. This right goes in tandem with its antithesis namely statelessness. In fulfilling this objective, this chapter explores the framework of the right to a nationality in two divisions. The first is the Universal division. The latter covers instruments regulated under the United Nations system while the regional division covers instruments under regional and sub-regional systems, specifically with the African Region, the European Region, the Inter-American Region, the Asia-Pacific Region and the Arab States’ Sub-regional division. In this and the following chapters, the word ‘nationality’ has been preferred instead of the word ‘citizenship’ due to its common usage in international instruments.

## **2.2 Historical backdrop**

Under the international plane, the right to acquire, change and retain nationality is what constitutes the right to a nationality. The word nationality is preceded by article “a” to connote single and not dual or multiple nationalities. Thus, a departure in the right to dual or multiple nationalities as compared to the recognised right to a single nationality in human rights norms.

Historically, the right to a nationality was not recognised as an individual right in isolation of State involvement. An individual could not claim this right as one does on the right to life, for example. Nationality could be claimed against another State in form of diplomatic protection, a claim that could only be done by a State on behalf of an individual. A State had sole and unfettered discretion in deciding as to who was its national. This position was affirmed by the Permanent Court of International Justice in 1923 in Tunis and Morocco Nationality Case*.*[[78]](#footnote-79) Only imposition of nationality to individuals who were not of a given State was not allowed. For example, State E granting and considering M as its national while M lives far from it and is a national of State P and at the same time M having no connection of whatsoever kind to State E.

This discretion did not continue to be held absolutely. In the year 1930 the Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws came up with limitations in State discretion in nationality matters. Under article 1 of the Convention, it was provided that each State was empowered to determine who are its nationals, however this would only be honoured by other States only if such determination would be consistent with international conventions, international custom and the principles of law related to nationality.

More limitations continued to take strong roots after the adoption of the Universal Declaration of Human Rights in 1948. More specifically, article 15 which forms the basis of the afore defined right to a nationality provided that everyone has the right to a nationality and that no one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality. This declaration, though not binding on a specific State [[79]](#footnote-80) remains as the basic international customary law with regard to the right to a nationality. In this line, even judicial decisions on nationality are consequently founded on this article.

International instruments and judicial decisions on nationality in protection of the right to a nationality have at times generally focused on the following principles and rules:[[80]](#footnote-81)the right to a nationality is a universally recognised human right; neither marriage nor the dissolution of marriage, or the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse; statelessness shall be avoided; there shall be no distinctions or practice which amount to discrimination on the grounds of sex or gender, language, religion, political or other opinion, race, colour, national, social or ethnic origin, property, birth or other status; all nationals are equal before law; if any provision of the current law conflicts with an international treaty to which the State is party, the provisions of the international treaty shall prevail; and finally an insistence on procedural guarantees and due process in matters of determination of nationality. Looking at these principles, it is notable that the right to acquire, change and retain nationality is intertwined in the above principles.

## **2.3 Nationality and the Ideal of Connection**

It is pertinent before observing the universal and regional frameworks on nationality to note on the idea of nationality law and the types of connection that are recognised as creating the rights of states to recognise a person as a national and the obligations on states to grant nationality in any particular case. This reflects the main question of this thesis which will look into what connections should be entitling a person to citizenship in the context of Tanzania. It is further due to the fact that there is currently neither international treaty nor jurisprudence establishing that a state is obliged to recognise the nationality of a person who has a genuine connection to that state with exception only of a few numbers of circumstances. [[81]](#footnote-82)

Way back in 1923[[82]](#footnote-83) and held by theorists and legal scholars, attribution of nationality by a state to persons whom it could not reasonably hold to be its nationals was seen as wrong and an encroachment to sovereignty of states.[[83]](#footnote-84) There is thus a need to have a connection entitling a person to nationality. Owen highlights thus:

“….those and only those individuals have a claim to membership of a polity whose individual autonomy and well being is linked to the collective self government and flourishing of that polity.”[[84]](#footnote-85)

Routes through which such a connection arises is largely through place of birth, hereinafter named *jus soli;* parental citizenship, hereinafter named *jus sanguinis* and through residence. International norms on attainment or acquisition of nationality hinge largely on the above routes. The routes are hereunder explained.

### **2.3.1 *Jus soli, Jus sanguinis* and Residence as Routes of Connection**

The concepts *jus soli* and *jus sanguinis* are Latin words. Defined from their Latin origin, the word *jus soli* means right of the soil while *jus sanguinis* means right of blood. By *jus soli*, a child is said to be a citizen of a given country by a mere birth in the respective country while by *jus sanguinis*, a child’s citizenship is determined by associating parent(s)’ citizenship. In this context, birth alone in a given country does not entitle a child to be a citizen. An illustration can further elaborate this. Assuming that country W attributes citizenship by birth under *jus soli* mode: V, a child born in country W to parents who are neither citizens of country W will automatically be a citizen of country W by birth unless there are exceptions provided under the law. For example, if V is born to a father who is an envoy. If on the other hand country W attributes citizenship by *jus sanguinis* mode, V’s citizenship will depend on whether her parent(s) are citizens of country W although she was born in country W. If (depending on the law of country W) neither of her parents is a citizen of country W, V will not be a citizen by birth.

Historically, *jus soli* mode was dominant in the British tradition. The feudal mode of living formed a precondition of *jus soli* mode of attribution of citizenship. Persons born under a feudal lord were considered as his ownership. As such, birth alone in the land owned by a given feudal lord meant being a citizen. This mode of attribution of citizenship continued to grow under the British citizenship tradition. Following development of migrations outside Europe, *jus soli* mode was adopted in British colonies in Africa, United States, Canada, Ireland, and Australia. Preference of this mode was in countries of immigrants where children born in those countries automatically acquired citizenship by mere birth in their new areas of settlement.

In fact, until immediately before 1983, the British position was that of *jus soli* mode.[[85]](#footnote-86) This position was affirmed under section 4 of the British Nationality Act (BNA) of 1948. Under this section every person born on or after 1 January, 1949 within the United Kingdom and Colonies was a citizen of the United Kingdom Colonies (CUKC) by birth unless he was a child of an accredited foreign diplomat or was born to an enemy alien in territory occupied by that enemy. Under this position, citizenship by birth was that of a pure *jus soli*. That is, birth alone was used to determine citizenship by birth. Immigration and nationality status of parents didn’t even at all matter except for the exceptions mentioned. [[86]](#footnote-87)

*Jus sanguinis* mode on the other hand predominated under the French tradition. In a bid to do away with the feudal tradition where an individual was seen as a property of his feudal lord, *jus sanguinis* mode was seen a way through. It was assumed that a person born anywhere to a father who was French would continue to be French citizen. This was seen to be an achievement against bondage of feudal lords.

In fact both modes of attribution of citizenship are not carved in stone. They get adopted by countries depending on needs and circumstances of the respective countries. For example, countries whose citizens were moving away from their countries preferred *jus sanguinis* mode in order to maintain their children’s citizenship while the same shifted to *jus soli* mode when they changed to be countries of massive immigration. This is what happened to France prior and after 19th century. However, this is common in countries that have stable border controls. Those whose borders are not ably controlled prefer *jus sanguinis* mode. Both concepts are reiterated to be basic connections that create rights and obligations between States and individuals in matters of entitlement to nationality.

With regard to residence, McClean and Ruiza Bou Nigm [[87]](#footnote-88) have this to note:

“The most basic link between an individual and a country is mere physical presence, even if it be for 45 minutes spent wholly in an aircraft packed on an airport apron.” Particularly for cases of naturalisation, it is an international norm that a given period of residence of a person has a great share in the type of connection entitling her or him to citizenship by naturalisation. Failure to observe this norm may render even a granted naturalisation non-honoured by other states. This transpired in the 1955 Nottebohm case in which it was held:

“According to the practice of states, to arbitral and judicial decisions and to opinion of writers, nationality is a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interest and sentiments, together with the existence of reciprocal rights and duties. It may be said to constitute the juridical expression of the fact that the individual upon whom it is conferred either directly by the law or as a result of an act of the authorities, is in fact more closely connected with the population of the state conferring nationality than with that of any other state.”[[88]](#footnote-89)

Given the fact that the lack of the right to a nationality gives room to statelessness, it is also worth noting the concept as it will also be looked into on statelessness in Tanzania.

### **2.3.2 Statelessness**

The international definition of a stateless person is provided for in article 1(1) of the 1954 Convention relating to the status of Stateless Persons. The latter is defined as a person who is not considered as a national by any state under the operation of its law. Various global efforts are being undertaken to end this status.[[89]](#footnote-90) A stateless person finds herself or himself non-responsible to any state in terms of protection or accountability.

To further clarify the definition on statelessness, the African Commission on Human and Peoples’ Rights is proposing the definition to include a person who is unable to establish a nationality in practice in the ongoing process to develop a protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa.

As noted in the background, statelessness is determined on the facts of each case. It is, however largely a creature of both structural and administrative processes. Structural processes are linked to laws formulated by a state that can leave individuals without nationality while administrative processes are linked to procedural problems arising from actions by agencies or officials of a state. For example, where agencies fail to effectively provide documents that purport to help to prove nationality such as birth certificates or create conditions that make it even impossible or hard to obtain such documents due to such factors like corruption, unnecessary bureaucracies, excessive fees, lack of appeal or review procedures and unrealistic deadlines. [[90]](#footnote-91) Similarly, one of these situations can imply statelessness: where a person is generally deprived of the rights associated with nationality, where a person’s nationality is contested or disputed and where a person is unable to prove his or her nationality.[[91]](#footnote-92)

The following is then a corpus of universal and regional frameworks on the right to a nationality and statelessness.

## **2.4 Universal and Regional Frameworks**

### **2.4.1 Universal Framework of the Right to a Nationality and Statelessness**

The universal framework encompasses international treaties plus declarations and other non treaty documents of the United Nations (UN).[[92]](#footnote-93) For the purpose of this thesis the following are selected instruments:

The first is the Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930.This Convention was adopted by members of the League of Nations at The Hague on 12 April, 1930. Given the then existing conflicts in matters of nationality, the Convention was adopted in a bid to progressively reach an international agreement on matters that conflict in nationality issues. It has six recitals in the preamble and further divided into six chapters: Chapter one comprises general principles, Chapter two: expatriation permits; Chapter three: nationality of married women; Chapter four: nationality of children; Chapter five: adoption and chapter six: general and final provisions, thus comprising a total of thirty one articles.

The Convention affirms the position that was commonly held that each State had powers to determine who qualify to be its nationals. However, it adds qualification of consistency with international Conventions, international custom and principles of law that are internationally accepted in matters of nationality.[[93]](#footnote-94) In other words, the Convention delimits unfettered discretions in deciding as to who is a national of a given State.

In a bid to settle conflicts that were resultant from holding double nationality especially with regard to allegiance and service in military between countries that a person held nationality, double nationality is discouraged under this Convention.[[94]](#footnote-95)The Convention however creates condition of recognition of each nationality a person may possess where he or she has double nationality.[[95]](#footnote-96) Of another consideration is the law to be followed in determining nationality of an individual. The Convention hinges back to national law of given State. That is, the law that governs one’s nationality remains the respective State’s nationality law.[[96]](#footnote-97)

Generally, the Convention advocates for single nationality and actions against statelessness. The latter is reflected in chapters two to five where in expatriation, it is insisted not to count as loss of nationality; marriage and its breakdown not to cause one to lose nationality; and acts of adoption not to cause forfeiture of nationality while an adopted child has not yet acquired another nationality. Of another focus are children born to diplomats. The Convention insists to exonerate them from nationality of a foreign country in which a child is born.[[97]](#footnote-98)

The Convention thus creates a step ahead from the pre-existing unfettered discretion of States in determining matters of nationality. It further creates a basis for development of nationality law.

The second significant declaration is the Universal Declaration of Human Rights, 1948.[[98]](#footnote-99) The Universal Declaration of Human Rights, hereinafter named UDHR was adopted by the General Assembly of the UN on 10 December, 1948. Its structure is composed of seven recitals in the preamble and thirty articles. It is a non-legally binding instrument but so authoritative to the extent of being considered as the “Law of the United Nations.”

The Declaration comprises the basis of the right to a nationality under article 15. This article creates the right to every person to have a nationality. It also limits acts of arbitrary deprivation of an individual’s nationality and finally gives entitlement for an individual to change his or her nationality. The article as previously noted does not create a specific obligation on a given State to grant nationality. Being a universally accepted declaration implies that inclusion of the right to a nationality in it obliges states that are not contracting parties to instruments of nationality to respect the right to a nationality as a human right.

The period between the First and Second World Wars had effects, among others related to statelessness calling for a Convention namely the Convention Relating to the Status of Stateless Persons, 1954. A number of persons were turned stateless during the interwar period. The Convention was adopted on 28 September 1954 and entered into force on 6 June 1960. It comprises four recitals in the preamble and forty two articles. The Convention sets the standard definition of a statelessness person and rights attached to this state. Amongst rights are those related to travel documents. Contracting States are urged to cater for travel documents necessary for stateless persons. Samples are even attached to the Convention. Of an important note in issuance of these travel documents is that their issuance does not mean that an individual issued with the document is a national/citizen of the State issuing the travel document.

The Convention is in tandem with its sister Convention namely, Convention on the Reduction of Statelessness, 1961.This Convention was adopted on 30 August 1961 and entered into force on 13 December 1975. It has two recitals in its preamble and a total of twenty one articles. While its sister Convention sets rights of a stateless person, this Convention deals against creation of statelessness. Contracting States are urged to reduce and/or abolish instances that can lead to creation of individuals who are stateless. This insistence ranges from those born in a given State who would otherwise be stateless if not attaining nationality where they are born,[[99]](#footnote-100)foundling children and birth in an aircraft or ship.

The Convention allows deprivation of nationality in specific circumstances save that the deprivation can lead to statelessness. Although the Convention does not provide directly for the right to a nationality, it indirectly provides for it because insistence on reduction and abolition of statelessness implies that the Convention aims at seeing that individuals can acquire and be able to retain their nationalities.

Of another significance under the Universal limb is the International Covenant on Civil and Political Rights, 1966.This Convention was adopted on 16 December 1966 and came into force on 23 March 1976. It comprises five recitals in the preamble and fifty three articles. It is an extensive Convention that covers rights derived from the inherent dignity of the human person.[[100]](#footnote-101)

Like the Universal Declaration of Human Rights, the Convention creates a general obligation on States to provide nationality to children when born. It does not specifically show which State is responsible to confer this right. Notwithstanding this, the Convention creates an avenue to an insurance of the right to a nationality to every child when he is born. This is essential given the fragility of children being born stateless.

Specifically on the rights of a child is the Convention on the Rights of the Child, 1989.This Convention was adopted on 20 November 1989 and came into force on 2 September 1990. It has twelve recitals in its preamble and fifty four articles. Articles 7 and 8 of the Convention provide for the right to identity by being provided with a name and nationality. These articles formulate the basis of special care, protection and assistance required to children. State parties are required to ensure that registration of children upon birth is done. This is essential in preserving the right to identity in form of name and nationality.

Related to migrant workers and their families is the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, 1990.This Convention was adopted on 18 December 1990 and came into force on 1 July 2003. Specifically, article 29 provides the right to registration and nationality to each child of a migrant worker. As with the Convention on the Rights of the Child, the category of children who happen to be born while outside home countries of their parents are afforded protection of their right to a nationality.

Another Convention is the Convention on the Rights of Persons with Disabilities, 2006. It was adopted on 13 December 2006 and came into force on 3 May 2008. Article 18 provides right to children with disabilities to acquire nationality at birth and a requirement to afford them to be registered immediately after their birth. Essentially, the Convention resembles the Convention on the Rights of the Child in its requirements to registration and acquisition of nationality with exception that the Convention stipulates for children with disabilities.

In general the selected universal instruments formulate a framework on acquisition, change and retention of nationality. In them the status of being considered as a non-national of any state is what is in principle dealt against. In relation to this study, the instruments illuminate as to how there still remain room for fragility of the right to a nationality which they seek to protect. In the first place, states remain with discretionary jurisdiction to determine who can be their nationals. In the second, no state is clearly made responsible to grant nationality to an individual. Even the requirement to grant nationality to a child born in a given state continues to be in discretion of a given state under the wording of the instruments. If this is the case then matters of deciding as to what constitutes citizenship of an individual in a given state, that is determination of nationality as underscored in this study, continue to have a possible negative impact in the right to a nationality.

Since the instruments do not also provide for mechanisms of proof of nationality, a further gap in protection of this essential and fundamental human right is ought to continue existing. In other words, the question as to what connection should be entitling a person to nationality remains largely in the discretions of authoritative powers of the respective state. Therefore, while the universal framework on the right to a nationality and statelessness creates a basis for protection for the right, yet it creates no safeguards towards protection of the right particularly in matters of determination and proof of nationality which this study explores.

### **2.4.2 Regional Framework of the Right to a Nationality and Statelessness**

#### 2.4.2.1 African Region

The African region has a number of instruments that compose the right to a nationality as follows.

To begin with is the African Charter on Human and Peoples’ Rights, 1981.The Charter was adopted in June 1981 and came into force on 21 October 1986. It is a basic Charter in human rights matters under the umbrella of the African Union. The Charter does not contain a specific article for the right to a nationality instead article 5 has been a standing article to include indirectly the right to a nationality. It goes thus:

“All forms of exploitation and degradation of man, particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.”

The lack of direct treatment of this important right in this Charter prompted the African Commission on Human and Peoples’ Rights to commit itself to draft and pursue the coming into effect of a Protocol to the African Charter on Human and Peoples’ Rights on the Specific Aspects of the Right to a Nationality and Eradication of Statelessness in Africa. This commitment was a result of seeing wide ranging and growing issues of nationality. It was resolved thus:

“........the right to nationality of every human person is a fundamental human right implied within the provisions of article 5 of the African Charter on Human and Peoples’ Rights and essential to the enjoyment of other fundamental rights and freedoms under the Charter.”[[101]](#footnote-102)

The draft protocol is in place and its discussions among African Union member states are on-going. Despite the lack of direct provisions on the right to a nationality in this Charter, the latter has for so long impacted African jurisprudence on nationality matters.

Next is the Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa, 2003**.** This protocol was adopted on 11 July 2003 and came into force on 25 November 2005. The protocol does provide in article 6 the following:

“(g) a woman shall have the right to retain her nationality or to acquire the nationality of her husband;

(h) a woman and a man shall have equal rights with respect to the nationality of their children except where this is contrary to a provision in national legislation or is contrary to national security interests.”

The above provisions are essential in matters of nationality rights to women. However, the article has inherent weaknesses. In one place it does not create an equal right between woman and man in conferral of nationality between each other upon marriage. It is only a woman who is said to be entitled to acquire her husband’s nationality while her husband cannot on the same footing acquire nationality on grounds of being married to her. In yet another, children’s nationality which is said to be equally shared between a woman and her husband is restricted to national law and security interest conflict this equality, then a woman cannot confer her nationality rights to her children.

Specifically related to children is the African Charter on the Rights and Welfare of the Child, 1990.This Charter was adopted on 11 July 1990 and came into force on 29 November 1999. Article 6 is the relevant article on the right to a nationality. It goes thus:

“2. Every child shall be registered immediately after birth.

3. Every child has the right to acquire a nationality.

4. State parties to the present Charter shall undertake to ensure that their constitutional legislation recognise the principles according to which a child shall acquire the nationality of the State in the territory of which he has been born if, at the time of the child’s birth, he is not granted nationality by any other State in accordance with laws.”

The Charter marks important rights with regard to the right to a nationality of children. Registration of a child immediately after birth serves, among others, record keeping which is essential for nationality determination. On the other hand, the general right to acquire nationality echoes article 15 of the Universal Declaration of Human Rights. However, different from the Universal Declaration of Human Rights which does not create a binding provision, this Charter continues to bind State parties to uplift the *jus soli* principle which is essential especially where a child’s non-acquisition of nationality in such a country he is born can result into statelessness. The words “undertake to ensure” underline this obligation.

Therefore, the African region’s legal framework on the right to a nationality and statelessness though it is tailored on the universal framework has strength with regard to safeguard of attainment of nationality to children. More particularly the African Charter on the Rights and Welfare of the Child creates responsibility upon states to grant citizenship on *jus soli* basis especially where failure to grant such citizenship would create statelessness on the affected child.

#### 2.4.2.2 European Region

The European region on the other hand is composed of the following instruments.

The Convention to Reduce the Number of Cases of Statelessness, 1973 features in the beginning. This was a Convention adopted by members of the International Commission on Civil status. In other words it was under the aegis of the International Commission of Civil Status. It was adopted in Berne on 13 September 1973. It comprises ten articles. Relevant to a nationality is article 1. It states:

“A child whose mother holds the nationality of a Contracting State shall acquire her nationality at birth if he would otherwise have been stateless. However, where maternal descent only becomes effective as regards nationality on the date when such descent is established, a child who is still a minor shall acquire his mother’s nationality on that date.”

Insistence lies in the nationality of a mother especially when the father of the child has refugee status. That is, a child of a father with refugee status is deemed not to hold his father’s nationality.[[102]](#footnote-103)

Like the previous instruments on nationality of a child, the Convention confers a *jus soli* right of nationality especially where non conferral of the same would make the child stateless. The Convention, however fails to show what position would be if the said mother was stateless. In other words, the article confers the right to a child born of a mother who possesses nationality of a Contracting State.

Next to the above is the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms, 1995.Composed of six recitals in its preamble and 39 articles, this Convention was adopted by the Participant States of the Commonwealth of Independent States on 26 May 1995. Of relevance is article 24 which states:

“1. Everyone shall have the right to citizenship. 2. No one shall be arbitrarily deprived of his citizenship or of the right to change it.”

The article comprises an interchangeability of the term nationality to citizenship as noted in chapters one and two of this thesis. Generally, the article is a replica of article 15 of the Universal Declaration of Human Rights save for its usage of the word ‘citizenship’ instead of ‘nationality’ and the non-usage of article ‘a’ before the word citizenship. Thus, its explanations remain reflected in those under the title of Universal Declaration of Human Rights, 1948.

On acquisition, article 6 on its entirety covers the same. With regard to change of nationality, the Convention creates a room under paragraph 1 of article 8 for each State Party to allow change of nationality through renunciation with a condition that such a renunciation does not result into statelessness. Provisions on acting against all cases of statelessness can be said to aim at ensuring that nationality is retained and not lost. The Convention further provides for matters related to multiple nationality and their associated rights and duties under chapter five and recognising the effect of State succession in creating statelessness, chapter six is devoted to stipulating principles to be considered in cases of succession, settlement by international agreement and principles of non-nationals.

Another significant instrument is the European Convention on Nationality, 1997.The Convention was adopted on 6 November 1997 by the Council of Europe. It comprises ten recitals in its preamble, ten chapters and a total of 32 articles. It is an extensive Convention on matters of nationality and the rights attached to it. Drawing from the second recital, the Convention takes into consideration numerous international instruments relating to nationality, multiple nationality[[103]](#footnote-104) and statelessness. It further seeks to promote the progressive development of legal principles concerning nationality, their adoption into internal law and avoidance of case of statelessness.[[104]](#footnote-105)

Specifically, article 4 provides for rules on nationality to be followed by each Member State:

“The rules on nationality of each State Party shall be based on the following principles:

1. Everyone has the right to a nationality
2. Statelessness shall be avoided
3. No one shall be arbitrarily deprived of his or her nationality
4. Neither marriage nor the dissolution of a marriage between a national of a State Party and an alien, nor the change of nationality by one of the spouses during marriage, shall automatically affect the nationality of the other spouse.”

The Convention throughout tries to stipulate on the above principles. Acquisition, change and retention of nationality have all been provided for in the Convention.

Next is the Council of Europe Convention on the Avoidance of Statelessness in Relation to State Succession, 2006.This Convention was adopted by the Council of Europe on 19 May 2006. It is a supplement to the European Convention on Nationality which provides for general principles in cases of State succession. It provides for specific rules on nationality in cases of State succession. It comprises ten recitals in its preamble and 22 articles.

Of particular reference in this Convention is recital 10 and article 2. Recital 10 states:

“In order to give effect to the principles established in the European Convention on Nationality that everyone has the right to a nationality and that the rule of law and human rights, including the prohibition of arbitrary deprivation of nationality and the principle of non-discrimination, must be respected in order to avoid statelessness,”

while article 2 adds:

“Everyone who, at the time of the State succession had the nationality of the Predecessor State and who has or would become stateless as a result of the State succession has the right to the nationality of a State concerned, in accordance with the following articles.”

Looking at these Conventions, it can be deduced that the Convention draws the right to a nationality in light of the Universal Declaration of Human Rights and the European Convention on Nationality, however with delimitation in matters of avoiding statelessness that can arise from State succession.

Thus, the legal framework on the right to a nationality and statelessness under the European region like the Universal system creates the general framework for acquisition, change and retention of nationality and in return an insistence on avoidance of statelessness. However, responsibility on states in bringing into effect these provisions is lacking.

#### 2.4.2.3 Inter-American Region

Under the Inter-American region there is the American Declaration of the Rights and Duties of Man, 1948.This Declaration was adopted by the Ninth International Conference of American States on 2 May 1948. It comprises six recitals and XXXVIII (thirty eight) articles. It is a non-binding instrument. Specifically, article XIX (nineteen) provides:

“Every person has the right to the nationality to which he is entitled by law and to change it, if he so wishes, for the nationality of any other country that is willing to grant it to him.”

Related is the American Convention on Human Rights, 1969.This Convention was adopted on 22 November 1969. Of particular reference is article 20 which states:

“1. Every person has the right to a nationality.

2. Every person has the nationality of the State in whose territory he was born if he does not have the right to any other nationality.

3. No one shall be arbitrarily deprived of his nationality or of the right to change it.”

This article echoes article 15 of the Universal Declaration of Human Rights. However, while the latter does not specifically show who is responsible on conferment of nationality, the Convention fills this gap. It provides *jus soli* benefit to an individual who does not have any other nationality and who is as a result prone to statelessness. In this case, the Convention gears at reducing instances of statelessness during birth.

Therefore, the Inter-American region’s framework has strength related to African region’s framework with regard to responsibility in granting citizenship on *jus soli* basis. This again creates a safeguard against statelessness to children on their birth.

#### 2.4.2.4 Asia-Pacific Region

Under this region there is the ASEAN Human Rights Declaration, 2012.This is a Declaration adopted by the Association of Southeast Asian Nations (ASEAN) members on 18 November 2012. It comprises 40 articles deduced from six headings. Of particular reference is article 18 which states:

“Every person has the right to a nationality as prescribed by law. No person shall be arbitrarily deprived of such nationality nor denied the right to change that nationality.”

This article also reflects article 15 of the Universal Declaration of Human Rights as echoed under article 10 of the Declaration which states:

“ASEAN Member States affirm all the civil and political rights in the Universal Declaration of Human Rights [......].”

The addition of the words ‘as prescribed by law’ however brings in new input. A challenge to this lies in the fact that the right to a nationality so declared is subjected to the contents of domestic law which might be prejudicial to the principles of human rights enshrined in the Universal Declaration of Human Rights.

Therefore, the Asia-Pacific’s legal framework creates more room for fragility of the right to a nationality and possibilities of statelessness. Under this framework, all matters of determination of nationality are ought to depend on what respective domestic laws stipulate. If the latter are inherent with shortfalls related to curtailment of the right to a nationality then it follows that the available regional framework has a less avenue to remedy the situation given the actual wording available in the declaration.

#### 2.4.2.5 Arab States’ Sub-region

The first instrument under this region is the Arab Charter on Human Rights, 2004 (art 29).This is a new version of the 1994 Charter which was adopted by the Council of the League of Arab States on 22 May 2004. It contains 53 articles and five recitals. Of particular relevance is article 29 which provides:

“1. Every person has the right to a nationality and no citizen shall be deprived of his nationality without a legally valid reason.

2. The State Parties shall undertake, in accordance with their legislation, all appropriate measures to allow a child to acquire the nationality of his mother with regard to the interest of the child.

3. No one shall be denied the right to acquire another nationality in accordance with the applicable legal procedures of his country.”

Looking at the above article, too much attachment and reliance to domestic law can be generally seen in the following ‘in accordance with their legislation,’ and ‘in accordance with the applicable legal procedures of his country.’ This implies that even if there might be some shortfalls in the respective requirements in domestic legislation, then the shortfalls will irrespectively be taken into board. Although customary international law requires recognition of such treatments upon fulfillment of international principles of nationality law, yet because matters of nationality law are largely under jurisdiction of State law, it follows that the chances are high for taking into board such shortfalls.

With regard to deprivation of nationality for a ‘legally valid reason’ in sub-article 1 of article 29, a question can be raised as to what extent a reason can be said to be legally valid. This further creates another chance for discretionary whims in deprivation of nationality.

Second to the above is the Covenant on the Rights of the Child in Islam, 2005.This is a Covenant concluded under the aegis of the Organisation of the Islamic Conference (OIC) on 28-30 June 2005. Of most relevance is article 7 which states on identity as follows:

“1. A child shall, from birth, have right to a good name, to be registered with authorities concerned, to have his nationality determined and to know his/her relatives and foster mother.

2. State Parties to the Covenant shall safeguard the elements of the child’s identity, including his/her name, nationality, and family relations in accordance with their domestic laws and shall make every effort to resolve the issue of statelessness for any child born on their territories or to any of their citizens outside their territory.

3. The child of unknown descent or who is legally assimilated to this status shall have right to guardianship and care but without adoption. He shall have a right to a name, title and nationality.”

The article comprises the right to a nationality while at the same time underlining the importance of registration of a child in order to enable determination of nationality to be easily exercised.

In general like the previous region’s framework, too much reliance on the domestic framework with regard to grant of nationality particularly to children is also observed. This approach leaves latitude for fragility of the same right sought to be protected under the regional framework.

## **2.5 Conclusion**

This chapter has attempted to draw the general international and regional framework on the right to a nationality and statelessness. Selection of the main instruments under the international and regional arrangements has been made where specific articles that provide for the right to a nationality and statelessness have been highlighted.

Brought under the general overview, the instruments illuminate the general right to a nationality, that is to every person without considering such factors like age and specific right of nationality to a child. Specifically on the right of a nationality to child, instruments try to advocate elimination of statelessness emerging from birth. This stems from anticipation that elimination of statelessness of a child upon birth has a wide range of impact.

Though there are variations in the way the right to a nationality in these two contexts is stated, instruments that state on the general right seem to echo the Universal Declaration of Human Rights while those stipulating for the right to a nationality for a child largely echo the Convention on the Rights of the Child.

With exception of the American Convention on Human Rights and the African Charter on the Rights and Welfare of the Child, however most of the instruments remain non binding by not holding specifically on which States should be obliged to provide nationality especially to those who are easily rendered stateless.

On the other hand, treatment of those who are already stateless and foundling children have been minimally considered in the above instruments. All in all, however the instruments are the backbone of the right to a nationality and avoidance of statelessness which this thesis seeks to relate in its second research question.

# **CHAPTER THREE**

# **LEGAL FRAMEWORK AND ADMINISTRATION OF CITIZENSHIP IN**

# **TANZANIA**

## **3.1 Introduction**

This chapter covers the legal framework of citizenship and its administration in Tanzania. Before highlighting the current legal framework and its administration, this chapter begins by highlighting as to how Tanzania citizenship evolved both in Tanganyika and Zanzibar. This evolution is significant as it informs the current state of the art of the legal framework. It constitutes a foundation in the understanding of the current citizenship legal regime. While the evolution is treated separately between Tanganyika and Zanzibar, the current framework on its counterpart is treated as a whole since Tanzania citizenship is a Union matter under a consolidated single Tanzania Citizenship Act.[[105]](#footnote-106)

## **3.2 Evolution of Tanzanian Citizenship Law**

The current Tanzanian citizenship legal regime is an interplay of a shared history of two former independent territories of Tanganyika and Zanzibar. Combination of the two histories came up with the 26 April 1964 Union between Tanganyika and Zanzibar. As such, while pieces of legislation that compose the corpus of Zanzibari nationality go as far as 1911 with the Nationality and Naturalization Decree of 1911, those of Tanganyika begin with the 1948 British Nationality Act. It is worth treating the two separately and, given the order of age of the duo histories, Zanzibar starts.

### **3.2.1 Zanzibar**

The making of citizenship law in Zanzibar was necessitated by immigration of foreigners originating from various parts. The year 1698 marks the beginning of rule by the Sultan of Oman after a successful eviction of Portuguese rule. No formal records showing promulgation of citizenship laws in Zanzibar by His Highness the Sultan. Formal records began when the Sultan signed a formal agreement of protection of the British.[[106]](#footnote-107)

The first law on citizenship was the Nationality and Naturalization Decree. [[107]](#footnote-108) A total of seven provisions comprised this Decree. Section 2 defined a Zanzibari as a subject of His Highness the Sultan.

According to section 3 of the Decree, a Zanzibari by birth was;

1. a child, whether born in the Dominions of His Highness the Sultan or not, of a Zanzibari father who was born within or became a subject of His Highness the Sultan by naturalization.
2. The child born in the Dominions of His Highness the Sultan of parents unknown or whose nationality is unknown and
3. The child born in the Dominions of His Highness the Sultan of an alien father born in the Dominions of His Highness the Sultan.

This Decree was repealed by the Nationality Decree.[[108]](#footnote-109) Before the enactment of this Decree, the British enacted the British Nationality Act of 1948 which, though Zanzibar was not a British colony yet it was also applied. The Nationality Decree was enacted on 27 December 1952. It comprised 14 provisions. With regard to citizenship by birth, section 3 provided thus:

“3(1) Every person born (whether before or after the 27th December, 1952) within the Dominions of His Highness the Sultan shall be a Zanzibar subject by birth.[[109]](#footnote-110)

(2) For the purposes of this Decree, a person born aboard a registered ship or aircraft; or aboard an unregistered ship or aircraft of the government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or, as the case may be, in that country.”

Under the law, the British Resident had powers of naturalisation of aliens under the law, among others.

Related was the 1954 Registration of Persons Act which obliged every person of 16 years and above to register himself or herself in order to identify persons in Zanzibar. Failure to register was criminalized.

In the year 1963 the Government of His Highness enacted the Independence Constitution of 1963 which took care of citizenship matters under part one of the Constitution.

The Zanzibar Revolution of 12 January 1964 led, among others to formulation of the Revolutionary Council which delegated Presidential Powers to enact laws under its advice. The first law enacted under this law was the Existing Laws Decree[[110]](#footnote-111) which allowed continued application of existing laws as of 11 January 1964 with minor amendments. With regard to amendments in citizenship matters, the former Zanzibar subject was to be known as citizen of the State of Zanzibar.

After the Union of Tanganyika and Zanzibar, matters of citizenship were listed amongst Union matters. As a result, the Extension and Amendment of Laws No.5 Decree of 1964 was enacted and the law amended the Citizenship Act Cap 512 of 1961. After amendments, the latter would extend to Zanzibar. The Nationality Decree was in effect repealed in the third schedule of the Extension and Amendment of Laws.

In the year 1995 the Tanzania Citizenship Act[[111]](#footnote-112) was enacted and its Regulations in 1997. The Act together with its Regulations came into force on the 1February 1998. This Act consolidated laws relating to citizenship in both Mainland Tanzania and Tanzania Zanzibar, namely the Citizenship Act,[[112]](#footnote-113) the Citizenship Ordinance[[113]](#footnote-114)and the Extension and Amendment of Laws.[[114]](#footnote-115)

### **3.2.2 Tanganyika**

Tanganyika was placed under protection of the German following the 1885 Berlin Conference.[[115]](#footnote-116) After the German defeat in the First World War, however it became a British mandated territory on 20 July 1922. [[116]](#footnote-117)As a result, the Crown gained extra-territorial jurisdiction over its British subjects in this territory. This jurisdiction continued notwithstanding the shifts from British mandated territory to British trust territory under the United Nation’s Trusteeship Scheme on 13 December 1946 and to a trust territory in 1949.[[117]](#footnote-118) Tanganyika continued to be a trust territory until 9 December 1961 when it attained independence.

Before Tanganyika became independent, as noted before, all matters relating to citizenship were governed by the British Nationality Act of 1948. Upon attainment of independence on 9 December 1961 matters of citizenship were contained in the Tanganyika’s independence Constitution which was contained in the Second Schedule to the Tanganyika (Constitution) Order in Council 1961. One year after independence, that is, on 9 December 1962 Tanganyika became a republic. Section 26(1) of the Republic of Tanganyika (Consequential, Transitional and Temporary Provisions) Act [[118]](#footnote-119) provided that, the citizenship laws that were contained in the Tanganyika Constitution[[119]](#footnote-120) would be in force as an Act of Parliament.

With this effect the provisions were printed in a separate Act namely, the Citizenship Act.[[120]](#footnote-121) This Act upheld section 1(1) of the Tanganyika Independence Constitution with regard to who would be a citizen of Tanganyika on independence. It provided that a person would be a citizen of Tanganyika on 9 December 1961 if he was born in Tanganyika; and at the same time being a citizen of the United Kingdom Colonies or British Protected Person prior to 9 December 1961 and if one of his or her parents was born in Tanganyika.

A transitional period of two years was given (for those who, except for some reasons could not fulfill the above conditions) to register for Tanganyika citizenship. [[121]](#footnote-122) To fulfill this successfully, among others, the Citizenship Ordinance[[122]](#footnote-123) was enacted. The Ordinance provided for definition of terms such as alien, certificate of naturalisation, registration and what constituted citizenship by registration and naturalisation. Under the Ordinance, an alien is defined to mean a person who is not a Commonwealth citizen, a protected person or a citizen of the Republic of Ireland.[[123]](#footnote-124) An alien in this definition is the one who, in order to be Tanganyikan citizen was required to be naturalised. This would be possible only after an application made by the respective alien in accordance with section 7 of the Ordinance.

On the other hand, citizenship by registration was available to Commonwealth citizens, citizens of the Republic of Ireland, protected persons and children of citizens by descent.[[124]](#footnote-125) Registration was also available to citizens of African descent, who were born and one of their parents was also born in Angola, Cape Verde Islands, French Somaliland, Mozambique, Portuguese Guinea and the Sao Tome and Principe Islands, Spanish West Africa,[[125]](#footnote-126)and the Republic of South Africa or who had been resident for a period of not less than ten years in those countries and who was not a citizen of an independent state on the continent of Africa.[[126]](#footnote-127) This delineation was useful in determination as to what connection entitled a person to citizenship under such circumstances.

As noted in the previous part, on 26 April 1964 the United Republic of Tanganyika and Zanzibar was formed. In effect the Extension and Amendment of Laws[[127]](#footnote-128) extended the provisions of the 1961 Citizenship Act relating to citizenship by birth or descent. Following this amendment, the 1961 Citizenship Act extended to recognise all those born before Union and after who were/would be citizens of Tanganyika or Zanzibar to be termed as citizens of the United Republic.[[128]](#footnote-129)

As previously noted, the law of citizenship in the United Republic is governed by the Tanzania Citizenship Act[[129]](#footnote-130) and the Tanzania Citizenship Regulations.[[130]](#footnote-131) Being a consolidation of laws above noted, it provides a saving provision under section 30 where status of citizenship prior to enactment of the Tanzania Citizenship Act continues to apply.

## **3.3 Legal Framework of Tanzanian Citizenship**

The Constitution of the United Republic of Tanzania[[131]](#footnote-132) constitutes the first component of the legal framework. The Constitution of the United Republic of Tanzania is the basic law in Tanzania. [[132]](#footnote-133) It earmarks citizenship matters to be amongst Union matters.[[133]](#footnote-134) It provides for the rights and duties of a citizen of Tanzania as opposed to any other person. Among the rights and duties stipulated in it are those related to franchise and those specifying for holding of certain public positions.[[134]](#footnote-135) The Constitution delineates as to what rights are available to every person, including non citizens and those which are exclusive for citizens.[[135]](#footnote-136)

The Constitution however is limited to stipulating such rights and does not create a framework as to what then constitutes Tanzanian citizenship by birth, descent or naturalisation. It also does not stipulate as to what constitutes proof of Tanzanian citizenship. The Constitution hinges on written law on citizenship, that is, the Tanzania Citizenship Act[[136]](#footnote-137) when specifying for what constitutes Tanzanian citizenship by birth qualifying for specific position. Article 39(1) of the Constitution stipulates thus *in verbatim*:

“39(1) A person shall not be entitled to be elected to hold the office of President of the United Republic save only if-

1. He is a citizen of the United Republic by birth in accordance with the citizenship law.”

Therefore, though the Constitution of the United Republic of Tanzania formulates the basic law of the land, yet it does not directly stipulate for matters related to what constitutes Tanzanian citizenship. Rather it gives mandate of specifications of what constitutes Tanzanian citizenship to the Tanzanian written citizenship law. This reliance requires the latter to be as perfect as possible since its shortfalls becomes of great impact.

The proposed 2014 Constitution of the United Republic of Tanzania had devoted the whole of chapter six to stipulate for matters of citizenship in the United Republic. Generally it had provided for the right to citizenship, reclassification of Tanzanian citizenship into two types, namely citizenship by birth and by registration; citizenship of a child found in the United Republic without knowing his or her parents and who is under the age of seven years to be presumed as Tanzanian citizen by birth; adopted alien child by Tanzanian citizen to be regarded as citizen of Tanzania by registration; special status of Tanzanian citizens who renounced Tanzanian citizenship and finally matters related to citizenship by naturalisation.[[137]](#footnote-138)

Another legislation is the Tanzania Citizenship Act.[[138]](#footnote-139)The Tanzania Citizenship Act is the principal Act which constitutes means of attainment and acquisition of Tanzanian citizenship. The Act provides for two means of attainment of Tanzanian citizenship that is, by birth[[139]](#footnote-140) and descent.[[140]](#footnote-141) On the other hand the Act provides for means of acquisition of Tanzanian citizenship by naturalisation. [[141]](#footnote-142) From the Act therefore three categories of Tanzanian citizenship are found to be by birth, descent and naturalisation.

Attainment and acquisition of citizenship are terms used to show how citizenship categories mentioned above come by. The categories of citizenship, namely by birth, descent and naturalisation are spread in the above law in two parts. Part two covers citizenship by birth and descent and it is entitled “*Attainment* of Citizenship on or After Union Day” (emphasis added) while citizenship by naturalisation is covered under part two which is entitled “*Acquisition* of Citizenship by Naturalisation” (emphasis added). These differences have a purpose. Attainment of citizenship implies that upon birth in the United Republic or outside the United Republic and without exceptions provided in the law, one becomes automatically a citizen of the United Republic by birth or descent and enjoys an unqualified status of that citizenship. On the other hand, acquisition of citizenship implies a non automatic means of being a citizen of the United Republic. One has to fulfill some conditions and apply for citizenship in order to be considered for the same. Citizenship by birth is defined under section 3 of the Act to mean a person who is a citizen of the United Republic by virtue of the operation of section 4, by virtue of section 5 and by virtue of his birth in Tanzania Zanzibar and the effect of subsection (2) of section 4.

On the other hand, citizenship by descent is defined to mean a person who is a citizen of the United Republic by virtue of section 6, by virtue of his being a citizen of Mainland Tanzania by descent in accordance with the provisions of section 4(3) and by virtue of the combined effect of his being a Zanzibar subject by descent in accordance with the former law of Tanzania Zanzibar (and had that law remained in force until immediately before Union Day) and of subsection 2 of section 4 and citizenship by naturalisation is that acquired under part III of the Act and granted certificate of naturalisation to that effect which includes a certificate of naturalisation granted under the Act and a certificate of registration granted under the Citizenship Ordinance, the Citizenship Act and the Extension and Amendment of Laws (No.5) Decree as per section 3 of the Act.

Particularly on citizenship by birth, sections 4 and 5 of the Tanzania Citizenship Act cover the position. Section 4 covers those who were born before Union while section 5 covers those born after Union. Section 4 centres on section 3 of the Citizenship Act [[142]](#footnote-143) which states:

“Section3. Every person born in Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth:

Provided that a person shall not become a citizen of Tanganyika by virtue of this section if at the time of his birth-

1. neither of his parents is a citizen of Tanganyika and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Tanganyika, or
2. his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.”

On the other hand, section 5 of the Tanzania Citizenship Act provides:

“Section 5(1) Subject to the provisions of subsection (2), every person born in the United Republic on or after Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth, and with effect from the commencement of this Act shall become and continue to be a citizen of the United Republic, subject to the provisions of section 30.

(2) A person shall not be deemed to be or to have become a citizen of the United Republic by virtue of this section if, at the time of his birth-

1. neither of his parents is or was a citizen of the United Republic and his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic, or

any of his parents is an enemy and the birth occurs in a place then under occupation by the enemy.”

The Act provides the basic statute for determination of Tanzanian citizenship. It pinpoints as to how discretional matters of determination of citizenship are.[[143]](#footnote-144) It creates the benchmark of existing discrepancies between letters of law and actual practice underlying sections 4 and 5 of the Act. As reproduced above, these provisions resemble with those provisions which are interpreted to refer to the *jus soli* principle. With regard to proof of Tanzanian citizenship, the Act does not stipulate for mechanisms of proof of Tanzanian citizenship.

The above mentioned three means/categories of attainment and acquisition of citizenship are interpreted according to five historical periods, that is the period before independence of Tanganyika (before 9th December, 1961); during sultanate empire for Zanzibar (before Zanzibar Revolution of 12th January, 1964); on or after Revolution and before Union, after independence of Tanganyika and before Union (from 9th December, 1961 to 25th April, 1964); after Union of Tanganyika and Zanzibar to date (from 26th April, 1964).

The first component of citizenship by birth is that ranging before Tanganyika Independence that is, before 9th December, 1961.A person was regarded as citizen of Tanganyika if he or she was born in Tanganyika before Tanganyika independence if at the date of his or her birth was a citizen of the United Kingdom, colonies or British protected person and if one of his or her parents was born in Tanganyika. The first law applicable here was the Tanganyika (Constitution) Order in Council.[[144]](#footnote-145) Later, section 1(1) of the Citizenship Act[[145]](#footnote-146) made a further recognition. Under the Tanzania Citizenship Act[[146]](#footnote-147) such a citizen is recognised as a citizen of Tanzania by birth before the Union of Tanganyika and Zanzibar under section 4(1) read together with section 30 of the Act.

The second component of Citizen by birth is that which ranges from the date of Independence of Tanganyika until before Union of Tanganyika and Zanzibar that is, from 9th December, 1961 to 25th April, 1964.A person who was born in Tanganyika on the day of independence of Tanganyika and during the period before Union was recognised to be a citizen of Tanganyika by birth if he or she was born in Tanganyika and one of his parents was a citizen of Tanganyika. This is different from the above where the requirement is birth of one’s parent while in this circumstance is being a citizen of Tanganyika by then. The law applicable under this part is section 3 of the Citizenship Act.[[147]](#footnote-148) Under the Tanzania Citizenship Act such a citizen is recognized as a citizen of Tanzania by birth before the Union of Tanganyika and Zanzibar under section 4(1) read together with section 30 of the Act.

The third component is that referring to a Citizen who was born in Zanzibar before Revolution that is, before 12th January, 1964.A person who was born in the Isles before Revolution and thus considered as a Zanzibar subject was regarded as a citizen of Zanzibar as per section 3(1) of the Zanzibar Nationality Decree.[[148]](#footnote-149) Following the Presidential Decree[[149]](#footnote-150) which passed the Existing Laws Act of 1964 to amend, recognize and allow pre-existing laws to continue to apply, a person who was born during this period continued to be recognized as a citizen of Zanzibar after Revolution.

Before the enactment of the Zanzibar Nationality Decree, the Nationality and Naturalization Decree[[150]](#footnote-151) was used to recognize a citizen of Zanzibar by birth. Under the Tanzania Citizenship Act, such a citizen is recognized as a citizen of Tanzania by birth before the Union of Tanganyika and Zanzibar under section 4(1) read together with section 30 of the Act.

A citizen of Zanzibar cannot be regarded as such if his or her parents were born from any of these states; Australia, Belgium, Canada, Ceylon, France, Italy, New Zealand, Portugal, Republic of Ireland, Union of South Africa, United States of America as per section 1(2) read together with the third schedule of the Zanzibar Nationality Decree.

The fourth refers to a citizen who was born in Zanzibar on or after Revolution and Before the Union of Tanganyika and Zanzibar that is from 12th January, 1964 to 25th April, 1964.A person who was born in Zanzibar on or after Revolution and before the Union of Tanganyika and Zanzibar was recognized as a citizen of Zanzibar under section 3(1) of the Zanzibar Nationality Decree. Under the Tanzania Citizenship Act such a citizen is recognized as a citizen of Tanzania by birth before the Union of Tanganyika and Zanzibar under section 4(1) read together with section 30 of the Act.

And finally the fifth refers to a citizen born in the United Republic of Tanzania on or after the Union of Tanganyika and Zanzibar that is, from 26th April, 1964 to date. A person born in the United Republic of Tanzania on or after the Union of Tanganyika and Zanzibar is recognized as a citizen of Tanzania by birth if one or both of his parents is a citizen of Tanzania as per section 5 of the Tanzania Citizenship Act. This section is however critical as it will be shown in chapter seven.

A citizen by descent on the other hand is recognized as such when born outside Tanzania and his determination of citizenship depends on the period he or she was born as well as the citizenship of his or her parents.

The first component of this category refers to a citizen born outside Tanganyika before Independence that is, before 9th December, 1961.A person born outside Tanganyika before Independence if at the date of his or her birth was a citizen of the United Kingdom, colonies or British protected person was recognized as a citizen of Tanganyika by descent if his father was a citizen of Tanganyika by birth or registration/naturalization. He or she was recognized as such under section 1(2) of the Citizenship Act. Under the Tanzania Citizenship Act such a citizen is recognized as a citizen of Tanzania by descent under section 4(3) read together with section 30 of the Act.

The second is a citizen born outside Tanganyika on or after the date of Independence of Tanganyika until before Union of Tanganyika and Zanzibar that is from 9th December, 1961 to 25th April, 1964.This also was recognized as a citizen of Tanganyika by descent if his father was a citizen of Tanganyika during his or her birth. He or she was recognized as such under section 1(2) of the Citizenship Act. Under the Tanzania Citizenship Act such a citizen is recognized as a citizen of Tanzania by descent under section 4(3) read together with section 30 of the Act.

The third is a citizen born outside Zanzibar before Revolution that is before 12th January, 1964.This was recognized as a citizen of Zanzibar if his or her father was a citizen of Zanzibar as per section 4 of the Zanzibar Nationality Decree. Under the Tanzania Citizenship Act, such a citizen is recognized as a citizen of Tanzania by descent under section 4(3) read together with section 30 of the Act.

The fourth is a citizen born outside Zanzibar on or after Revolution and before Union that is from 12th January, 1964 to 25th April, 1964.This was recognized as a citizen of Zanzibar if his or her father was a citizen of Zanzibar as per section 4(2) of the Zanzibar Nationality Decree. Under the Tanzania Citizenship such a citizen is recognized as a citizen of Tanzania by descent under section 4(3) read together with section 30 of the Act.

The fifth is a citizen born outside Tanzania on or after the Union that is from 26th April, 1964 to date. This is recognized as a citizen of Tanzania by descent if during his or her birth his or her father or mother was a citizen of Tanzania as per section 6 of the Tanzania Citizenship Act. It must be noted that before the enactment of the Tanzania Citizenship Act determination of citizenship of a person born outside Tanzania was based on father’s citizenship while after its enactment, determination of the said citizenship is up to now based on both father and mother. It must also be noted that a person born outside Tanzania cannot acquire citizenship by descent if one or both of his or her parents are also citizens of Tanzania by descent.

The third category is Citizenship by Naturalisation.This is a category of citizenship acquired by resident foreigners who qualify under the law to be naturalised as citizens of Tanzania. According to the Tanzania Citizenship Act, there are four groups of foreigners who can apply for naturalisation as citizens of Tanzania. These are; Resident foreigners aged 18 years and above; a person born outside Tanzania to a father or mother who is a citizen of Tanzania by descent, a minor child below 18 years and a resident woman married to a citizen of Tanzania.

Whereas a woman who is married to a citizen of the United Republic is entitled to be naturalised as a citizen of the United Republic at any time during the life-time of the husband upon making an application in the prescribed form, [[151]](#footnote-152)naturalisation of other foreigners is dependent upon fulfillment of the following conditions, among others.

In order for an alien to qualify to apply for naturalisation as a citizen of the United Republic, he or she must fulfill the following pre-qualifications as provided for under the second schedule of the Tanzania Citizenship Act as follows:

1. have resided in the United Republic throughout the period of twelve months immediately preceding the date of application; and
2. that during the ten years immediately preceding the said period of twelve months he resided in the United Republic for periods amounting in the aggregate to not less than seven years; and
3. that he has an adequate knowledge of Kiswahili or the English language; and
4. that he is of good character; and
5. that, in terms of his past and potential contribution to the national economy, scientific and technological advancement and to the national social and cultural welfare, he would be a suitable citizen of the United Republic;
6. that he intends, if naturalised, to continue to reside permanently in the United Republic.

The use of the conjunction ‘and’ at the end of each condition means that all conditions must be fulfilled.

With regard to procedures of application for naturalisation, an application for naturalisation as citizen of Tanzania is channeled through Ward (or Shehia for the case of Zanzibar), District and Regional Defense and Security Committees.

At Ward/Shehia level the following procedures are followed:[[152]](#footnote-153)

1. An applicant collects application forms from any nearest Immigration Office and duly fills them in.
2. The applicant will present the application forms filled in to Ward Executive Officer/Shehia (for Zanzibar) where he resides. The applicant will be interviewed by the respective officer and the Ward/Shehia Defence and Security Committee.
3. The Ward Executive Officer/Shehia will forward the applications accompanied by recommendations of the Ward/Shehia Committee to respective District Immigration Officer.

At District Level the following procedures are followed:[[153]](#footnote-154)

1. Upon receiving of the application from Ward Executive Officer/Shehia, the respective District Immigration Officer will require the applicant his fingerprints to be taken and further publish in two consecutive issues of daily newspapers of both English and Swahili version read in both Mainland Tanzania and Zanzibar.
2. The applicant will pay a non refundable prescribed submission fee.
3. Upon satisfaction of the application, the District Immigration Officer will notify the District Secretary of Defense and Security Committee within 30 days of the application to be discussed by the Committee.
4. After the discussion by the District Defense and Security Committee, the application together with recommendations will be sent to the Regional Immigration Officer for further action.

At Regional Level the following are the main procedures followed:[[154]](#footnote-155)

1. Upon receiving of the application from the District Immigration Officer, the Regional Immigration Officer will notify the Regional Secretary of the Regional Defense and Security Committee within 90 days for an intended discussion and deliberations over the application.
2. Then the Regional Immigration Officer forwards the application with recommendations to Commissioner General of Immigration. On the part of Zanzibar, he will forward the application to Commissioner of Immigration Zanzibar.

In the case of Zanzibar, before the application is sent to the Commissioner General of Immigration, the Commissioner of Immigration Zanzibar having received the application from Regional Immigration Officer accompanied by recommendations from Shehia, District and Regional Defense and Security Committees, he will forward the application to the Second Vice President with his recommendations. The Second Vice President is the Chairman of the Committee for Citizenship. [[155]](#footnote-156)

After a discussion by the Committee of citizenship, the Commissioner of Immigration Zanzibar sends the application with recommendations of the Committee to the Minister of Home Affairs through Commissioner General of Immigration.

On the other hand at the level of Immigration Headquarters the following procedures are apparent.[[156]](#footnote-157)

1. The Commissioner General of Immigration receives applications from Regional Immigration Officers accompanied by recommendations from Ward, District and Regional Defense and Security Committees and then forwards the applications to the Minister of Home Affairs with his recommendations for final decision.
2. For the case of Zanzibar applications, the Commissioner General of Immigration receives the applications and forwards the same to the Minister of Home Affairs for final decision.
3. After the Minister has given his final decision, the applications are returned to the Commissioner General of Immigration.
4. The Commissioner General of Immigration will notify the applicants of the results of their applications
5. An applicant whose application is approved will be required to renounce his citizenship within a period of 28 days.
6. Upon renunciation of citizenship and submission of proof thereof, the successful applicant is required to pay the prescribed outstanding fee.
7. After payment of the outstanding fee, then a Certificate of Naturalization is issued to the successful applicant.

A Foreigner above 18 years born outside Tanzania to a parent who is a citizen of Tanzania by Descent[[157]](#footnote-158) is subjected to conditions of application for naturalisation as a citizen of Tanzania since he cannot inherit Tanzania citizenship from a parent who is a citizen by descent.

On the other hand, a foreign child below 18[[158]](#footnote-159) must; be of an age below 18**;** hold a valid passport of his nation**;** possess a valid Residence Permit or Pass and have an applicant parent or legal guardian who is a citizen of the United Republic of Tanzania.

Having qualified for the application, the applicant has to fulfill the following procedures;[[159]](#footnote-160)

1. Collect application forms at any nearby Immigration Office and duly fill them in
2. Pay prescribed submission fee
3. Submit applications to the Commissioner General of Immigration
4. The Commissioner General upon being satisfied that the applications are complete will forward the same to the Minister of Home Affairs with his recommendations for final decision.

A foreign woman married to a citizen of Tanzania[[160]](#footnote-161) must;

1. Be legally married to a citizen of Tanzania
2. Hold a valid passport of his nation
3. Possess a registered marriage certificate
4. Possess a valid Residence Permit or Pass

Having qualified for the application, the applicant has to fulfill the following procedures;[[161]](#footnote-162)

1. Collect application forms at any nearby Immigration Office and duly fill them in
2. Pay prescribed submission fee
3. Submit applications to the Commissioner General of Immigration
4. Fulfill other conditions of advertisement and renunciation of her former citizenship.
5. The Commissioner General upon being satisfied that the applications are complete will forward the same to the Minister of Home Affairs with his recommendations for final decision.

It must be noted that the decision to grant or refuse an application for naturalisation by the Minister is final. He is not bound to assign reason(s) for such a decision. The latter is also not subject to appeal or review in any court.[[162]](#footnote-163)

Since the Tanzanian citizenship regime does not allow dual nationality, it is pertinent to note that when an applicant for naturalisation has been notified that his or her application has been approved and granted citizenship, he or she is required to renounce the nationality or citizenship of any other country other than the United Republic and take an oath of allegiance within a period of twenty eight days from the date of notification. Failure to meet this condition renders the application to being quashed and deemed never to have been made.[[163]](#footnote-164)

With regard to renunciation and deprivation of Tanzanian citizenship, the Tanzania Citizenship Act allows any citizen of the United Republic of full age and capacity to renounce citizenship in a prescribed manner. The Minister is empowered to register this renunciation and once this is effected, the person ceases to be a citizen of the United Republic. [[164]](#footnote-165)Where the renunciation is made during a period which the United Republic is involved in war or when in the opinion of the Minister the renunciation goes contrary to the public policy, the Minister may refuse to register the renunciation, although this refusal does not make the person to cease to be a citizen of the United Republic on the date that does not any longer contravene the reason(s) for refusal to be registered as such.[[165]](#footnote-166)

According to the Tanzania Citizenship Act[[166]](#footnote-167) a citizen of the United Republic ceases to be a citizen of the United Republic if he has attained the age of eighteen years and being of full capacity he or she;

1. acquires citizenship of some other country other than the United Republic by a voluntary act other than marriage
2. otherwise acquired citizenship of some country other than the United Republic or while a citizen of the former Republic of Tanganyika or the former People’s Republic of Zanzibar; and has not, by the specified date renounced his citizenship of that other country, taken the oath of allegiance and made and registered a declaration prescribed by Parliament regarding his intention as to residence.[[167]](#footnote-168)

On the other hand, the Minister may deprive a person of his or her citizenship. Deprivation however cannot be exercised to a Tanzanian citizen by birth or descent given that this can render him or her to be stateless. Deprivation is possible for a citizen by naturalisation for the following reasons:[[168]](#footnote-169)

1. if the Minister is satisfied that the person has at any time while a citizen of the United Republic and of full age and capacity voluntarily claimed and exercised, in a foreign country, any right accorded exclusively to citizens of that country and which render it non conducive to the public good that he or she should continue to be a citizen of the United Republic.
2. if the Minister is satisfied that the certificate of naturalisation possessed by the person was obtained by means of fraud, false representation or the concealment of any material fact.
3. if the Minister is satisfied that such person has shown himself by act or speech to be disloyal or disaffected towards the United Republic.
4. if he or she has, during any war in which the United Republic was engaged, unlawfully traded or communicated with any enemy or been engaged in or associated with any business that was to his knowledge carried on in such a manner as to assist an enemy in that war.
5. has, within five years after becoming naturalised, been sentenced in any country to imprisonment for a term of not less than twelve months.
6. Has been ordinarily resident in foreign countries for a continuous period of five years and during that period has not registered annually in a prescribed manner with the United Republic Consulate or by notice in writing to the Minister, indicated his intention to retain his citizenship of the United Republic.

Before effecting an order of deprivation of citizenship, the Minister notifies the person and the latter is given an opportunity for inquiry. A committee composed of members appointed by the same Minister and a Chairman who possesses judicial experience, conducts the inquiry.[[169]](#footnote-170)

The Tanzania Citizenship Act further provides for supplemental determinants of citizenship. [[170]](#footnote-171)It provides for status of determination of citizenship for legitimated children and posthumous children. The former refer to children born out of wedlock and later their parents being married while the latter refer to those children born after their father (s) have already died.

In general, marriage subsequent to children who were born out of wedlock enables them to be treated as though they were born legitimate.[[171]](#footnote-172) On the other hand, a child born after his or her father’s death, his or her father’s citizenship is determined accordingly at the time of his birth. For example, if he or she was born on 9 December 1961, while his or her father had already died, then the status of citizenship of his father on 9 December 1961 if he were alive is to be considered in relation to citizenship status of the child.

The Tanzania Citizenship Act which is the principal Act in matters of citizenship has both positive and negative pointers to the Universal and Regional frameworks described in the previous chapter. The right to acquire, change and retain nationality which is the focus of matters related to citizenship have been provided under the law with limitations. This is a pointer to article 15 of the Universal Declaration of Human Rights.[[172]](#footnote-173) The Act provides for means to acquire citizenship, means to renounce citizenship at will and thus a change to nationality and the right to continue holding citizenship status. However, retention of citizenship is subject to fragility. This is due to lack of safeguards when Tanzanian citizenship status is called to be determined or proved. As it was noted above that the law does not stipulate as to what constitutes proof of Tanzanian citizenship and how the same can be proved. With this shortfall a stringent mechanism of determination of citizenship can lead a person who would have thought oneself a citizen to be turned stateless. This is possible due to the fact that the lack of legal safeguards of determination of citizenship implies that discretionary means are employed.

In relation to the Protocol to the African Charter on Human and People’s Rights of Women in Africa[[173]](#footnote-174) the Act has strengths and weaknesses. The Act provides an equal play between a woman and man in children’s citizenship determination. Prior to the enactment of the Tanzania Citizenship Act in 1995 a child born outside Tanzania would be Tanzanian citizen by descent only if her/his father was also a Tanzanian citizen. After the enactment of the Tanzania Citizenship Act in 1995, a child of that type would also be considered citizen if only her/his mother was a Tanzanian citizen. Thus a father and mother have both equal rights for inheriting their children’s citizenship.

The Immigration Act[[174]](#footnote-175) is another Act that constitutes the legal framework of Tanzanian citizenship. The Act generally provides for the control of immigration into the United Republic and for matters relating to immigration. [[175]](#footnote-176) The Act is thus essential in matters relating to residence of foreigners which are necessary elements considered in granting citizenship by naturalisation. This is due to the fact that among other conditions for being naturalised is to meet the prescribed period of residence in the United Republic. On the other hand, the Act also bestows responsibility of immigration officers in facilitating, controlling and granting citizenship to qualified alien immigrants.[[176]](#footnote-177)

The Act differentiates a citizen and non citizen through its definition of an alien immigrant. The latter is defined as any person who is not a citizen of Tanzania.[[177]](#footnote-178) This definition is embedded in the limitation of actions that can be taken against an alien immigrant versus a Tanzanian citizen. A citizen of Tanzania is said to be affected by the actions under the Act where only her/his status as citizen is being determined, where she/he obstructs an immigration officer to perform his duties, where regulations that prescribe for places of entry into Tanzania, furnishing of information to an immigration officer upon entry or departure, forms to be filled in and any matter that can lead to carrying into effect of the Act are in issue.[[178]](#footnote-179) This Act also gives limitation to deportation of a citizen of Tanzania as such highlighting the rights of a citizen as against an alien immigrant.[[179]](#footnote-180)

With regard to proof of citizenship, this is the only Act which stipulates for burden of proof of citizenship. However, it does not on the equal footing provide as to how such proof can be brought into effect. Of particular reference is section 44 of the Act which provides for the burden of proof on citizenship matters. It is generally provided that the burden of proof of citizenship lies on the party alleging to be citizen of the United Republic. This Act therefore creates an important area relevant to this thesis, that is, proof of citizenship.

Another Act in this framework is the Tanzania Passports and Travel Documents Act.[[180]](#footnote-181)This Act provides for the issuance, control and cancellation of passports and travel documents and for other incidental matters. In principle the Act works under the control of the Tanzania Citizenship Act since all passports and Tanzanian Travel Document are required to be issued to Tanzanian citizens recognised under the Citizenship Act. The words “any citizen of the United Republic of Tanzania” underlined in classifying persons entitled to passports of travel documents, signify how the requirement of Tanzanian citizenship status is crucial in issuance of the Passports and Travel Documents.[[181]](#footnote-182) It is for this matter that the Act accords the holding of a Passport or Travel Document as a *prima facie* evidence of the nationality or domicile of the holder and of his entitlement to state protection.[[182]](#footnote-183) This is an important aspect in the aspect of proof of citizenship envisaged under this thesis.

The Registration and Identification of Persons Act[[183]](#footnote-184)also is to be grouped in this part. This Act provides for the registration of persons in the United Republic, the issue to them of identity cards and for connected purposes.[[184]](#footnote-185) In defining who is a citizen under section 3, the Act defines citizen to mean a person who is a citizen of the United Republic in accordance with the law for the time being relating to citizenship. It also defines an alien as any person who is not a citizen or a national of the United Republic. While mentioning the law for the time being relating to citizenship implies in principle the Tanzania Citizenship Act. The Act delineates between citizens and aliens. This differentiation is given by specifying that national identity cards are issued to citizens of the United Republic and aliens resident in the United Republic.[[185]](#footnote-186) However in determining citizenship status, the Act refers back to the Tanzania Citizenship Act like its counterpart statutes above mentioned.

The Law of the Child Act[[186]](#footnote-187) is yet another Act which constitutes this legal framework. It is the only legislation in Tanzania that provides directly for the right to nationality although it refers back to the Tanzania Citizenship Act because the latter is the principal Act which stipulates for matters of nationality/citizenship. This is provided for under section 6. In relation to the provision for right to nationality, the Act provides the common mode followed by the Convention on the Rights of the Child[[187]](#footnote-188) and the African Charter on the Rights and Welfare of the Child.[[188]](#footnote-189) However, slightly different from the above the right to a nationality is subject to limitations under existing written law. The provision allows deprivation of nationality of a child subject to provisions of written law. In principle this means that the right to acquire, change and retain nationality provided for under the law can be stripped away under provisions of the Tanzania Citizenship Act.

Given the existing shortfalls in the modalities of determination and proof of Tanzanian citizenship, this leaves latitude for authorities to deprive citizenship of a child. As a result a child may be left stateless contrary to the jurisprudence under international law geared at delimiting statelessness, particularly to children. Given the fact for example that the current legal framework does not stipulate for citizenship status determination of a foundling, it follows that such a child remains at a risk of being deprived of nationality under circumstances of the law.

Other statutes that have a hand in matters of citizenship include the Elections Act.[[189]](#footnote-190)The mention of the Tanzania Citizenship Act underlies section 10 which sets the standard of qualification for registration as a voter by being a citizen of the United Republic which is the power vested under the Tanzania Citizenship Act. The Registration of Births and Deaths Act[[190]](#footnote-191) is another Act which has a linkage with matters of citizenship. This Act provides for, among others registration of births which is essential in matters of determining and proof of citizenship. Finally is theRefugees Act. [[191]](#footnote-192)This Act provides for matters of refugee administration which are essential in delineating between citizens and aliens in the category of refugees.

The legal framework constituting Tanzanian citizenship by birth which is central to this thesis is guided under two main concepts namely *jus soli* and *jus sanguinis*. The former refers to right of citizenship by considering only one being born in a given territory without regard to citizenship of parents while the latter conditions citizenship by birth on whether parent(s) is/are citizen(s) in addition to being born in a given territory.

Practice that has been rooted since before independence with regard to these two concepts has been that in order for a person to be termed citizen of Tanzania by birth he/she must be born in the United Republic to a parent who is also a citizen thus conforming to *jus sanguinis* concept. Prior to independence the condition was at least one parent to be born in Tanganyika. This practice has been prevailing up to now. The law that backs up this position has not been amended since independence. While this position remains unchanged, other countries that held the same letters of law amended it owing to the fact that they recognised that it went contrary to practice. Secondary sources also show that the letters of law of that position conform to *jus soli* concept which considers a citizen as a person who was born in a given territory without necessarily looking into citizenship of parents. It is affirmed in this thesis that the position of practice under the Tanzanian citizenship legal framework is that of *jus sanguinis* contrary to what is actually provided under the Tanzania Citizenship Act.

In summing up this part it can be deduced that the legal framework of Tanzanian citizenship hinges on the Tanzania Citizenship Act. Even the Constitution of the United Republic of Tanzania refers to it in matters related to determination of Tanzanian citizenship. The Act is governed and implemented by the Tanzania Immigration Services Department as it will be seen under the following section below.

## **3.4 Citizenship Administration in Tanzania**

Overall, citizenship matters are governed by the Tanzania Immigration Services Department.[[192]](#footnote-193) The latter collaborates with other institutions that touch matters related to citizenship. These institutions either issue documents to persons whose citizenship status need first to be determined prior to their issuance or constitute advisory, prosecuting and adjudicating machineries for matters related to citizenship determination. In this research they are collectively termed as “other institutions” as it is shown hereunder.

### **3.4.1 Tanzania Immigration Services Department**

The Tanzania Immigration Services Department is an institution of the Government of the United Republic of Tanzania under the Ministry of Home Affairs. It is mainly responsible for control and facilitation of entry, stay and exit of foreigners and citizens alike. This responsibility is notable through its mandate to issue passports and travel documents; management of matters related to citizenship; issuance of visa, passes and residence permits to foreigners.

The Commissioner General of Immigration is the chief executive officer of the Department.[[193]](#footnote-194)Being also an immigration officer, [[194]](#footnote-195)he or she is assisted by immigration officers both in mainland Tanzania and Zanzibar. Owing to administrative purposes, immigration matters in Zanzibar are headed by the Commissioner of Immigration (Zanzibar) on behalf of the Commissioner General of Immigration. [[195]](#footnote-196) Under that behalf such roles like issuance of passports and travel documents; issuance of visa and passes; issuance of residence permits; management of citizenship applications and all other related matters are done under the Commissioner.

The Department is the overall institution that manages matters related to citizenship in the United Republic of Tanzania. This is provided for under Part III of the Immigration Act on powers, rights and duties of Immigration Officers. Section 12(d) provides among other duties and responsibilities of an immigration officer that is to facilitate, control and grant citizenship to qualified alien immigrants. In fact any exercise that involves determination of Tanzanian citizenship would be a pitfall and devoid of relevance if it fails to involve in any extent the Immigration Services Department. It is no wonder thus that issuance of national identity cards, for example requires an involvement of immigration officers. Interrogation of applicants for national identity cards and approval of their applications require a hand of an immigration officer.

Applications for naturalisation as citizens of Tanzania for aliens; ascertainment of citizenship of an individual and related clearance of doubts related to citizenship fall under the Immigration Services Department. Although the Minister responsible for home affairs plays the head role, yet his or her discharge of mandates are under a close advice of the Immigration Services Department. For example, applications for naturalisation as citizens of Tanzania by aliens go through scrutiny and custody of the Immigration Services Department until recommended to the Minister for consideration of final approval and grant of citizenship.

The Department through the Commissioner General of Immigration is also empowered to issue passports and travel documents. The term used to refer to this authority is a competent authority defined to mean the Commissioner General of Immigration Services or an immigration officer to whom power to issue passports or travel documents has been delegated, Tanzania diplomatic missions and consular offices abroad vested with power to issue passports or travel documents. [[196]](#footnote-197) In practice a Passport Control Officer (PCO) is the officer who issues the passports and travel documents on behalf of the Commissioner General of Immigration.

Issuance of passports and travel documents by this department adds to the above regard that it is the overall institution in matters of citizenship. Why? A passport is issued only to a person who has been proved to be citizen of the United Republic. With exception of some travel documents such as a Certificate of Identity[[197]](#footnote-198) and a Geneva Convention Travel Document, [[198]](#footnote-199)a travel document such as an Emergency Travel Document is also only issued to a citizen of the United Republic.[[199]](#footnote-200) It must be remembered that a passport is customarily under international law regarded as a prima facie evidence of nationality of the holder.[[200]](#footnote-201)

Finally, the Department’s in charge in citizenship matters is evident during round up operations against illegal immigrants. It is common that such operations involve a corpus of various state agencies, but when it comes to matters of determination of citizenship it is immigration officers who are deemed to conduct this exercise. This stems from consideration of their headship in matters of citizenship.

Therefore, the Tanzania Immigration Services Department can be considered to rank the first among institutions that deal with issues related to determination and proof of Tanzanian citizenship as shown above.

# **3.4.2 Other Institutions**

Other institutions include the National Identification Authority (NIDA).The National Identification Authority (NIDA) is an institution under the Ministry of Home Affairs. It was established under paragraph 2(1) of the National Identification Authority (Establishment) Instrument [[201]](#footnote-202) and came into force on 1 January 2008. It registers and issues relevant identification cards to citizens, foreigners and refugees after they are registered in the National Data Base. Under this thesis, great weight is accorded to national identity cards which are deemed to be issued to citizens of the United Republic.

Another institution is the Refugee Services Department. The Department coordinates the process of grant of refugee status to bona fide asylum seekers.[[202]](#footnote-203) In addition, the Refugee Department is responsible for monitoring their movements within camps and collaborates with the Immigration Department, United Nations High Commissioner for Refugees (UNHCR) and other Government agencies during scrutiny, registration and repatriation to their home country. Essentially this is also an institution that has a hand in matters related to citizenship in Tanzania.

There is also the Ministry responsible for Labour in Mainland Tanzania and Zanzibar Revolutionary Government. Relevant in matters of citizenship, these Ministries collaborate with the Immigration Department in issuance of residence permits to foreigners. Issuance of these permits distinguishes foreigners from citizens. Applications for naturalisation for foreigners also depend on how a foreigner has been residing in the United Republic by using residence permits which are issued by the Immigration Department in a close collaboration with the said Ministries for Tanzania mainland and Zanzibar respectively.

Another significant institution in matters related to citizenship is the Registration, Insolvency and Trusteeship Agency (RITA)-Tanzania Mainland and Registrar of Births and Deaths in Zanzibar. The two institutions are responsible for, among others registration of births and deaths. A birth certificate is an important document in determining one’s citizenship. In fact in every exercise that requires one to prove his or her citizenship by birth, the most relevant document is a birth certificate which is issued by the said institutions.

There is also the Zanzibar Identity Cards Registration Office. The office administers registration and issuance of identity cards to residents of Zanzibar who are Tanzanian citizens and of the age of 18 years and above. The office of the Commissioner of Immigration in Zanzibar collaborates with the above office in determining citizenship of the applicants for registration. In this way, it is also an essential institution with regard to citizenship determination.

Another institution refers to Office of Vice President of the United Republic of Tanzania and the Second Vice President of Zanzibar Revolutionary Government. It must be reiterated that immigration and citizenship are amongst union matters.[[203]](#footnote-204)Owing to this, institutions that are responsible for coordinating union matters are of necessity to consider. More particularly with regard to Zanzibar, before an application for naturalisation is sent to the Commissioner General of Immigration, the Commissioner of Immigration Zanzibar having received the application from Regional Immigration Officer accompanied by recommendations from Shehia, District and Regional Defence and Security Committees, he or she forwards the same (with recommendations) to the Second Vice President who is the Chairman of the Committee for citizenship. It is after passing through this stage that an application accompanied with recommendations from the committee that is sent to the Minister of Home Affairs through the Commissioner General of Immigration. Thus the two institutions are necessary in matters of citizenship.

Other institutions in this group are the National Electoral Commission (NEC) and Zanzibar Electoral Commission (ZEC).The above institutions, among others coordinate matters related to voting for various political posts. The Tanzanian legal regime on elections for various public posts requires that those who vote and those who vie for the posts must be Tanzanian citizens. [[204]](#footnote-205)The above institutions therefore are required to register Tanzanian citizens and issue them with voting cards. This requires enhanced collaboration with the Immigration Services Department.

The above institutions as noted in the introduction collaborate with the Immigration Services Department owing to the fact that they issue documents that require determination of citizenship status prior to their issuance. The following institutions compose the advisory, prosecuting and adjudicating machineries when citizenship matters are in issue.

The first institutions in this group are the offices of the Attorney General of the United Republic of Tanzania and Zanzibar Revolutionary Government. The respective Offices of the Attorney Generals are responsible for advising the Government on issues of immigration and Citizenship in the United Republic of Tanzania when required. Moreover, scrutiny of drafted statutes related to citizenship is managed by the Office of the Attorney General. They are also key in managing cases related to citizenship.

The second is the office of the Director of Public Prosecutions of the United Republic of Tanzania and Zanzibar Revolutionary Government. The Office of the Director of Public Prosecutions performs the day to day functions of criminal prosecutions. Like the offices of the Attorney General, the office prosecutes among others, citizenship matters.

The third related office is the Office of the Solicitor General. The office is charged with supervision of civil litigation and arbitration proceedings. Where civil litigations in matters of citizenship are in issue, the Office of the Solicitor General also plays its role. This office has been created under the Office of the Attorney General (Restructure) Order. [[205]](#footnote-206)

The fourth and final institution in this group is the Judiciary. The judiciary is important in deciding cases that involve matters of citizenship for both Tanzania Mainland and Zanzibar. In Tanzania mainland the Court system comprises the Primary Court; the Resident Magistrate’s Court which also houses the District Court; the High Court and the Court of Appeal. Zanzibar on the other hand has the Primary Court; District Court; Regional Magistrate’s Court and the High Court of Zanzibar. Cases involving matters of citizenship have an original jurisdiction beginning with either the Resident Magistrate’s Court or the Regional Magistrate’s Court and High Court of either Tanzania Mainland or Zanzibar. Their correlation with matters of citizenship is significant in the above aspect of trial of cases related to citizenship and the laying of foundation of judicial pronouncements of contradictory positions in determining citizenship.

### **3.4.3 The Powers of the Minister and Commissioner General of Immigration in Citizenship Administration**

Citizenship administration in Tanzania owes much of the powers of the Minister[[206]](#footnote-207) and Commissioner General of Immigration which are necessary to be looked into under this part. Specifically, the Minister has powers in naturalisation of aliens,[[207]](#footnote-208) reduction or waiver of fees for naturalisation,[[208]](#footnote-209) clearing citizenship in doubt[[209]](#footnote-210) and acts as an appellate body in matters of deprivation, revocation and grant of citizenship together with passport and travel documents.[[210]](#footnote-211) Some of these powers are non-appealable or subject to any judicial inquiry.[[211]](#footnote-212)

On the other hand, the Commissioner General of Immigration has mandate to require an applicant of a passport who has already submitted requirements for passport application as provided for under section 12 of the Tanzania Passports and Travel Documents Act to further produce evidence of citizenship of his parent. [[212]](#footnote-213) The Commissioner is also empowered to revoke a passport at any time where the holder permits another person to use it, if the holder has been deported or repatriated at the expense of the Government, if the holder has ceased to be citizen of the United Republic, if the holder engages in illicit drug trafficking, money laundering, migrant trafficking, terrorist act or any other illegal transaction and if it is in the national interest or national security.[[213]](#footnote-214) The Commissioner General has also powers in facilitating, controlling and granting citizenship to qualified alien immigrants.[[214]](#footnote-215)

Another related power of the Commissioner General of Immigration is found under section 14(c) of the Immigration (Amendment) Act, 2015. This section states:

“Section 14. Amendment of the Tanzania Citizenship Act is amended-(*sic)*

1. by adding immediately after section 64 the new section 64A-

64A-(1) The Commissioner General may, where circumstances require and within specified time, request a person to furnish to him certain documents or information for purposes of determination or verification of such person’s citizenship.”

Erroneously however, the section so amended does not exist under the Tanzania Citizenship Act, thus a need to be amended.

In general, the Minister and Commissioner General of Immigration remain with outstanding authoritative and discretionary powers related to matters of administration of citizenship.

## **3.5 Conclusion**

This chapter has reconciled three aspects regarding evolution of Tanzanian citizenship law and its framework and finally institutional administration of citizenship in Tanzania. It can be deduced from the evolution of citizenship that matters of determination of citizenship underlie their foundation in the way citizenship law evolved, both in Tanzania mainland and Zanzibar. In addition, the Immigration Services Department has been seen as the key and central institution in all matters of citizenship. All other institutions that require determination of citizenship status of individuals as condition for provision of their services need the support of the Immigration Department. In fact where an institution is required to determine citizenship of an individual and does it in isolation of the Department, there is likelihood of reducing weight in the strength of the determination so made.

# **CHAPTER FOUR**

# **DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP**

## **4.1 Introduction**

This chapter analyses as to how determination and proof of Tanzanian citizenship is actually undertaken. It also points out and discusses apparent discrepancies existing between letters of law and actual practice while at the same time showing its implications. It also revisits the challenges prevailing in determination of citizens originating in border regions and points out strategies for improvements considerations. These matters are relevant as they point out in practice the central and main question of this research of analysing as to what connection should be entitling an individual to citizenship given the actual practice in Tanzania. The chapter also constitutes some comparative elements by engaging a cross section of selected countries. The countries are selected only as illustrations and not in a strict sense of international comparative law and its associated implications.

## **4.2 How Determination and Proof of Tanzanian Citizenship is Undertaken?**

Determination of Tanzanian citizenship is a process by which a decision is made on whether a person is Tanzanian citizen or not while proof means a document that is issued confirming that a person is Tanzanian citizen. In the absence of documentary evidence to prove citizenship, non-documentary evidence is resorted to. For the purpose of this research, determination of Tanzanian citizenship looks into the letters of law in establishing as to what constitutes Tanzanian citizenship coupled with the manner the law is interpreted in practice. Under the Tanzanian citizenship legal regime, determination and proof of citizenship formally arise under various circumstances. The latter have implications in establishing as to what connection should be entitling a person to Tanzanian citizenship and who is actually stateless given the practice in place. It is under these circumstances that the extent to which the right to a nationality is protected and avoidance of statelessness is actually undertaken under the Tanzanian citizenship regime.

### **4.2.1 Circumstances Calling for Determination and Proof of Tanzanian Citizenship**

#### 4.2.1.1 During Application for Passports and Travel Documents

The first circumstance arises during application for Passports and Travel Documents. The latter are issued by the Tanzania Immigration Services Department. A person who approaches the Immigration Services Department in order to be issued with a passport or travel document is required to prove his or her citizenship. Similarly, her or his citizenship will be scrutinized to ascertain as to whether he or she qualifies to be a Tanzanian citizen under the Tanzania Citizenship Act. Determination and proof of citizenship under this circumstance is necessary since passports and travel documents are expected to be issued to Tanzanian citizens only. Beforehand, it is worth noting in a nutshell the meaning and origin of the word itself.

Originally the word passport is said to be a combination of two French words namely “passer” meaning to pass and “port” meaning a port or a gate. It is linked to medieval document that was required as a condition to allow a person to pass through the gate of a city wall. The Old Testament is referenced in Nehemiah 2:7-9 to hold the oldest form of this document. This was during the period of the reign of the Persian Empire at around 450 B.C when Nehemiah the cupbearer at the court of King Artaxerxes requested for permission to go to Judah to rebuild the latter. He stated thus upon the King’s approval:

“[…] If the King approves, may I be given orders for the governors of Transeuphrates to let me pass through on my way to Judah? Also an order for Asaph, keeper of the King’s forest, to supply me with timber for the beams of the gates of the citadel of the Temple, for the city walls and for the house which I am to occupy? These the King granted me because the kindly handoff my God was over me. When I reached the governors of Transeuphrates, I gave them the King’s orders. The King had sent an escort of army officers and cavalry along with me.”[[215]](#footnote-216)

According to the Tanzania Passports and Travel Documents Act[[216]](#footnote-217) a passport is defined as a document in an electronic booklet form issued to a citizen of the United Republic of Tanzania under the Act for the purpose of facilitating his movement across boundaries subject to laws and regulations of the country of destination or transit. On the other hand a travel document is defined to mean a document other than a passport issued under the Act. In Tanzania there are Ordinary Electronic Passport, Service Electronic Passports and Diplomatic Electronic Passport. On the other hand, there are Emergency Travel Document, Certificate of Identity and General Convention Travel Document.[[217]](#footnote-218) An Emergency Travel Document is issued to a citizen of the United Republic for a single journey only. It expires upon return of the holder. Different from a passport, a travel document or Identity card’s international recognition depends upon formal agreement between and among states.[[218]](#footnote-219) For example, an Emergence Travel Document may be used to travel to Kenya upon agreement thereto while at the same time not allowed to travel to Namibia. Under the Tanzania Passport and Travel Documents Act, the holding of a passport or travel document is a *prima facie* evidence of the nationality of the holder and his entitlement to state protection.[[219]](#footnote-220)Though there have been divergent views as to whether a passport constitutes sole proof of nationality[[220]](#footnote-221) the place of a passport is very significant and impacts greatly to the rights of an individual particularly in matters of travel. Turack[[221]](#footnote-222) has this to note:

“Today, on our shrinking planet, the passport is playing an increasingly significant role. It is used as an instrument to frustrate travel, to prevent the individual from leaving his own country, or to preclude the bearer’s ingress to some foreign territory.”

The second half of nineteenth century saw growth of international travel and in the 1920 the Geneva Conference adopted a recommendation of a style, layout, content, validity and issuing fees for Member States. It was not until 1946, however when the United Nations created the International Civil Aviation Organisation (ICAO) which has been spearheading standardisation of passports beginning with the 1980’s suggestion of use of machine-readable passports.[[222]](#footnote-223)

As said earlier, passport and travel documents compose documents that call for citizenship test of an individual. Being documents issued to Tanzanian citizens by an institution that is charged with matters of proof of citizenship, they create a watertight evidence to prove that their holders have passed the test of citizenship. Of great concern under this research was the manner of establishment of whether an individual is citizen of the United Republic.

Research revealed that in establishing as to whether an individual is citizen or not, three levels are looked into. The first is whether an individual is citizen by naturalisation or registration, the second is whether an individual is a citizen by descent and the third is whether a person if citizen by birth. The first requires passport applicant to produce a certificate of naturalisation or registration while the second requires the applicant to produce a letter of confirmation for Tanzanian citizenship by descent. Once these documents are respectively produced, then it follows that the applicant’s citizenship is conclusively proved unless the documents were issued on falsified information.

The third level runs into two sub-levels namely, the level of birth of an individual her/himself and the level of parent (s) a typical *jus sanguinis* mode. In support of this determination, a birth certificate or affidavit of birth of an individual and her/his parent(s) are required. This process is not however smooth and objective as it sounds. Particularly to those persons whose names appear “foreign” or those whose physiological features appear “foreign” or those who identify themselves to originate from border regions, the process turns sour.

It is where the notion of origin of an individual emanates leading to further unequal treatments and discrepancies between actual letters of law and the real practice. The quickest method employed is to find a person who is conversant with the tribe of the individual for interrogations. Most commonly the ability to talk in the respective tribal language is tested, failure of which may lead to the second level of interrogation through the Border Management and Control (BMC) Division.[[223]](#footnote-224)Under the latter, formal investigations as to the citizenship of an individual commence by requirements to fill in a questionnaire that among others requires such information like names of the applicant, her/his parents, grandparents and near relatives their dates and places of birth, if deceased their places of burial and a requirement of oral testimonies of persons conversant with the information provided therein. Final approval that a person has passed the test of citizenship remains in the discretion of the officer conducting the inquiries.

In addition to all this an individual is required to resubmit documents that can help in proving her/his citizenship to be further discretionary finally decided by the same authorities to prove citizenship. The search of requirements to prove such citizenship is conducted by the individual her/himself at her/his own expenses. The commonly held view by the respondents to this research (authorities’ series) was that the respondents are the ones who allege to be citizens, therefore they are bound to provide proof.

Sister Lucy (not her actual name) narrated how she faced challenges in this aspect. In October 2018 she submitted her application for an electronic passport after her previous machine-readable passport had expired. She was required to travel for further studies to Rome in January 2019. She prepared all necessary documents including her national Identity card and submitted them to Mbeya Regional Office (Not actual regional office’s name). When she submitted them she was told by an officer that her citizenship was to be further investigated for the reasons that she originated from Kigoma region and her physiological features resembled of individuals from Rwanda. Inquiries were made but not successful.

She was required to travel to her home village to collect additional evidences to prove her citizenship including letters from hamlet chairperson and standard seven Primary School leaving certificate. She collected all those documents and her mother (father already deceased) required to be further interrogated. In fact her mother was required to appear before the officers in Mbeya but because of the sister’s request (due to her mother’s deteriorating health condition) the interrogation of her mother and other elders who knew her family was done at Kigoma Regional Immigration Office.

For a period of seven months she heard nothing of the results until May 2019 when she was told that she can proceed with her application. Having missed her chance to go for studies in January 2020, Sister Lucy remains utterly disappointed to proceed with the process. When inquired further by the researcher as to why all this happened to her she said the officers seemed to have already decided in their minds that she originated from one of the neighbouring country (name reserved) to the extent that everything that was provided as support of her citizenship seemed non-helpful.

The notion of origin held under this thesis seemed to prevail over the letters of law which required that in order for her to be Tanzanian citizen by birth she was required to be born in the United Republic (and in addition, at least for the practice under the Tanzanian citizenship regime a parent who is also citizen).This is one of perhaps a number of untold ordeals that individuals whose citizenship are in doubt are ought to pass through.

This research has strongly noted that whenever the notion of origin is thrust upon an individual who approaches the Immigration Services Department to apply for a passport all means provided to evidence her/his Tanzanian citizenship turn to be unhelpful, instead discretion prevails on whether the respective applicant should be approved to be citizen or not. Difficulties and sometimes impossibilities to prove citizenship under this notion are likely to result under the wide history of African nationality laws and the history of partition of the African continent and colonial rule. Imagine of Lucas born in 1959 to a father and grandfather both born in the United Republic yet told to evidence his origin as a condition to determine his citizenship in a condition where he has no birth certificate of his (let alone his father’s or grandfather’s). Such a requirement may lead him not to be issued a passport applied for and an impending statelessness condition.

By and large, passport and travel document applications have a significant position in testing as to whether an individual is Tanzanian citizens or not. A person who would have thought to be citizen for decades may find her/himself non-citizen and at an extreme case stateless upon conditions attached to determination by authorities as to whether she/he is Tanzanian citizen or not.

#### 4.2.1.2 During Application for National Identity Card

The second circumstance that calls for determination and proof of Tanzanian citizenship arises during application for National Identity Cards. Amongst the categories of national identity cards issued by the National Identification Authority are identity cards issued to Tanzanian citizens.[[224]](#footnote-225) Determination and proof of citizenship is bound to arise here. Applicants for such national identity cards are therefore required to be interrogated and provide to that effect evidences of proof of their citizenship.

Determination of citizenship of an individual applying for a national Identity Card involves the Immigration Services Department. The latter’s officers are required to interrogate an applicant to ascertain as to whether she/he is a citizen. The basic information of the applicant are obtainable under Form 7 which is filled in by the applicant to be approved an Immigration Officer, among others. Documents that are required to be attached with the application form include any of the following: passport, father or mother’s national Identity card, Driver’s licence, National Electoral Commission (NEC) or Zanzibar Electoral Commission (ZEC) registration card, National Health Insurance Card, Taxpayer Identity Number (TIN), Zanzibar Residence Identity Card, Social Security Membership Card, Primary School Leaving Certificate and Secondary School Academic Certificate.

Amongst the information required are the names, dates, places of birth and citizenship status of parents of the applicant. An applicant is at times required to attach a birth certificate or affidavit of birth of the applicant’s parent coupled with her/his own birth certificate or affidavit of birth. This is done to establish citizenship of the applicant through *jus sanguinis* mode. Where citizenship of the respective applicant is in doubt, formal processes of investigations by the Immigration Services Department described in the previous section are conducted. An example of applicants of the national Identity Card whose applications were rejected on ground that the applicants were illegal immigrants is given in the background section of Chapter One.

#### 4.2.2.3 During Voters’ Registration

The third circumstance arises during Voters’ Registration. The Tanzanian legal regime relating to elections allows only citizens of the United Republic to vote. Under section 10 of the Elections Act, [[225]](#footnote-226) for example it is aptly provided that no one can be qualified to register as a voter if he or she is not a Tanzanian citizen aged 18 and above. This condition highlights requirement of scrutiny of citizenship of a person who approaches the National Electoral Commission (NEC) for registration. For the case of Zanzibar Electoral Commission (ZEC), a Zanzibar resident who is in principle a citizen of the United Republic is the only entitled to be registered in the voters’ register.

Practice has shown however that determination of citizenship of an individual who registers in the voter’s register has not been accorded weight it deserves. While registration for National Identity cards involves closely the Immigration Services Department, process has not been the same for voters’ registration. Mubanga had this to note quoted *in verbatim*[[226]](#footnote-227)

“With regard to citizenship of a holder of the voter’s registration card, it is interesting to note that a voter’s registration card is issued without laboring into identifying the citizenship status of the applicant more so in densely populated areas like Dar Es Salaam. In this case, a person without any support of documentary evidence approaches an officer responsible for registration and provides an oral testimony on places of residence, birth and such other required information. Through physical visits in three registration posts in Temeke Municipality I ever made, I proved that it was very easy for an applicant to provide wrong information. In this circumstance it is not surprising to find that a handful of non-Tanzanians possessing voters’ registration cards.”

While there has been such a laxity in the process of determining citizenship, a voter’s registration card has been serving a number of identification of Tanzanian citizenship prior to the roll-out of national Identity cards. In fact all identification-related purposes that are being replaced by a national Identity card were covered by a voter’s registration card. During application for passport, registration for Subscriber Identification Module (SIM) card, opening bank account, loan application, public transport ticket requisition and other related transactions, a voter’s registration card was required among other requirements.

Notwithstanding these shortfalls, given the fact that it is only Tanzanian citizens who are legible to vote and be voted for, the process of registration of voters remains countable amongst circumstances calling for determination and proof of Tanzanian citizenship. However, due to the limitations notable during the process of registration a voter’s registration card remains less weighted in a serious proof of Tanzanian citizenship. It can be said that political reasons (particularly the need not to harass prospective voters) overwhelm the bases of serious determination of citizenship status of an individual prior to registration and issuance of the card.

#### 4.2.2.4 During Application for Birth Certificate

The fourth circumstance arises during application for Birth Certificate. A birth certificate is issued to any one born in the United Republic notwithstanding his or her nationality. Given the weight accorded to a birth certificate as evidence of citizenship by birth, determination and proof of one’s birth place is essential. In fact prior to changes in column of citizenship of parents in a birth certificate, there used to be noted of citizenship of parents which critically called for ascertainment of citizenship of the parents. An applicant for a birth certificate was required to present her/himself before an immigration officer for citizenship interrogations. Upon satisfaction of citizenship of the applicant a notice to that effect would be sent to the Administrator General for further action. [[227]](#footnote-228)Although this practice has been omitted, yet applications for birth certificates remain essentially requiring ascertainment of the applicant’s citizenship status at least for records.

The essentiality of a birth certificate as a determining factor of Tanzanian citizenship can be referred in the recent case of Robert John Penessis v. United Republic of Tanzania.[[228]](#footnote-229) In this case a certified copy of birth certificate possessed by the Applicant was essentially used as a means to contest that the Applicant was a Tanzanian citizen. Although the Respondent state advanced its argument that the document was fraudulent, yet the African Court placed much weight on the essentiality of a birth certificate and declared the Applicant to be citizen of Tanzania. The Court ruled that the Respondent state had arbitrarily deprived the Applicant of his nationality, among others.

The facts to this case were that Robert John Penessis (also claimed to have been known as Robert John Rubinstein and Robert John Maitland) was arrested by the Tanzanian Immigration Authorities on 08 January 2010. The subject of his arrest was due to his alleged illegal entry and presence in the United Republic. On 17 January 2011 he was charged, convicted and sentenced by the Court of the Resident Magistrate of Kagera to a fine of eighty thousand shillings (80,000) Tanzanian shillings or in default two (2) years’ imprisonment and ten (10) cane strokes. Dissatisfied, the Applicant appealed to the High Court at Bukoba (the ‘High Court’) which on 06 June 2011 upheld the conviction but set aside the corporal punishment sentence. In addition the High Court sentenced him to six (6) months in prison for contempt of court and issued an order for his expulsion from the territory after serving the prison sentence.

On 04 June 2012 the Applicant further appealed to the Tanzania Court of Appeal which upheld the conviction of two (2) years’ prison sentence but set aside the six (6) months’ sentence for contempt of court and expulsion order. Following the latter’s purview to be in the authority of the Minister of Home Affairs, on 04 December 2012 the latter issued both detention and deportation orders. The latter, however were not fulfilled upon his completion of his two (2) years’ prison owing to the Respondent’s claim that he refused to cooperate and comply with administrative procedures with the Immigration Authorities and South African Embassy.[[229]](#footnote-230) His application to the Court was received on 02 June 2015 and among the issues determined by the Court was whether or not the right of the Applicant to Tanzanian nationality had been violated. Among the documents relied upon in determination of the Applicant’s nationality was a certified copy of birth certificate of the Applicant.

Essentiality of a birth certificate in matters of determination of citizenship was seen in this case. The Court did not enquire into authenticity of the document and declared the Applicant as Tanzanian citizen. From the facts and decision of this case, it can be deduced that application for a birth certificate formulates an essential circumstance calling for determination and proof of Tanzanian citizenship. In fact the holding of a birth certificate was also among others, the factor which made Anudo in the case of Anudo Ochieng Anudo v. United Republic of Tanzania[[230]](#footnote-231) to be declared Tanzanian citizen. This case further adds to the contention as to how a birth certificate is essential in determining and proving citizenship. Hence its application is considered as a circumstance calling for determination of an individual’s citizenship before it can be issued.

#### 4.2.2.5 During Round up Operations

The fifth arises during Round up Operations. Operations that involve expulsion of illegal immigrants highly require determination and proof of citizenship. An example can be re-iterated of *Operesheni Kimbunga* noted in chapter one. Necessity of effective determination and proof mechanisms is apparent since any occasioned failure to effectively conduct the exercise can lead to expulsion of Tanzanian citizens, a practice that can render individuals stateless. The latter was reiterated by the late Father of the Nation, Mwalimu Julius Kambarage Nyerere to be unacceptable when giving an example of Nduli Idd Amin’s action of expulsion of non-citizens. He said:

“Uraia lazima uheshimike bila ya ubaguzi, la sivyo uraia huo wote utapuuzwa bila ubaguzi. “Jenerali Amin juzi juzi kawaambia Waingereza wawachukue raia wao. Lakini katika ugomvi huu baina ya nchi mbili, watu wengi wataumia sana; hawa ni watu, si wanyama. Lakini Jenerali Amin alisema, ‘Hao ni raia wenu.’Ila sasa anasema, ‘Wahindi wote lazima waondoke, pamoja na raia wa Uganda.’ Unaweza kuitetea kauli hiyo kwa misingi gani? Maana kama unasema, na ni sawa kabisa kusema hivyo, kwamba Jenerali Amin anayo haki kutaka watu wote wenye pasi za Kiingereza waondoke Uganda, kwa sababu ni Waingereza, basi hili la pili unaliteteaje? Maana yake nini kuwaambia kundi kubwa la watu, kwamba kuanzia leo, ama kesho, ama juma lijalo, watu nyinyi si raia tena? Maana yake ni kwamba hawa watakuwa binadamu duniani wasiokuwa na taifa, wala nchi walipo na haki ya kuishi.

Na hasa unawafanyaje watu wa namna hiyo? Ukiwapa siku thelathini kuondoka nchini, au muda mwingine wowote, unawafanyaje muda huo ukiisha? Unatarajia waende wapi: kwenye mwezi? Tuseme sisi Watanzania tungeamua kuwafukuza baadhi ya raia wetu, tungefanyaje? Tungewachunga hadi mpaka wa Kenya. Na Kenya itasema, ‘Hapana, hawa si raia wetu.’ Na halafu tuwachunge hadi mpaka wa Uganda, na Malawi, na Zambia, na Zaire, na Burundi, na Rwanda, na wote waseme vivyo hivyo. Halafu tutafanyaje; tutawaua?”[[231]](#footnote-232)

Literally translated by the researcher:

“Citizenship must be respected without discrimination otherwise citizenship will be disregarded without similar discrimination. Recently, General Amin has told the British (Government) to take its citizens. But, amidst the conflict between these two countries many people will be hurt. These are humans, not animals. But General Amin said, ‘those are your citizens.’ On the same note he is now saying, all Indians must leave together with Ugandan citizens. On what basis can you defend this statement? Because if you say (and it rightly saying so) that General Amin has the right to order all persons with British passports to leave Uganda because of being British, then what about the second arm of the statement, how do you defend it? What does it imply telling a huge group of persons that from today or tomorrow or next week you will no longer be citizens? This implies that these persons will be humans in the world without a nation or country to exist and have on it a right to live on. And more particularly, how do you treat such kind of persons? If you delimit them to leave the country within thirty days or any other limit of time, what will you do to them if the delimited time ends (without fulfillment of the order)? Where do you expect them to go? To the moon? Let us imagine, if we Tanzanians had decided to deport some of our citizens, what would we have done? We would guard them after up until the Kenyan-Tanzanian border. And if Kenya will say no, they are not our citizens and then if we guard them after to Ugandan-Tanzanian border and Malawi, and Zambia, and Zaire and Burundi and Rwanda and all of these countries similarly reject them, then what shall we do? Kill them?”

In fact such exercises in the absence of formal proofs of citizenship are prone with problems. It is this challenge which even made the Minister of Home Affairs when deliberating for the 1995 Tanzania Citizenship Bill that he even suggested not to undertake such exercises in the absence of national identity cards to prove Tanzanian citizenship. He said:

“Halafu akauliza suala la tatu Mheshimiwa Pawa, je, Wizara huchukua hatua za kuwasaka kuthibitisha Uraia wake? Hali tuliyokuwa nayo mpaka sasa ni vigumu sana kufanya msako kuthibitisha raia wa Tanzania mpaka tutakapokuwa tumekamilisha zoezi la vitambulisho. Pia kama hakuna hisia kama mahali Fulani pana watu wakorofi wageni, kufanya misako tu kwa maana ya misako inaweza ikaleta usumbufu, *harassment*, na Sheria zetu zinazuia mtu kusumbuliwa. Kwa hiyo, tukifanya bila misingi unaweza ukapelekwa Mahakamani kwa kuleta *undue harassment to the subjects of this country*. Kwa hiyo, sisi kama Wizara, kwakweli hatutaanza mazoezi ya kuanza kuzunguka nyumba hadi nyumba kuuliza wewe Pawa ni raia, au nani raia. Kama kutakuwa na hoja, suala hili litajitokeza tu. Hakuna aliyekwenda kumsaka Premji likaja kujitokeza katika *proceeding*. Lakini mwananchi akiwa na fununu kwamba Fulani anaendesha mambo yake kama vile raia ambapo siyo raia, basi tungeomba vyombo vinavyohusika vya dola viarifiwe ili huyu mtu ashughulikiwe. Lakini kuanza misako ya makusudi tu tunaweza tukapata shida.”[[232]](#footnote-233)

Literally translated by the researcher:

“And Honourable Pawa asked the third question, what measures does the Ministry take to hunt (illegal immigrants) to prove their citizenship status? As it stands it is very difficult to undertake a round up exercise to prove Tanzanian citizenship until the exercise of issuance of national Identity cards is completed. Also if there are no rumours that there are malignant aliens somewhere, then conducting mere round up exercises can result into harassment and our laws are against undue harassment to a person. Therefore, if we undertake the exercise baselessly (we) can be taken to court for causing undue harassment to the subjects of this country. Therefore, we as a Ministry, indeed will not begin exercises of going around house by house asking whether (you) Pawa is a citizen or who is a citizen. If there will be a question (of citizenship) to be determined, the latter will eventually emerge. No one went to hunt Premji but his question just emerged in proceedings. But if a citizen has rumours that a certain person conducts her/himself as citizen while she/he is not then we would request relevant authorities to be informed and take action against such person. But a mere undertaking of round up exercises for the sake of the name only can cause to us troubles.”

Indeed challenges of determination and proof of Tanzanian citizenship have been overtime facing the exercises of round up operations. Since there is no standing alone document or mechanism to prove Tanzanian citizenship with exception of a certificate of naturalisation or registration duly issued, proof of Tanzanian citizenship that results from the above circumstances is done through documentary and non-documentary mechanisms. Documentary proofs include certificate of naturalisation or registration; certificate of birth; national identity card; passport; voter’s registration card; affidavit of birth; passport; school certificates and confirmation letter for Tanzanian citizenship. Non-documentary mechanisms on the other hand include interrogating on one’s place of birth; scrutiny into one’s tribe and local language; scrutiny of names; race and physiological features; historically related matters, for example scar marks resulting from small pox vaccination and general knowledge in matters that a Tanzanian citizen of ordinary understanding is expected to be conversant with, for example the ability to sing the national anthem. Consideration of this is provided in the subsequent section.

## **4.3 Proof of Tanzanian Citizenship**

Proof of Tanzanian citizenship has challenges in establishing as to who is a Tanzanian citizen. Through documentary or non documentary means of establishing Tanzanian citizenship, a certificate of naturalisation duly issued wins credit as a document that does not pose challenges in proving citizenship of its holder. Other documentary or non documentary means have inherent challenges. Coupled with the shift of burden of proof of citizenship to a person who alleges to be a Tanzanian citizen, rejection of documents that purport to be proof of citizenship and ineffective non documentary means of proof, indeed result into challenging situations, not only to the person required to prove his citizenship but also to the authorities in need of such ascertainment. It begins with the guiding law on the burden of proof of citizenship hereunder.

Section 44 of the Immigration Act sets the condition of burden of proof in citizenship matters. It provides that in cases of proof of citizenship, the burden of proof that a person is a citizen of the United Republic lies on the same person. The law does not proceed to show in what means the person is supposed to prove his citizenship. Nowhere even in the Immigration regulations, the Tanzania Citizenship Act and its accompanied regulations.

This position is also reflected in the case of Attorney General and Two Others *versus* Aman Walid Kabourou[[233]](#footnote-234) which overruled the position held in John Sapuli and Two Others *versus* Rajabu Athumani Mrope and the Attorney General.[[234]](#footnote-235) The latter had held the burden of proof of citizenship to lie with the petitioners.

Respondents to the question requiring opinion on the practicability of section 44 of the Act received divided answers. There were respondents who saw it practicable while others saw it as impracticable. Those who said it is practicable insisted that because there are no ascertained means to prove Tanzanian citizenship, it is thus right the burden of proof to be on the party alleging to be a citizen of the United Republic. On the other hand those saying it is impracticable were of the view that the provision would be practicable if it had specified which documents or other means to prove one’s citizenship.

It was also viewed that the Tanzania Immigration Services Department has been strictly using this position to even reject means provided by those who are supposed to prove their citizenship. At an extreme case one respondent showed how she was bound to travel in her home area, gather evidences together with elders who would prove her citizenship and took them to the Immigration offices for testifying upon her citizenship. All these were done at her own expenses only to find no proof to date. A formal test of practicability of this controversy was observed in the case of Anudo Ochieng Anudo[[235]](#footnote-236) hereunder. The brief facts to the case are necessarily provided below.

On the 22nd March, 2018, the African Court on Human and People’s Rights in Arusha passed a judgment in a nationality case against the United Republic of Tanzania: the case of Anudo Ochieng Anudo *versus* United Republic of Tanzania. This case has brought to test the practice and law on the burden of proof in matters of citizenship, among others.

Anudo Ochieng Anudo was a project manager with a German NGO working on access to clean water. In 2012, when he was processing formalities of marriage, he approached Babati Police Station. The authorities suspected of his Tanzanian citizenship and as a result retained his passport. His nationality was withdrawn and he was then deported to Kenya. The Kenyan side expelled him in return rejecting that he was not Kenyan. Anudo could not enter the United Republic and thus remained in the “no man’s land” between the Tanzania-Kenya border in Sirari.

On 2nd September, 2013 Anudo sent a letter to the Minister of Home Affairs and the Immigration Services Department requesting to know why his passport was confiscated by the Police. Following investigations conducted by the Immigration Department, he was formally informed that he was not a Tanzanian citizen and that his passport was obtained using fake documents. The passport had been cancelled and on the 1st September, 2014 he was deported back to Kenya where he was on 6th November, 2014 arraigned before Court and declared him to be in an irregular status. Following the Court’s decision he was expelled back to Tanzania and stayed in the “no man’s land” in stateless status.

Before the Court, among others Anudo contested for the right to nationality and the right not to be arbitrarily deprived of his nationality. He submitted that he was a Tanzanian citizen by birth and claimed that his both parents were Tanzanian citizens by birth. In evidence of this claim of nationality he stated to hold a birth certificate showing that he was born in Tanzania, a Tanzanian voter’s card and passport number AB125581 all issued by relevant authorities.

The Court argued, among others that Anudo’s citizenship was being challenged 33 years after his birth during which period he held himself as a Tanzanian. It also considered the fact that Anudo’s parents’ citizenship was not disputed by the United Republic. As such the Court concluded that Anudo was arbitrarily deprived of his nationality contrary to article 15(2) of the Universal Declaration of Human Rights. Of particular reference under this thesis is the deliberation on who had the burden of proof of nationality under the circumstances. The Court shifted the burden on the Respondent State to prove on the contrary on the basis of legal documents that were issued by the same. Quoted *in verbatim* the Court had this to say[[236]](#footnote-237)

“In the instant case, the Applicant maintains that he is of Tanzanian nationality, which is being contested by the Respondent State. In the circumstance, it is necessary to establish on whom lies the burden of proof. It is the opinion of the Court that, since the Respondent State is contesting the Applicant’s nationality held since his birth on the basis of legal documents established by the Respondent State itself, the burden is on the Respondent State to prove the contrary.”

Essentially, this has been the practice under the Tanzania citizenship regime where an individual whose citizenship is in doubt bears the burden to prove his/her citizenship.

Another related case that has underlined the shift of burden of proof of citizenship from an Applicant to the respective Respondent State is the case of Robert John Penessis v. United Republic of Tanzania.[[237]](#footnote-238) In this case the Court declared that it had adopted the general law principle of *actor incumbit probatio* by which anyone who alleges a fact must prove it.[[238]](#footnote-239) It further held that since the Applicant was not in a position to access or produce the required proof and thus the Respondent State was entrusted with the means and prerogatives to discharge the burden of proof. Thus it decided that the Applicant had made out a *prima facie* allegation and as such the burden to prove the contrary was shifted to the Respondent State.[[239]](#footnote-240)

With the above decisions, it is notable that this burden is not absolute against the person required to prove one’s citizenship contrary to what is being held in practice. The burden has been heavy laden following the lack of a single document that can stand on itself to prove Tanzanian citizenship with an exception of a certificate of naturalisation or registration dully issued.

Reflecting from the above discussions proof of Tanzanian citizenship can be analysed by looking into two schemes: one, the circumstances that call for proof of one’s citizenship and two, what are the available means of proof of the same. This research has confirmed that circumstances that require proof of Tanzanian citizenship mainly arise when one applies for a passport and travel document; when applying for national identity card (as a Tanzanian);[[240]](#footnote-241) when registering as a voter or when contesting for a public position; when applying for a birth certificate and during round up operations.

On the other hand, it has been revealed also that the means to prove Tanzanian citizenship has been through both documentary and non-documentary. Depending on the category of one’s citizenship, documentary means are done through presenting certificate of naturalisation or registration; certificate of birth; national identity card; passport and travel document; voter’s registration card; affidavit of birth; school certificates and confirmation for Tanzanian citizenship letter.

With regard to non-documentary means, the following are commonly used: interrogating on one’s place of birth; scrutiny into one’s tribe and local language; scrutiny of names; race and physiological features; historically related matters, for example scar marks resulting from small pox vaccination and general knowledge in matters that a Tanzanian citizen of ordinary understanding is expected to be conversant with, for example the ability to sing the national anthem.

Since the circumstances calling for proof have been highlighted in the previous chapter, analysis of the means of proof follow in this chapter. Since the two are closely related (the circumstances calling for proof and the means of proof), then some aspects covering circumstances will also be treated while analysing the means of proof. Each means is treated separately as follows.

The first group is by documentary means and starts by passport and travel document. Tanzanian passports and travel documents are issued under the Tanzania Passports and Travel Documents Act. Under the Act, a passport is defined to mean a booklet in an electronic form issued to a citizen of the United Republic of Tanzania under the Act for the purpose of facilitating his movement across boundaries subject to laws and regulations of the country of destination or transit.[[241]](#footnote-242) On the other hand, a travel document is defined to mean a document other than a passport issued under the Act.[[242]](#footnote-243) Both documents are issued to a person who is a citizen of Tanzania. However, as it will be seen hereunder in practice possession of a passport or travel document does not in itself stand to be a sole proof of Tanzanian citizenship. This is contrary to what is stated under section 11 of the Tanzania Passports and Travel Documents Act where it held that the holding of a passport or travel document shall be *prima-facie* evidence of the nationality or domicile of the holder and of his entitlement to state protection.

Practice in issuance of passports shows that a Tanzanian passport is issued upon fulfillment of four conditions namely, filling in application forms electronically,[[243]](#footnote-244) proof of citizenship, proof of travel needs and other incidental conditions. [[244]](#footnote-245) Proof of citizenship takes precedence of all other requirements. While other requirements may be waived according to circumstances, citizenship requirements remain standing. Where for example an applicant is at an extreme case requiring him/her to be issued with a Tanzanian passport (for example travelling for medical purposes) and his/her Tanzanian citizenship is not properly ascertained/proved, a passport may be issued with restrictions of its validity and other incidental conditions.[[245]](#footnote-246) While an emergence travel document is issued with lesser conditions compared to a passport, its main condition of issuance also accords weight to proof of Tanzanian citizenship. Thus a passport or travel document stands in a high standard of proof of citizenship.

As noted however in chapter one, production of a passport alone does not in practice stand to prove one’s passport. This has been recurrent in the exercises of replacement of passports as noted in the scenario by Zakaria in chapter one. It happened in 2005 and it continues in the similar exercise that began in January 2018 with the transformation to electronic passports. In such cases, a person who approaches the Tanzania Immigration Services Department for replacement of his or her passport is required to produce, in addition to the original passport being replaced other means to prove his/her Tanzanian citizenship including a birth certificate or affidavit for himself/herself and his/her parent. This research ventured into looking into as to why this?

It has been notable that there has been mistrust both on the mechanisms of acceptance and approval of applications for passport and the genuineness of documents that accompany an application that leads to issuance of the respective passport. Loopholes for bribery and false declarations are considered to be among the reasons that indeed subject the process of approval for issuance of passports and travel document to be a pitfall. One respondent immigration officer well versed in Tanzanian citizenship matters ascribed this mistrust to the fact that documents that are used to prove Tanzanian citizenship are not issued by the Tanzania Immigration Services Department and thus not under the control of scrutiny of the Department. For example, a birth certificate issued by RITA, national identity card issued by NIDA and an affidavit of birth issued by Commissioner for Oaths. While this may count to be among the reasons, yet it leaves a question as to why a passport issued by the same department is not accepted as a sole means to prove Tanzanian citizenship? It can thus be pointed out that, mistrust goes even amongst the officers themselves involved in the process of scrutiny and approval of applications for passports. One might fear that a passport to be replaced if it was issued under the influence of bribery, then scrutiny of necessary documents would even be perfunctory as such leading to the need to recall the means to prove the applicant’s passport.

Applications for electronic passports have necessitated the need to produce the national identity card whenever one applies for an electronic passport. It is under practice that a person who is qualified to possess a national identity card must accompany his/her application for a passport with a national identity card.[[246]](#footnote-247) Some respondents in the general public strata in this research, showed their concern that they expected that production of a national identity card as an attachment for an application for passport or travel document as the case might be would be a conclusive proof of Tanzanian citizenship. Contrary, however production of a national identity card remains as one separate condition. An applicant is further required to accompany documents that might have been similarly produced before NIDA when applying for the national identity card and considering that both the Immigration Department and NIDA are government entities which work closely, the requirement seems to be duplication.

It is the researcher’s view that, non acceptance of a passport as a sole means of proof of Tanzanian citizenship is due to mistrust in the processes leading to its acquisition. Thus a passport, although accepted as a *prima-facie* evidence of nationality both under the Tanzania Passports and Travel Documents and internationally, it still lacks a sanctified and sole proof of Tanzanian citizenship in practice due to the above noted mistrusts.

Another documentary means is by a letter from ward executive officer / shehia. Among the documents that are used to introduce a person for acquisition of documents that have direct implications in citizenship status of the applicant are letters issued by ward executive officers or Shehia for the case of Zanzibar where the applicant resides. These letters are issued in application for a Tanzanian passport and a national identity card. Some letters go beyond saying, “this person is a citizen of Tanzania residing in my local area. I forward him to you so as to grant him a passport.” It is assumed, among others that a person is more likely to be known of his/her citizenship by the local authorities where he/she resides. Unfortunately, procedures that lead to acquisition of such letters are also subject to the conception of mistrust.

This research ventured to find out how these letters come to be written by ward executive officers in three wards. Respondents in the latter category when requested to ascertain as to how they do confirm that persons whom they introduce to other authorities are knowable to them, acknowledged that they depend on information supplied to them about the person they introduce from local ten cell leaders. In this respect a person in need of such introductory letter from the respective ward executive officer goes to his/her local ten cell leader and obtains an introductory note/letter. The latter is then taken to the respective ward executive officer for preparation of the main introductory letter. This even happens without going into details of scrutiny of the truth of declarations contained in the local ten cell leader’s note/letter. When questioned on the responsibility as to the truth of falseness of the declarations, they shifted the responsibility to the respective local ten cell leaders. The latter were expected to bear the responsibility because they are the ones placed in a better position to know the persons they introduce.

In the researcher’s view, this is a laxity that gives way to diminishing authenticity of the introductory letter. Given the fact that due to practical impossibilities, it is not easy for the authorities (like the Immigration Department and NIDA) that require such introductory letters to make physical verification visits for proof of the authenticity of the respective letters, then it is not surprising to find a handful of letters that do not constitute genuine declarations. This further contributes to the continued requirement of various documents in proof of citizenship and sometimes the same types which were submitted in first applications to be resubmitted afresh.

A voter’s registration card is also another documentary means. Elections have at times been central to matters of proof of citizenship. Particularly when one contests for a political post, it has been common to find a person whose citizenship was previously not questioned to be scrutinized.[[247]](#footnote-248) In fact this is due to the fact that under the Tanzanian legal regime regarding voting and being voted for, a person qualifies to vote or being voted for if he or she is a Tanzanian citizen. Article 5 of the Constitution of the United Republic of Tanzania is central to the right to franchise.

Prior to dissemination of national identity cards[[248]](#footnote-249) voters’ registration cards have been central in identifying oneself as a Tanzanian citizen in applying for passport or travel document, SIM card registration, application for national identity card, opening of bank accounts and related exercises. Issuance of voters’ registration cards came after an establishment of the Permanent Voters’ Register under article 5(3) (a) of the Constitution of the United Republic of Tanzania. Beginning with the year 2005 voters’ registration cards started to be disseminated.

While the cards are sensitive to citizenship status, the processes that have been employed in issuing the cards have not in principle involved scrutiny as to whether applicants are really Tanzanian citizens. Beginning with the 2005 first dissemination of the said cards, an applicant was neither required to produce documents to prove his or her citizenship nor was he or she questioned on citizenship status. The exercise has always been conducted without an involvement of immigration officers who are actually versed and empowered in matters of citizenship.[[249]](#footnote-250) In registration, a person has always been required to present himself/herself to a registration officer who inquires mainly on date and place of birth, among others. The processes thus leading to issuance of voters’ registration cards diminish the latter’s assurance of reliance as a means to prove solely that the respective holder is a Tanzanian citizen.

Another significant documentary means is by a national identity card. Since the inception of dissemination of national identity cards, the latter have been gradually replacing the hitherto voters’ registration cards which were used in identifying oneself as citizen of Tanzania. Since 2018 the demand of production of a national identity card has gone far as a requirement in biometric registration for SIM cards which previously used voter’s registration cards. The card is also required in Company registration where an online Company registration is possible only if one has National Identification Numbers which are obtainable from registration with the NIDA for issuance of a national identity card. The requirement of the card is multiplying to even for employment in the public service. And the requirements will continue multiplying as the cards continue to be disseminated.

The Registration and Identification of Persons Act which is the parent statute for issuance of national identity cards was enacted to provide for registration of persons in the United Republic, the issue to them of identity cards and for connected purposes. This being the central aim of issuance of the cards, that is why the registration does not involve only Tanzanians but also aliens. Be as it may, the national identity card issued to a Tanzanian citizen is growing to be a central document in identifying a person as a Tanzanian citizen.

However, the processes leading to final issuance of the national identity card are critical. The researcher looked into the processes leading to final issue of a national identity card particularly with regard to ascertainment of one’s citizenship. It was observed that documents that were used to prove that the respective applicant was a Tanzanian citizen included a birth certificate, affidavit of birth, primary school leaving certificate, passport, secondary school leaving certificate, driver’s license, health insurance card, social security fund card, voter’s identity card, taxpayer’s identity number, Zanzibar resident card and a letter from hamlet chairman.[[250]](#footnote-251)

It is positively imperative to note that among the processes involved are filling in prescribed forms that are to be approved by an immigration officer. The latter is at times involved in interrogating an applicant to establish his/her Tanzanian citizenship. Challenges remain first in the documents accompanying the respective application and the workload of interrogating applicants against the available manpower of immigration officers. In two stations for example visited by the researcher in two wards in Kigoma, one station was centred in each ward where one ward involved applicants from more than three villages against available three immigration officers who conducted the interrogations. The work was scheduled for a period less than two weeks per station. A day started at around 9 in the morning and ended at around 4 in the evening. With the available two desks of immigration officers coupled with the limitation of time, some applicants were bound to keep on guard by sleeping at the centres for registration in order to be able to catch-up with the following day for being registered. This similarly reflected to what extent interrogations were effective given the huge number of applicants against the human power.

As also analysed in the previous part, application forms are endorsed by local authorities upon introduction by local ten cell leaders who are at times not critical in the aspect of citizenship. On the other hand some documents accompanying an application for national identity card such as a taxpayer’s identification number, driver’s license, primary school leaving certificate, secondary school leaving certificate, health insurance card, social security fund card and voter’s identity card do not attach weight in establishing the applicant’s citizenship. As such reliance on them in the aspect of establishing citizenship status of an individual might be misleading.

Given the fact also that the pace of needs to disseminate national identity cards does not run concurrent with the capacity in terms of human power to effectively establish citizenship status of the applicants, then it follows that a national identity card when it comes to critical proof of Tanzanian citizenship remains inadequate to stand in that position. It is a fact prevailing that the government desires to ensure that all legible persons to be registered for national identity cards, whether aliens or Tanzanian citizens are issued the cards as earlier as possible.[[251]](#footnote-252) As a result, it is also the researcher’s view that a national identity card does not effectively meet effective standards to stand as a sole documentary proof of Tanzanian citizenship notwithstanding the fact that it is labeled ‘citizen identity card.’ If it had met the standards, there would have not been further requirements of proof of citizenship such as birth certificate and affidavit of birth when for example applying for a passport.

A birth certificate also falls in this category. A birth certificate is a significant document in identifying as to whether a person was born in the United Republic. Prior to removal of a column in a birth certificate that provided for citizenship status of parents of a holder of the respective birth certificate, it was common that citizenship of parents was also provided in a birth certificate. A birth certificate in that respect provided as to whether the holder’s parents were Tanzanian or not. With this therefore a person would be out rightly said to be a citizen of Tanzania or not by looking only at the respective birth certificate information. This is no longer in practice. Instead the father’s country of birth and mother’s country of birth columns have replaced the previous father’s nationality and mother’s nationality respectively. In addition, in the current birth certificates a *nota bene* (NB) is given that the respective certificate is not proof of citizenship. This implies that a birth certificate in itself cannot be produced as a sole document to prove one’s citizenship.

It is pertinent to note that declaration of places of birth of parents under the current practice relies on information provided by the applicant in prescribed forms together with attached evidence such as a national identity card which in itself is critical as shown above. Challenges however lie with late applicants in the 10th years and above. In both cases reliance of the genuineness of information depends largely on the same person providing them. If wrong information is given, then it is possible to stand as it is given the lack of critical scrutiny and counterchecks of the information so provided. In this context a birth certificate though constituting a significant document to prove one’s citizenship by birth, yet it is inherently impeded by the above shortfalls.[[252]](#footnote-253)

Another important documentary means is by affidavit of birth. Given the fact that birth certificates are not sufficiently available to a large number of persons in Tanzania, affidavits of birth have been remedial in practice.[[253]](#footnote-254) It is a basic document produced before the Immigration authorities upon application for passport or travel document. It is also produced on application for national identity card. An affidavit of birth is prepared in a prescribed form as provided for under section 10 of the Oaths and Statutory Declarations Act.[[254]](#footnote-255)

Further, under section 3 of the Notaries Public and Commissioners for Oaths Act [[255]](#footnote-256) persons entitled to practice as notary public and commissioner for oaths in mainland Tanzania are; an advocate and a person entitled to practise as a notary public in England, Scotland, Northern Ireland or the Republic of Ireland. [[256]](#footnote-257)

Given the weight of evidence it carries with regard to birth, an affidavit of birth is expected to be prepared under a very strict adherence to statutory declarations. However, this has not been always the case. Among others, it would be expected that a deponent must be present in person before the respective commissioner for oath during the process of swearing, affirming or making declaration as the case may be. Failure to adhere to this expectance leaves an affidavit as a document that cannot be solely relied upon for proof of Tanzanian citizenship.

Documentary and practical reviews and observations respectively have shown that at some instances affidavits obtainable from lower courts are prepared not by magistrates. Instead blank forms are filled in required information, sometimes even without the presence of the person supposed to act as a deponent. With this absence it is not even surprising to find that a person who is not an actual deponent signs the affidavit on behalf of the actual deponent.

This practice is not only observable in lower courts but also amongst advocates. Mubanga[[257]](#footnote-258) notes how most of affidavits of birth are drafted on more business motives, supply of information by persons who are not actually the deponents and finally without an actual concern by advocates to ascertain on the information being supplied. Upon question posed to one respondent, it was adduced that circumstances of meeting the requirements of getting actual deponents are at times difficult thus leading to such practice.

This can be reflected under section 12 (3) of the Tanzania Passports and Travel Documents Act with regard to conditions precedent to affidavits produced in application for passport. Under the Act such affidavit must be stated or sworn by a parent or legal guardian or a person who was present at the place of birth when the applicant was born and who is not less than five years above the age of the applicant or the applicant’s close relative who was informed of the applicant’s birth by the parents.

The respondent above mentioned narrated of the circumstances that befell him when he approached the Immigration authorities at Immigration Headquarters for application of first issuance of passport. He said that he had no birth certificates both for himself and parent. To that effect he was advised to look for affidavits of birth *in lieu of*. The respondent was born in 1948 in one village in Mara region. His parents were both deceased. He approximately said that his father was born in 1908 while his mother was born in 1915. He further said that there was no remaining uncle or aunt. It came now that he was required to obtain affidavits (for himself and one parent) that were supposed to meet the above criteria. That is, for his affidavit of birth a deponent to that effect was required to be his parent or guardian who actually were deceased or a person who was present during the birth of the applicant and of not less than five years above the applicant, that is who was at least born in 1943. There was no such a person as the applicant had left the village since 1965 and no person whom he could have located to have been present during his birth. Otherwise he was remained with one option of finding a close relative who was informed of the applicant’s birth by the parents. The respondent narrated that his father had died in 1966 and her mother in 1970 and no actual person whom he could identify to have been informed of his birth by his late parents. With all this, the respondent narrated that he was left in dilemma and advised to just provide information required and even making some assumptions for those information he could not obtain and the affidavits were prepared.

Indeed this is one amongst many similar scenarios pertaining to affidavits of birth. It can thus be concluded that proof of Tanzanian citizenship by birth using an affidavit of birth leaves gaps that make it a document that cannot stand firmly on its own to prove one’s citizenship.

School Leaving Certificates are also employed as documentary means. In proving that a person was born in the United Republic, at some instances school leaving certificates are requested, most commonly primary school leaving certificates. While such certificates may reflect that the person was born in the United Republic owing to his/her attachment to being educated in home schools and colleges, it is not always the case. This is due to a number of reasons. One, a foreigner who was not born in the United Republic and immigrated while still a minor with his or her parents or guardians may have joined primary school, if lucky enough advance to higher secondary school and university and obtain certificates to that effect. For those who might have not known the history of such person would assume him/her to have been born in the United Republic by mere looking at the respective certificates while it was not. Two, education has grown to go beyond even the boundaries where a person was born and grown. It is not surprising to find a child born in Tanzania to undertake his/her primary school education in Uganda. Thus the notion of school certificates being attached to places of birth of the applicant is diminishing. Three, authorities in schools do not place much strength in identifying citizenship of their students. Not even certificates do they reflect citizenship of the respective students. Therefore, reliance on school leaving certificates for proof of citizenship is not under these circumstances a source to solely depend on.

Of another category of its own is a confirmation for Tanzanian citizenship. This is a document in form of letter or certificate issued by the Commissioner General of Immigration to a person who has renounced other nationality or nationalities he or she is presumed to possess. For example, a person who was born in Tanzania to a father who is Tanzanian while his or her mother is a non-citizen, then upon reaching eighteen years it is presumed in practice that he or she might be inheriting his or her mother’s citizenship as such required to renounce such other citizenship. Upon making declarations concerning citizenship and residence and swearing/affirming an oath of allegiance and production of relevant documents to prove his/her Tanzanian parent’s citizenship, then he/she is issued a letter of confirmation of Tanzanian citizenship. The letter states whether such a confirmation is by birth or descent as the case may be. If the applicant was born outside the United Republic to either parent who is a non-citizen while another is a citizen, then confirmation becomes that of citizenship by descent.

When this document is duly issued, it declares the status of citizenship of the bearer whether by birth or descent and has strength in proving Tanzanian citizenship to that effect. Since it involves ascertainment of such status before its issuance, it is a document that can duly stand to prove one’s citizenship. Unfortunately, however the document is neither prescribed under the Tanzania Citizenship Act nor under regulations. The researcher was informed of debates that were held pro or against issuance of the documents. Since there are no standing legal rules prescribing for it, then its position remains critical.

A certificate of naturalisation or registration forms yet another significant means to prove Tanzanian citizenship by naturalisation or registration as the case may be. As noted previously, a certificate of naturalisation or registration[[258]](#footnote-259) is the only in practice that once produced and proved to be duly issued stands as a sole proof of Tanzanian citizenship by naturalisation or registration. This research has noted that this elevated status is a result of the rigorous procedures that lead to acquisition of a certificate of naturalisation. The conditions and procedures leading to naturalisation as a citizen of the United Republic are lengthy and involve various stages. More importantly, the document is issued under the close guidance of the Immigration Department. Practice with the Immigration Authorities has shown that production of a certificate of naturalisation or registration does away with other requirements such as birth certificate or affidavit of birth for both the applicant and his or her parents compared to other categories of citizens.

While a certificate of naturalisation is hailed to compose strong proof of citizenship, its access is challenging. While Tanzania remains reputable in history for its benevolence in grant of citizenship to refugees through mass outreach programs, [[259]](#footnote-260)still the normal channel of access to naturalisation is wanting of review. The challenges begin with the conditions to be fulfilled before application for naturalisation. As noted in the previous chapter, in order to qualify to apply for naturalisation, among others one has to show economic contribution and must have resided in the United Republic for a period of ten years. Tanzania has no permanent residence card as such in order to reside in the country legally for such a period consecutively, one must possess a residence permit renewed for such a period. [[260]](#footnote-261)In order to tally with the requirement of economic contribution especially in terms of investment, the most relevant residence permit is Class A Permit which is issued to investors.[[261]](#footnote-262) Though persons who have been residing in the United Republic and engaged in small scale trade, business, artisanship, fishing, farming or any legally recognised activity and members of prescribed professions in possession of prescribed qualifications intending to practise such profession and consultancy services are also included under this class, yet a number of those who would want to access naturalisation fail to meet these conditions.

There are also administrative procedures described in the previous chapter which contributes to difficulties in the process. It is not surprising for the process to take more than three years before the applicant gets a final determination of her/his application as to whether it is approved or not.

There are also challenges of high fees. Tanzania is counted to be one of countries in the world that charges high fees for naturalisation and in fact for example in East Africa being the highest.[[262]](#footnote-263) Though fees have been reduced to some categories of persons, yet they remain high to most individuals who are classified in those groups. The latter are identified under regulation 2 of the Tanzania Citizenship (Amendments) Regulations[[263]](#footnote-264) and include persons born in Tanganyika before independence who were not recognised as citizen under the Citizenship Act [[264]](#footnote-265)and subsequent legislations thereto, persons born in Tanganyika before or after independence by parents who were not recognised as citizens under the Citizenship Act[[265]](#footnote-266) and subsequent legislations thereto, persons who entered in Tanganyika before or after independence and stayed there in for a period which, in the opinion of the Commissioner General in consultation with the Minister, qualifies to be granted citizenship under conditions specified therein, persons born in Tanganyika before or after independence and their parents fall under categories 2 and 3 above and persons born outside the United Republic of Tanzania and their parents are citizens of Tanzania by descent. The fee for these groups is two million Tanzanian shillings (Approximately $ 870) paid in two instalments of one million each. The rest of these are required to pay a total of $5000 paid in two instalments of $1500 during submission of application and $ 3500 upon approval of the application and before citizenship is formally granted. In fact the difficulties as to access to naturalisation can be traced in the debates of the 1995 Citizenship Bill which laid down for conditions of grant of citizenship by naturalisation. One representative of most what members of parliament contemplated had these to contribute:

“Maombi ya Uraia yamekuwa mengi sana hapa nchini tuyaangalie wana nia gani. Kwa nini wanaoomba hasa kuwa raia na huko nyuma ilikuwaje. Ni suala ambalo ni nyeti isionekane tu Tanzania ni mahali ambapo watu wanaweza kuja na wakapata Uraia kwa urahisi. Natumaini madhumuni mojawapo ya Muswada huu ni ku-*tighten* kwamba watu hawaingii tu kiholela na kutangaza kesho kutwa maombi ya Uraia, namna gani. Ni lazima tuwe waangalifu katika suala hili.Suala zima la Usalama wa nchi ni lazima litazamwe kwa umuhimu unaostahili.”

Literally translated by the researcher;

“There have been a huge pile of applications for naturalisation let us scrutinize them to see what they want. Why are they (now) applying for naturalisation and what was the situation before. It is a sensitive issue Tanzania not to be seen as a place where people can come by and get naturalised easily. I hope one of the objectives of this Bill is to tighten against easy entry of people (foreigners) and announce two days after that they apply for naturalisation. We must be careful on this on this matter. The whole issue of national security must be looked into with importance it deserves.”

This goes deeper into the effect of non-application of the *jus soli* principle though the letters of law highlight it. With this notion, it can be said to be among reasons for non acceptability of attainment of citizenship by a mere birth in the United Republic notwithstanding the fact that the letters of law depict the *jus soli* mode of attribution of citizenship.

Other explanations to this can be linked to the concept of autochthony. The concept of autochthony is said to originate from two Greek words namely, *autos* to mean self and *khthon* to mean earth. Combined, it constitutes the meaning “sprung from the earth” and thus “an original or indigenous inhabitant of a place.”[[266]](#footnote-267)It is a concept that is commonly applied in deciding as to who deserve to be called citizens of a given state by invoking the “first-comer claims.” Individuals claim to be true locals because they were the first to inhabit in a given territory and thus excluding those who came later as non-citizens. It is a concept largely used in cases of immigration purviews. Societies involved are largely agricultural or industrial. Here the largest fear lies in avoidance of dominance in resources, culture or power by immigrants against those who claim to be inhabitants in a given territory. Though those who advance this fear are normally large in number, they however fear that they can later be “colonised” by “strangers” and ultimately be marginalised. As such, tendency becomes to use every possible means to stop this trend.

Therefore, a certificate of naturalisation which counts to be the only document that can stand by itself to prove Tanzanian citizenship by naturalisation sails through a number of challenges towards its final dissemination. These challenges have direct implications in the difficulties of proof of Tanzanian citizenship especially to those who would want to be naturalised as Tanzanian and more importantly on those who have lived for decades in Tanzania and have lost even connection to their origin countries. As such they may be prone to risk of statelessness to themselves and their generations.

The second group composes of non-documentary means of proof of Tanzanian citizenship. This group begins by the mechanisms of interrogations on one’s place of birth. Interrogation on one’s place of birth is one of an oral method used to ascertain on one’s place of birth and his or her citizenship. At one level, interrogation is done between an authority and the person being interrogated and at another level this interrogation can involve a third party who is conversant with the facts about birth of the first party. Both involve oral testimonies and at times coupled by production of evidences that might be required as per the interrogation.

This method is commonly used by the Immigration Authorities and NIDA officials when interrogating applicants for passports and national identity cards respectively. While this is an effective method that adds to ascertainment of one’s birth and his/her citizenship in addition to documents produced, circumstances in which such interrogations are conducted count much to the authenticity of the final results of the information obtained.

Given the load of applicants for passports and national identity cards against the available resources of manpower, it is not uncommon to find an interrogation being done perfunctorily. An example can be seen with the researcher’s note above narrated on the exercise of applications for national identity cards. Under such a pressure an interrogation might not yield results expected. This is also observable during application for passport. It is however commendable that where interrogations reveal some suspicions on the truth of information given, interrogations have at times been shifted to third officers who can conduct further interrogations in a more enhanced manner. This practice was observed at the Immigration Headquarters where an immigration officer at a counter receiving applications for passport would forward the respective applicant whom he is suspicious of his or her information to the Border Management and Control Division. In fact, interrogations are significant in establishing as to whether a person is a Tanzanian citizen or not.

Another non-documentary means is by scrutiny into one’s tribe and local language. Another method commonly used to ascertain on birth of an individual claiming to be Tanzanian citizen is the scrutiny of his/her tribe and local language. This practice is largely seen during applications for passports and national identity cards. During this research it was observed at Immigration Headquarters that if one declared on his/her application forms to have been born in Mbeya, for example the next question would be of which tribe? If for example the respective person said he/she was a Nyakyusa then the person would be taken to an officer who was conversant with Kinyakyusa interrogate him/her.

While this method does to a large extent help in ascertaining on one’s place of birth, however it has inherent weaknesses. Being conversant in local language where one is said to be born cannot be said to be a sole determining factor of being born there. Languages can be learnt and accustomed to. It is no wonder to find a person who is very conversant in Kihaya because of being fervent to learn and practise it while actually he is not a Haya. If determination of such person’s place of birth will rely on such ability to speak Kihaya fluently, it follows that authorities may be misled to consider a non-citizen to be citizen of the United Republic.

On the other hand, it is not necessary that being born in a given place necessitate an ability to be conversant with the local language spoken by those born in the respective area. One respondent for example narrated on how he faced difficulties when he went to apply for a passport at Immigration Headquarters. He said that he was born at Bitale Village in Kigoma Rural. His father and mother had shifted to Dar Es Salaam when he was still at the age of three and has been ever since living in Dar Es Salaam. When he approached the Immigration Authorities he was required, among others to speak Kiha which is the local vernacular language spoken by persons originating in the area,[[267]](#footnote-268) however he could not manage speaking it.

The respondent continued to narrate how it was difficult for the authorities to accept the fact that he did not know the language because he was not grown up in the area. This is one among other similar scenarios. It is undeniable fact that a person might be born in a given place but unable to speak fluently the local language commonly spoken by dominant tribe in the respective area. For example, a person born at Kigoma town or at Ujiji might not be able to speak Kiha fluently. Therefore proof of birth and citizenship through scrutiny into one’s tribe and local language suffers some inherent weaknesses as noted above.

Scrutiny of Names is also a mechanism employed. Names have also been used to establish as to whether a person is a citizen or not. They are also used to identify places of origin of an individual. Names such as Mwakingwe, Mwamwaja, Mwakibete, Mwalusambo and Mwansasu are commonly linked to Nyakyusa originating from Mbeya region. Others such as Mushi, Kimaryo and Massawe are linked to the Chagga originating from Kilimanjaro region and the list goes on to other regions like Kagera with such names like Mukandala, Rweyongeza, Rwelamira, Rwegoshora, Mwesigwa, Kashaija and Rwetabura and Mara with such names like Marwa, Mwita and Muraza to mention but a few.

Practice has shown that persons whose names are common in the above categories are presumed to be Tanzanian citizens while those which appear foreign are presumed to be non-citizens. The latter case is found with such names which are common in other foreign countries though they might not be reflecting the same meaning. Common in this category are those born in border regions. Names like Mwita may be found both in Tanzania and Kenya, Sirilo and Rukundo in Tanzania and Burundi, to mention but a few.

It is thus a pitfall to assume that persons whose names are commonly found in a given region should presumably be regarded as Tanzanian while those who have similarity to foreign names should be presumed non-citizens. It was noted for example by two respondents that at one occasion when they were travelling from Kigoma, while others were interrogated upon production of their identity cards (at an immigration and police checkpoint), on their side they were not because their names are those in the category of the so called “common Tanzanian names.”

Another respondent Julius Hamenyimana (only Hamenyimana his actual names) narrated as to how he has been facing troubles when he registers his name as a Tanzanian. Julius was born in Kigoma to both parents who are Tanzanians by birth. The name Hamenyimana (which literally means ‘God knows’ in Kiha and Kirundi) was given to him owing to his bad state of health when he was young. Because the name is also common to Burundians, on application of his first passport, though he had a passport of his father, affidavit of birth of his father, his birth certificate, his introductory letter and identity card, yet he was subjected to prolonged interview. His application was put aside for two months until one immigration officer who happened to have known him and his parents rescued him. On renewal of his passport in September 2019 he had to resubmit similar attachments and pass through the same ordeals. He expects to be facing the same challenges in the future. While this kind of fact is not faulty in ascertaining citizenship of an individual, yet it remains handicapped with inherent weaknesses.

Another common method used to identify whether a given person is Tanzanian or not is by resorting to race and physiological features. The latter include skin colour, hair texture, shape of the body, eyes, nose and lips. Complaints were raised for example during *Operesheni Kimbunga* that this was a method largely employed by authorities. In border regions like Kagera and Kigoma, those who were found to resemble with citizens of their counterpart border countries like Rwanda and Burundi were prone to be considered as foreign. An approach to establish citizenship by means of race and physiological features has to be approached with great caution. At a high extreme it can be considered discriminatory against authorities.

Historically-related matters are also considered. Related to these are historical events. Of particular reference here is small pox vaccination. The latter was held to be exercised different from neighbouring countries. In Tanzania, such vaccination was made on the right hand shoulder thus leaving a scar on that side. It has been a common presumption that those who were born in Tanzania during the period when such exercise had already started were expected to have such a scar. While this may be a secondary factor in ascertaining birth in the United Republic, yet it cannot be solely relied upon as a means to prove Tanzanian citizenship.

At times other tests to prove that an individual is a Tanzanian are related tests of general knowledge which is assumed to be known by any Tanzanian citizen with common knowledge. One of them is the ability to sing the national anthem. This method has also to be approached carefully because non-citizens who are fervent in knowledge search can be found to answer questions correctly and the authorities in return be tempted to assume them as Tanzanians while actually they are not. On the other hand a person who is not fervent in knowledge search can fail to answer the questions although he might actually be a Tanzanian citizen. For example, a person may fail to sing the National Anthem though being a Tanzanian.

One respondent, Rehema (not her actual name) faced this challenge when she was applying for a national Identity card. Rehema was born in Kigoma region in the 1982. When she completed her primary school education she was married and upon marriage she shifted with her husband to Dar Es Salaam in 1998. In September 2019 she went to apply for a national Identity card. When she presented her forms the officers who were attending her whispered this is from *“kanda maalum”* meaning “special zone” and she was directed to go to District Immigration Office for interrogation. When she reached there, a single question was posed to her. She was required to list the names of Kigoma region districts. Rehema managed to mention Kigoma, Kigoma Rural, Kasulu and Kibondo which were the names during her shift to Dar Es Salaam. She failed to know that Kigoma region districts are currently Kigoma Urban, Kigoma Rural, Kasulu Urban, Kasulu Rural, Kibondo, Kakonko and Buhigwe and that marked the end of interrogation. Her citizenship was counted to be doubtful and in effect she was told to bring a letter from hamlet chairperson in her village area where she was born in Kigoma to introduce her as well as a primary school leaving certificate. She is recollecting to travel to Kigoma to collect the documents and not happy for the ordeal and is not assured that the documents will make her application approved. Relying on this method to prove citizenship has negative implications.

With exception therefore of a certificate of naturalisation or registration and confirmation for Tanzanian citizenship duly issued, the rest of means used to prove Tanzanian citizenship are inherently handicapped with shortfalls as respectively analysed above.

## **4.4 Determination of Tanzanian citizenship and Discrepancies between letters of**

## **law and actual interpretation**

Reading through secondary sources attempting to interpret section 5 of the Tanzania Citizenship Act and impliedly section 3 of the former Citizenship Act, there are apparent discrepancies between the letters of law and actual interpretation. The centre of this controversy lies in the mode attaching the Tanzanian citizenship model to either the principle of *jus soli* or *jus sanguinis.* Some secondary sources as shown in chapter one consider the letters of law of the Tanzania Citizenship Act to follow the principle of *jus soli* while actual interpretation which has been conclusively reached by the researcher is that in practice, it is the principle of *jus sanguinis* which is followed under the Tanzania Citizenship Act.[[268]](#footnote-269) In other words, while the Tanzania Immigration Services Department interprets the law to mean that a Tanzanian citizen by birth must have been born in the United Republic to a parent (s) who is a citizen of Tanzania, secondary sources relying on the letters of law interpret it to mean a person born in the United Republic whether to foreign parents or not with exception only to a father who has immunity of suit or parent who is an enemy to the United Republic and the birth occurring in a place under occupation by the enemy.

This is why under international display of the status of national laws regarding countries following *jus soli* against those following *jus sanguinis* model,[[269]](#footnote-270) Tanzania is considered among countries that grant unrestricted *jus soli*.[[270]](#footnote-271)The following provisions depicting *jus soli* mode are reproduced *in verbatim* in order to show how they resemble section 5 of the Tanzania Citizenship Act and section 3 of the Citizenship Act Cap 512 of 1961.

1. **Antigua and Barbuda**

The Constitution of Antigua and Barbuda of 1981 states that

“Section 113.The following persons shall become citizens at the date of their birth on or after 1st November 1981-a.every person born in Antigua and Barbuda: Provided that a person shall not become a citizen by virtue of this paragraph if at the time of his birth-i. neither of his parents is a citizen and either of them possess such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Antigua and Barbuda; or ii. Either of his parents is a citizen of a country with which Her Majesty is at war and the birth occurs in a place then under occupation by that country.”[[271]](#footnote-272)

1. **Barbados**

The Constitution of Barbados of 1966 states that

“Section 4.Persons born in Barbados after 29th November 1966 shall become a citizen of Barbados at the date of his birth: Provided that a person shall not become a citizen of Barbados by virtue of this section if at the time of his birth-a.his father possesses such immunity from suit and legal process as is accorded to an envoy of a foreign sovereign state accredited to Her Majesty in right of Her Government in Barbados and neither of his parents is a citizen of Barbados; or b. his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.”[[272]](#footnote-273)

1. **Belize**

The Constitution of Belize states that

“Section 24. Every person born in Belize on or after Independence Day shall become a citizen of Belize at the date of his birth: Provided that a person shall not become a citizen of Belize by virtue of this section if at the time of his birth-his father or mother is a citizen of a country with which Belize is at war and the birth occurs in a place then under occupation by that country.”[[273]](#footnote-274)

1. **Dominica**

The Constitution of the Commonwealth of Dominica states that

“Section 98.Every person born in Dominica after the commencement of this Constitution shall become a citizen of Dominica at the date of his birth: Provided that a person shall not become a citizen of Dominica by virtue of this section if at the time of his birth-a) neither of his parents is a citizen of Dominica and his father possesses such immunity from suit and legal process as is accorded to the enjoyment of a foreign sovereign power accredited to Dominica; or b) his father is a citizen of a country with which Dominica is at war and the birth occurs in a place then under occupation by that country.”[[274]](#footnote-275)

1. **Uganda**

The 1962 Constitution of Uganda which states:

“Section 9. Every person born in Uganda after 8th October 1962 shall become a citizen of Uganda at the date of his birth:

Provided that a person shall not become a citizen of Uganda by virtue of this section if at the time of his birth-

1. neither of his parents is a citizen of Uganda and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Uganda; or
2. his father is an enemy alien and the birth occurs in a place then under occupation by the enemy.”
3. **Kenya**

The 1963 Constitution of Kenya provides thus:

“Section 2. Every person born in Kenya after 11 December 1963 shall become a citizen of Kenya at the date of his birth:

Provided that a person shall not become a citizen of Kenya by virtue of this section if at the time of his birth-

1. neither of his parents is a citizen of Kenya and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Kenya; or
2. his father is a citizen of a country with which Kenya is at war and the birth occurs in a place then under occupation by that country.”
3. **Zambia**

The 1964 Constitution of Zambia which states:

“Section 9. Every person born in Zambia after 23rd October, 1964 shall become a citizen of Zambia at the date of his birth:

Provided that a person shall not become a citizen of Zambia by virtue of this section if at the time of his birth-

1. neither of his parents is a citizen of Zambia and his father possesses such immunity from suit and legal process as is accorded to the envoy of a foreign sovereign power accredited to Zambia; or
2. his father is a citizen of a country with which Zambia is at war and the birth occurs in a place then under occupation by that country.”

As it can be critically read through, the contents underlying the above reproduced provisions which are interpreted as to depict the *jus soli* model are quite similar in principle. It is therefore this similarity that makes Tanzania to be grouped in the countries such as United States, Antigua and Barbuda, Barbados, Belize and Dominica in considering the *jus soli* principle.

Under the Tanzanian judicial considerations there has not been so far a challenge against the provisions leading to a precedent or standing judicial pronouncement regarding this controversy. Research has revealed only a position held as a clarification from the Attorney General’s Office.[[275]](#footnote-276) Clarifying on the correct position of section 5 of the Tanzania Citizenship Act, the Office of the Attorney General concluded, among others that the section requires that a person needs to be born in the United Republic to a parent who is also a citizen so as to qualify to be a Tanzanian citizen by birth. Coupled with this clarification, the tendency by the leading authority on matters of citizenship, that is the Tanzania Immigration Services Department has been that the position on what constitutes Tanzanian citizenship by birth is ascertained under the Tanzania Citizenship Act. While countries such as Uganda, Kenya and Zambia amended their provisions (that were similar to that of Tanzania) in order to depart from *jus soli* principle, Tanzania has not amended the provision while still maintaining the *jus sanguinis* model of interpretation.

A question arises then as to why this research concedes to interpretation of the provisions (section 3 of the Citizenship Act and section 5 of the Tanzania Citizenship Act) in the *jus soli* model?

The first reason is drawn from history. At independence, Tanganyika inherited the *jus soli* British model which was the foundation of British nationality law. It was a position that only came to be amended in 1983. Fransman insists that apart from the children of certain diplomats and enemy aliens, the immigration and nationality status of the parents was irrelevant under the British inherited law on nationality. It was the place of birth and nothing more that conferred nationality that is, pure *jus soli.*[[276]](#footnote-277)Whether by default or not, therefore the provisions attain *jus soli* interpretation.

The second reason lies in the secondary interpretation of the provisions. As shown previously, every country whose provision reads in the context held under sections 3 and 5 of the Citizenship Act and the Tanzania Citizenship Act respectively is regarded to follow the *jus soli* model. This is shown in the examples of countries of Antigua and Barbuda, Barbados, Belize and Dominica. In other words, if Kenya, Uganda and Zambia, among others had not amended their provisions which were similar to those under the Tanzanian citizenship Acts would similarly be grouped in the list of countries that grant citizenship by birth under *jus soli* model. It is recognition of this controversy that prompted them to shift their positions to *jus sanguinis* model by amending their provisions.

The third reason is related to the second reason but lies in what actually is the interpretation of the convoluted provisions. This interpretation is advanced by Shah[[277]](#footnote-278) and forms a basis for *jus soli* interpretation. The word “and” in section 5(2)(a) of the Tanzania Citizenship Act is central to this challenge. If it were not for the proviso under section 3 of the Citizenship Act and that under section 5 of the Tanzania Citizenship Act, then a person born in Tanganyika and the United Republic respectively would be a citizen by birth unconditionally. It is the proviso which sets conditions on birth. Illustratively, if section 3 of the Citizenship Act were to read thus:

“Every person born in Tanganyika after the eighth day of December, 1961, shall become a citizen of Tanganyika at the date of his birth” then it follows that citizenship by birth after eighth December, 1961 would be limited to birth in Tanganyika only and no more condition would have been there.

Similarly if section 5 of the Tanzania Citizenship Act would have omitted the words “subject to the provisions of subsection (2)” and “subject to the provisions of section 30” and equivalently read as follows:

“[……]every person born in the United Republic on or after Union Day shall be deemed to have become and to have continued to be a citizen of the United Republic with effect from the date of his birth, and with effect from the commencement of this Act shall become and continue to be a citizen of the United Republic […..]”

Then it follows that citizenship by birth would have been unconditionally attained. It is the researcher’s view that the words deemed to be temporarily omitted, do not make the Tanzanian provisions to differ from the reproduced provisions for Kenya, Uganda, Zambia and the other countries above mentioned. In this case the Tanzanian position is bound to equally be interpreted in accordance to what similar provisions from those countries are interpreted.

As pointed out earlier, the centre of controversy lies in the use of the word “and” in the following:

“neither of his parents is or was a citizen of the United Republic and his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic.”

It is the concession of the researcher that the word “and” has been put to mean “in addition to” what is previously stated. That is to say, neither of his parents is or was a citizen of the United Republic “and in addition” his father possesses the immunity from suit and legal process which is accorded to an envoy of a foreign sovereign power accredited to the United Republic.

Under this interpretation a person becomes a citizen by birth if neither of his parents is or was a citizen of the United Republic upon his birth. For example, if Amadoli was born in Tanga on 20 April 1964 (before Union) to a father and mother who were citizens of Italy, then he became a citizen of Tanganyika automatically and unconditionally. If on the other hand the same person would have been born on 27 April 1964(after Union) to the same parents would equivalently be a citizen of the United Republic. If however his father would in addition be a diplomat, then this is where the exception comes as to his *jus soli* position. In other words, the fact that neither of Amadoli’s parents was a citizen of Tanganyika before Union or the United Republic after Union does not prevent him from becoming a citizen *unless* Amadoli’s father was a person possessing immunity from suit and legal process accredited to the then Tanganyika or the United Republic.

In this regard, the position of law on what constitutes Tanzanian citizenship by birth after independence of Tanganyika is not in consonant with the commonly held interpretation which fails to accord weight to the word “and” which indeed is central to the correct interpretation. It might be a default to think that the wording of the proviso of section 5 refers to a condition that either parent must be a citizen of the United Republic. This is due to the fact that even before independence of Tanganyika, consideration of a parent was a necessity in determining a person’s citizenship. It was provided for under section 1(1) of the Citizenship Act that in order for a person to be regarded as a citizen of Tanganyika on the eighth day of December, 1961(one day before independence), he ought to have been a citizen of the United Kingdom and colonies or a British protected person and in addition either of his parents being born in Tanganyika. The intention that after independence a citizen by birth was supposed to have (in addition of being born in Tanganyika) a parent who was a citizen of Tanganyika, is in this case not reflected in the said provision (section 3 of the Citizenship Act). Given the fact that this position has never been amended since independence, then if follows that the practice that a person born in the United Republic needs to be having either or both parents who is/are a citizen of the United Republic remain in practice and in conflict with the guiding provision.

Research into the 17-18 October 1961 Hansard on Tanganyika Citizenship-Government Paper No.4 and the 18 April 1995 Hansard on the 1995 Tanzania Citizenship Bill reveals further these discrepancies. The 17-18 October 1961 Hansard shows that it was the intention of the parliament to allow *jus soli* principle after independence of Tanganyika. The following were the words of the Minister of Home Affairs tabling the Bill and reproduced hereunder in verbatim for direct reference:

“Turning now to the specific proposals in the Government Paper, you will note: Sir, that we are having to decide not only what the national status of various persons will be on Independence Day and shortly after, but also what will determine a person’s national status in the more distant future. The proposals therefore fall naturally into two groups. The first group consists of persons whom it is proposed shall be or shall be entitled to be if they so wish, citizens of Tanganyika on Independence Day. The second group consists of persons who may at any time after Independence become or wish to become Tanganyikan citizens.

In the first group, the largest class comprises all people born in Tanganyika before Independence who are at present either British Protected Persons or Citizens of the United Kingdom and Colonies, one of whose parents was also born in Tanganyika. It is accepted international practice that a state accepts as its potential citizens any persons born within its area. Since, in the past numbers of people have come to Tanganyika from other countries for temporary purposes, and had children born to them here, and have then gone away elsewhere, it is proposed that this automatic citizenship shall only be granted to people so born in Tanganyika if at least one of their parents was also born in Tanganyika. If neither of their parents was born in Tanganyika, then they will be entitled to become registered as Tanganyika citizens if they wish, but they will not automatically be Tanganyikan citizens since their parents’ connection with Tanganyika may have been very casual or short-lived. *In the case of people born in Tanganyika after Independence Day, it is not required that one of their parents should also be born in Tanganyika*. However, it will be remembered that if such a child born in Tanganyika has another citizenship too, as will usually be the case of non- Africans, the child will have to decide within one year of reaching the age of 21 whether or not he wishes to keep his Tanganyikan citizenship.” [[278]](#footnote-279)(Emphasis added)

As it can be noted emphasis was put against duality of nationality. *Jus soli* was allowed to the extent that if the child had another nationality, he would be required to renounce such other nationality upon reaching twenty one if he so wished to remain Tanganyikan. Contrary to this position, members of parliament had another view of the position which in fact reflected *jus sanguinis* mode. The Chairman of Constitutional and Legal Affairs Committee had this to say:

“Na ni kweli wakazi au raia wa nchi yetu, wale ambao wako katika Wilaya za mipakani, unapozungumzia juu ya kuzaliwa Tanzania, kama tungeliacha tu bila kuliainisha na kwamba siyo kuzaliwa tu, lakini pia inabidi uwe na sifa ya kuwa raia, pengine lingeweza likatupa matatizo makubwa. Lakini ukisoma ibara ya 4 ya Muswada, kuzaliwa peke yake katika mojawapo ya nchi zilizoungana kufanya Tanzania, haitoshi.Ni mpaka mmoja kati ya wazazi, au sifa nyingine ya kuwa raia nayo itimizwe.”

Literally translated by the researcher:

“And it is true that inhabitants or citizens of our country found in border districts, when you speak of birth in Tanzania, if we had left it without describing it and that it is only being born in Tanzania (to qualify to be Tanzanian by birth) but also that you must have qualifications to be Tanzanian, perhaps it could cause to us a lot of problems. But if you read article 4 of the Bill, birth alone in the countries that united to form Tanzania is not enough until one of parents or other citizenship qualifications to be fulfilled.”

Since there were no changes in the previous position of law following the enactment of the 1995 Tanzania Citizenship Act, it follows that members of Parliament under the 1961 Citizenship Act had a view of *jus soli* mode while those of the 1995 Tanzania Citizenship Act had a view of *jus sanguinis* mode, the latter being the mode followed in practice. These discrepancies leave negative implications against persons relying on the letters of law as to determine their citizenship while in fact interpretation goes against such reliance. For example, Juma who was born in the United Republic to parents who are not citizens, relying on the *jus soli* mode existing in the letters of law of the Tanzania Citizenship Act may regard himself Tanzanian citizen but unfortunately when his citizenship is tested he finds himself non-citizen.

On the other hand among the above cited countries the following are selected cases showing how the *jus soli* provisions were followed or not followed. The first case is that of Dilcia Yean and Violeta Bosico v. Dominican Republic.[[279]](#footnote-280) It must be noted that Dominican Republic is among countries listed in this work to follow the *jus soli* mode. Although the Constitution of Dominican Republic provides for this mode, yet Dilcia Yean was denied Dominican citizenship. Dilcia Yean was born on 15 April 1996 in the Dominican Republic to a woman of Haitian descent. Through both judicial and legislative developments, the Government made it a law to deny citizenship to persons of the category of Dilcia Yean and Violeta Bosico. The Dominican Government before the Inter American Court of Human Rights had argued that the two girls were not Dominican and could not have been regarded as stateless since they were able to acquire Haitian nationality. The Court dismissed the claims of the Dominican Government and established that because the two girls were born in the Dominican Republic, they were Dominican citizens by the principle of *jus soli* which was the guiding principle under the Dominican Constitution. The Dominican Government was further held to be have failed to comply with its duty to safeguard the rights set forth in the American Convention and had committed an arbitrary deprivation of nationality to the girls leaving them stateless.

In the case of Zambia, matters related to former Presidents Dr. Kenneth Kaunda and Frederick Chiluba are worth noting here. As it was noted that Zambian Constitution followed *jus soli* principle but for political related reasons, it was amended in 1996 to exclude Dr. Kenneth Kaunda from contesting Presidential post on reasons that he had no citizenship roots in Zambia. The changes required that in order to contest for Presidential post one must have both of her/his parents born in Zambia, a condition that excluded Dr. Kenneth Kaunda because his parents were from former Nyasaland (later known Malawi).While however the same argument was posed against Frederick Chiluba whose father was also said not to be Zambian by birth and thus not qualifying to re-run for Presidential post, authorities turned away from realities and protected the position of Chiluba as being non-contentious against the Zambian Constitution. In the case of Lewanika and Others v. Chiluba[[280]](#footnote-281) the Supreme Court of Zambia affirmed that citizenship must not be defined in discriminatory terms. It was further found that whichever of several proposed biographies adopted, Chiluba’s ancestors came from Northern Rhodesia (later known as Zambia) and his citizenship and eligibility for the Presidential post could not be questioned since citizenship was attributed at Independence to anyone born in Zambia. [[281]](#footnote-282)The African Court on Human and Peoples’ Rights on its part had among others found the changes of Constitution mainly targeted to Dr. Kenneth Kaunda as discriminatory in Legal Resources Foundation versus Zambia.[[282]](#footnote-283)These explanations show how the *jus soli* position was applied on the wishes of authorities, but they also explain how application of the notion of origin in determination of citizenship has negative implications and with a catch all phenomenon in the context of African nationality laws. It also shows how it can overrun against letters of law to fit its own interests. As it can be seen, the *jus soli* principle was used to rescue Chiluba (by the Supreme Court’s proclamation) while the same could not be invoked on Dr. Kenneth Kaunda. It is the contention of this thesis that application of the notion of origin in citizenship determination reaps negative implications including discrimination and discrepancies between letters of law and actual practice and rendering the right to nationality to fragility while at the same time creating an environment of risk of statelessness.

# **4.5 Determination of Citizenship and the Notion of Origin of an Individual**

The notion of origin of an individual has not been given serious thought as a tool of connection entitling a person to citizenship. Under discussion of international nationality law and statelessness, it has been superseded by the concept ethnicity. As it was noted in chapter one[[283]](#footnote-284) there has been a fusion of the notion of origin and ethnicity in discussions around impacts of statelessness resulting from associating ethnicity in determining citizenship.[[284]](#footnote-285) Questions around citizenship of children of the Nubian descent in Kenya, the “Lebanese” of Sierra Leone, the Banyarwanda of Eastern Democratic Republic of Congo and the “Asians” in Uganda, among others[[285]](#footnote-286) have been treated around the concept ethnicity. This treatment leaves latitude for the notion of origin not to be accorded weight it deserves in determining as to what connection should be entitling a person to citizenship. As it was noted in chapter one[[286]](#footnote-287) the two concepts do differ. While the term ethnicity refers to the fact of belonging to a particular race or connectedness with or belonging to a nation, race or people that shares a cultural tradition, the concept origin goes further to consider the point from which something starts, the cause of something or a person’s social and family background.[[287]](#footnote-288) The notion of origin of an individual is argued to be in the latter definition where in deciding as to whether an individual is entitled to be citizen the point from where her/his family is rooted is considered.

It is a fact that political boundaries creating states existing today in Africa are a result of a hitherto unknown division of territories prior to the 1885 Berlin Conference. Thus, migrations amongst individuals and groups had no thought behind the political structures seen today. These movements and settlements in new areas for various reasons constituted new populations with different origins. The latter grew to multi-generations to the extent that determining entitlements to citizenship in a given polity particularly after independence by the tool of the notion of origin is bound to subject the right to a nationality to fragility and risk of statelessness. Manby had this to highlight:

“Many millions of people in Africa live in a country that is not the one where they were born, and many millions more in a country that is not the one their parents were born. Most of them have their origins in another African country; many have established new lives and intend to remain indefinitely in the ‘new’ country, which may be the country of their birth; others are nomadic pastoralists. Despite this, it is very difficult to acquire the nationality of any country through naturalisation; and a number of African countries provide almost no possibility for the descendants of migrants to obtain the nationality of the country where they were born, even over multiple generations.”[[288]](#footnote-289)

It is argued that the difficulties highlighted by the author in acquisition of nationality for descendants of migrants in countries they were born even over multiple generations, is a resultant feature of attachment of the notion of origin with the modalities of determining citizenship status of an individual. Attachment to this criterion leaves aside even the legal structures set for determining citizenship.

In Tanzania, the impacts of ethnicity in citizenship determination are not features observed as it is for the Nubian and Banyarwanda’s cases in Kenya and North Eastern Congo respectively. Tanzania is said to be composed of more than one hundred and twenty ethnic groups, yet it is not apparent finding one ethnic group failing to be recognised of its citizenship status. This brings into perspective as to how ethnicity and the notion of origin differ. It is the contention of this thesis in this aspect that the notion is employed in determining citizenship and has negative implications against the right to a nationality. As it was noted in the introduction [[289]](#footnote-290) the Commissioner General of Immigration had the following:

“Citizenship begins from your generation. Where your grandfather and grandmother were born and originated. Isn’t it? Then follows your parents, where was your father born? Where did he originate? Where was your mother born? Where did she originate? There are persons who have forty (40) or sixty (60) years here in Tanzania who are not though Tanzanians. It is not guaranteed that because you were born and lived here in Tanzania for years and thus thought that you are Tanzanian. And because another has lived here for so long wants to go to get various documentations and indeed fights for them.”[[290]](#footnote-291)

The above position illuminates the view of how the notion of origin has negative implications in determining as to what connection should be entitling a person to citizenship. A person who was born in Tanzania, for example and was sixty years by the year 2019, it means that he was born in 1959. If his father was also born in Tanzania in 1929 but his grandfather and grandmother born in Burundi in 1904 and 1909 respectively, it would follow that such a person would be said to originate from Burundi. This notion would progress to generations. If this notion was to be used to determine his entitlement to Tanzanian citizenship, he would not (himself) and his descendants be considered Tanzanian citizens. While the Tanzanian citizenship law at the time of his birth required that in order for him to have qualified to be citizen he was required to be born in Tanganyika to a parent who was also born in Tanganyika, [[291]](#footnote-292) yet this legal provision would be considered irrelevant. As a result, such a person and his descendants would be subjected to a situation of statelessness and to them the right to a nationality would be subjected to being easily stripped away.

This is what transpired at the incidence of meeting by the Commissioner General of Immigration with the residents of Bugango village in Kakunyu Ward in Misenyi District in Kagera region in Northwestern Tanzania. The residents had complained that they were born there together with their parents yet when it came to registration for national identity cards and some when contesting for political posts were told to be unqualified on ground of citizenship status.[[292]](#footnote-293) The response by the Commissioner General in terms of citizenship determination by considering birth by generation imports the notion of origin of an individual in citizenship determination with its implications.

The notion of origin also has its share in the challenges of citizenship status to a community of people of Comorian descent in Zanzibar. These are said to have lived in Zanzibar since before the period of Omani rule in the nineteenth century.[[293]](#footnote-294) This group is up to this day in a status of unascertained citizenship and at risk of statelessness. Of similarity are the Makonde descendants who came to Zanzibar in 1950s and 1960s when the Mozambican liberation movement FRELIMO had its presence in the island.[[294]](#footnote-295) To these groups, the notion of origin excluding them from being considered citizens is enshrined in the laws. Because they originated from non-British territories, they are considered non-Tanzanians. Comorians were under French protection. When the Nationality and Naturalization Decree [[295]](#footnote-296) was enacted persons of Comorian descent born in Zanzibar were not automatically made subjects of the Sultan entitled to attain Zanzibari nationality. This position was upheld in the 1952 Nationality Decree which named subjects of France not to qualify as subjects of His Highness the Sultan. Even after independence of Zanzibar, their status remained unqualified to be entitled to Tanzanian citizenship.[[296]](#footnote-297) Like the Comorians, the Makonde who were subjects of the Portuguese were not considered as subjects of His Highness the Sultan under the 1952 Nationality Decree. This thesis argues in this aspect that this phenomenon is all embedded in the notion of origin as a factor for entitling a person to citizenship. Given its negative implications whenever it is used, it continues to reap fragility to the right to a nationality and imminent statelessness amongst these groups of individuals as described in chapter five.

Finally as highlighted in chapter one, application of the notion of origin is what is considered under this thesis to have reaped Mtikila’s bizarre labeling of the Father of the Nation Mwalimu Julius Kambarage Nyerere and the Former President Benjamin William Mkapa as non citizens originating from Rwanda and Mozambique respectively.[[297]](#footnote-298) It was also a notion advanced by an outraged anonymous author towards the 2013 *Operesheni Kimbunga* and the expulsion of Rwandese, among others.[[298]](#footnote-299) The author associates the conception of the notion of origin with a centuries old debate as to who should be considered a perfect citizen of a given country. The author’s highlight is quoted *in* *verbatim*:

“Historical discourse shows that most Tanzanians are from neighbouring countries. The Ngoni people came from Zulu land in South Africa; Yao used to belong to Mwanamutapa Kingdom; Arabs of Unguja and Pemba Irelands (*sic*) in Zanzibar came from Oman during the rule of Sultan Sayid (*sic*) Said. Chaga, Maasai, and Meru people of Northern Tanzania are traced in Kenya; Hangaza people from Burundi; Haya people from Uganda; Waha (Ha people) arrived in from Zaire and Burundi; the Makonde people (tribe of former Tanzania President Benjamin William Mkapa) came from Mozambique; Nyasa people relocated from Malawi; almost all Mara region dwellers came from Kenya and the list can cover about 80 percent of all Tanzanians. The Singida and some Arusha people like Warangi, Wsandawe, Wabaebaig (*sic*), Wairaq and Hadzabe are not Bantus, but Semi Nilotic who found themselves in that country after immigration for survival.”[[299]](#footnote-300)

The above contention goes in tandem with what Karugendo raised, that almost all residents of Kagera region to have originated from Uganda, Rwanda and Burundi.[[300]](#footnote-301)

Looking at the above circumstances, this thesis argues in this aspect that the import of the notion of origin of an individual as a factor of connection entitling a person to citizenship has negative implications and subjects to fragility the fundamental human right of the right to a nationality and imminent statelessness. This is largely felt due to the nature of the African nationality law affected by the artificial boundaries created under the 1884-1885 Berlin Conference. Negative implications such as discrimination and statelessness risk are much felt by persons originating from border regions and those with cross border affinities as shown in the following sub section.

## **4.6 Determination and Proof of Tanzanian Citizenship to Persons Originating from Border Regions**

Among the challenging circumstances of proof of citizenship are related to persons who originate from border regions and who for that matter have close cross affinities with persons from countries they border. The challenges lie on both authorities and the individuals themselves. The challenges are seen for example when a person approaches the Immigration Authorities or NIDA for passport and national identity card application respectively. This group of persons and their associated challenge of citizenship determination was also discussed during debates for the 1995 Tanzania Citizenship Bill. The following words echo the challenging debate:

“Lakini hatuna hakika, Mheshimiwa Spika, kwamba kwa Muswada huu, hoja ambayo imekuwepo ya raia wa nchi yetu, kwa mfano mkazi wa Sirari kuleTarime ambaye ana sijui mnaita mji au mke upande wa nchi jirani ya Kenya na ana mji mwingine upande wa Tanzania, sasa hatuna hakika kama Muswada huu unajielekeza kujibu hoja ya kwamba hivi huyu Uraia wake unapotumia Sheria hii, moja kwa moja unajua yeye ni raia wa Tanzania au si raia wa Tanzania kwa maana ya kuzaliwa. Sasa hili la upande wa mipakani pengine michango ya Waheshimiwa Wabunge itasaidia kulifafanua.”[[301]](#footnote-302)

Literally translated by the researcher:

“But we are not sure, Honourable Speaker, that by this Bill, the question that has been pre-existing of our country’s citizenship, for example a resident of Sirari in Tarime who has I don’t know if you call it home or wife on the other side of the neighbouring country of Kenya and has another on the side of Tanzania, now we are not sure if this Bill guides itself to respond to this (challenge) to know if such a person is (by aptly looking at the law) a citizen of Tanzania by birth.”

This research has noted prevalence of presumption of non-citizenship amongst persons who originate from such regions particularly those from Kagera and Kigoma, even before being interrogated. In other words when a person identifies himself/herself to be originating from such border regions he or she is presumed to be originating from respective neighbouring countries. This preconception leaves negative implications amongst interrogating authorities even before they start gathering information.

Respondents who approached both Immigration and NIDA authorities for application for passport and national identity cards respectively narrated to have faced challenges in being accepted as citizens. Authorities used to transfer them to their counterpart officers who were conversant with areas the applicants originated from for further interrogations. At some instances third parties who were close relatives or other persons who knew the applicants were called to testify before the respective authorities on citizenship of such individuals. When questioned by the researcher about this practice, the respondent authorities accorded this to the effect of mixtures of citizens and non-citizens resulting from forced migrations in border regions coupled with illegal migrations in such areas. An example was given of the effect of refugees in Kigoma and Kagera region which leads to difficulties in identifying as to who is indeed a Tanzanian.

The authorities further adduced how such kind of populations has close affinities to persons from countries they border, thus a need to conduct a thorough scrutiny on their citizenship. It was also added that it is not uncommon to find illegal immigrants who have tried to identify themselves as Tanzanians by labeling themselves as being born in such regions thus diminishing trust to be accorded to persons originating in those regions.

Among the questions posed to authorities was whether they thought persons who were born in border regions need any special treatment in proving their Tanzanian citizenship. The answers to this fell into those who saw no need of special treatment while others saw the need. Those who saw the need advanced reasons shown in the previous paragraph while those who did not, saw to it that different treatments would imply unequal treatment before the law contrary to article 13 of the Constitution of the United Republic of Tanzania. Other respondents went as far as suggesting compulsory registrations and issuance of cards to that effect in order to identify them as such.

This research has confirmed the acute need to address challenge that faces both the authorities and applicants in proving Tanzanian citizenship. The next chapter will point out recommended strategies to address this challenge.

## **4.7 Strategies for Consideration**

Overall, the researcher has synthesized the following strategies that can be considered in formulating an effective framework for determination and proof of Tanzanian citizenship. The strategies are generally borne out of both doctrinal and empirical legal researches undertaken in this research. It must be noted in the beginning that the strategies are not recommendations as they might appear. They include law reform, human power capacity building, civic education, institutional capacity and coordination, technological considerations, international cooperation and policy considerations. This part attempts to answer the last question under 1.4 on what strategies to be considered and employed in formulating an effective mechanism for determination and proof of Tanzanian citizenship.

The first is law reform. In order to achieve a framework that can cure the defects inherent in the legal framework of determination and proof of Tanzanian citizenship law reform is a necessary composite. With exception of very few respondents who saw no need to revise the laws related to matters of determination and proof of Tanzanian citizenship, a large portion of the respondents proposed for law reviews and amendments. The target for this review has been with the Tanzania Citizenship Act which has been seen as sacrosanct in matters of citizenship. Specific with this thesis is the mode of determination of Tanzanian citizenship by birth after independence of Tanganyika. On the other hand is the mode of proof of Tanzanian citizenship.

It has been noted that there are apparent discrepancies between the letters of law on determination of Tanzanian citizenship against interpretation and real practice. While this cannot be easily identified it remains a fact that letters of law must correspond to what is brought into practice. It is fatal for practice to be contrary to the letters of law. It has also been seen that the law by itself is not very clear on what constitutes Tanzanian citizenship by birth. As it can be read from the general purpose of enactment of the Tanzania Citizenship Act the law is a consolidation of the laws relating to citizenship that existed before its enactment. In order to understand clearly what constitutes Tanzanian citizenship one has to resort to repealed laws related to citizenship. This contributes to one of the shortfalls in understanding Tanzanian citizenship. Even contradictions that were inherent in the consolidated laws are taken in board as they are. It would be much efficacious if the law on Tanzanian citizenship would take into board the pre-existing laws (without negatively affecting rights of those who are already affected by them) and enact its contents in a new law thus avoiding the necessity of going back to the repealed laws.

Looking through the Tanzania Citizenship Act and its regulations, nowhere also is it provided for what constitutes proof of Tanzanian citizenship. Instead in the Immigration Act it is where proof of Tanzanian citizenship is provided in a style of burden of proof. The law does not provide which means once produced constitute proof of citizenship. The lack of legally provided means to prove Tanzanian citizenship makes it difficult for ascertainment as to whether a given individual is a Tanzanian or not.

In both cases therefore, there is a need to consider the strategy of law reform of the Tanzania Citizenship Act together with other laws that have a direct link to the Act in order to achieve an effective legal framework related to matters of citizenship determination and proof.

The second is human power capacity building. Concerns have been raised by a couple of respondents both from the public authorities themselves and the general public on shortfalls related to professionalism in matters of determination and proof of Tanzanian citizenship. On the part of authorities themselves comes the issue of lack of clear understanding of the law and procedures related to citizenship determination and proof. On the side of the public at large concerns were largely on how some immigration officers ineffectively handle matters of determination their citizenship status. While considering other strategies for improvement of the legal framework for determination and proof of Tanzanian citizenship, capacity building of relevant authorities notably immigration officers is optimal.

The third is civic education. This is another area that was seen crucial in considerations to be made. It has been observed that public education on matters of citizenship is still lagging behind thus contributing on challenges in determination and proof of Tanzanian citizenship. In matters of proof of citizenship, for example the necessity of getting birth certificates and national identity cards have at times been prompted by occasional needs rather than being a duty. For example, a birth certificate may be sought because a person wants to join university education or because he or she wants to apply for loan from the Higher Education Students’ Loans Board (HESLB) or when a person wants to apply for passport or national identity card. On the other hand, a person may be prompted to register for a national identity card because he or she wants to undertake biometric registration of his SIM card. In the absence of such occasional needs, a person may neglect obtaining such necessary documents. While considering therefore attainment of an effective legal framework for determination and proof of Tanzanian citizenship, this strategy must also be observed.

The fourth is institutional capacity and coordination. A number of failures in determination and proof of Tanzanian citizenship are also alluded to inefficient institutional capacity and lack of enhanced coordination amongst entities that determine citizenship. Enhancement of institutional capacity and coordination contributes much in creating a solid base for effective legal framework for determination and proof of Tanzanian citizenship. In matters of effective registration of citizens and that of critically establishing citizenship of individuals by the NIDA and Immigration Authorities respectively demand enhanced institutional capacity of the two institutions. On the other hand, coordination amongst institutions is also necessary without which duplication of processes becomes common.

The fifth is technological Considerations. This is another area that has been raised in relation to matters of determination and proof of Tanzanian citizenship. The application of technology in matters of determination and proof of citizenship has not yet been fully attained. Given the transformation to the digital world that is ongoing, it follows that even matters of determination and proof of citizenship cannot be done successfully in isolation of respective enhanced technology.

The sixth is policy considerations. It was noted that the Tanzania Immigration Services Department was undergoing drafting of the National Immigration and Citizenship Policy. While the Policy is expected to cater for among others, issues related to determination and proof of Tanzanian citizenship it is also necessary to be placed into strategies necessary for creating an effective legal framework for determination and proof of Tanzanian citizenship.

The seventh is international cooperation. Matters related to determination and proof of citizenship are at times not limited to a determining country only. The facts of the case of Anudo can act as an example to illustrate this fact. It was observed that Anudo was deported to Kenya as being citizen of the latter country. However, upon reaching Kenya he was later re-deported to the border of Tanzania and Kenya for not being non-Kenyan. Prior cooperation in determination of citizenship between the two countries would have reduced this challenge. Therefore, international cooperation is a necessary strategy to consider in creating an effective legal framework for determination and proof of Tanzanian citizenship.

## **4.8 Conclusion**

This chapter has synthesized and analysed aspects relating to determination and proof of Tanzanian citizenship that have been explored throughout its previous chapters. It has generally been observed that while the position of law on what constitutes Tanzanian citizenship by birth after independence of Tanganyika is assumed to have been ascertained by the Tanzania Immigration Services Department under the Tanzania Citizenship, it is contrary not because of discrepancies between the letters of law against the real practice. On the other hand, proof of Tanzanian citizenship is still handicapped with inherent pitfalls with exception of a certificate of naturalisation duly issued which has been seen to be a standing document to prove Tanzanian citizenship by naturalisation. It has also noted on implications of the powers of the Minister and the Commissioner General of Immigration in matters related to determination and proof of Tanzanian citizenship. The last portion has resorted to strategies that need consideration in creating an effective legal framework for matters of determination and proof of Tanzanian citizenship.

# **CHAPTER FIVE**

# **STATELESSNESS IN TANZANIA**

## **5.0 Introduction**

As it was noted in chapter two, statelessness determination runs on facts of each circumstance. Establishment as to whether an individual or group of persons is stateless arises when such group of persons or individual is subject to citizenship test particularly during application for state documents such as passport and national Identity Card and during exercises of identification of Tanzanians against non-citizens. This chapter aims at identifying groups at risk of statelessness. The chapter is relevant as it illuminates the question of what working definition of a stateless person should be in the context of Tanzania and the extent to which mechanisms of determination and proof of Tanzanian citizenship safeguard statelessness. After this introduction, peculiarities of statelessness in Tanzania are briefly highlighted to be followed by the groups and a conclusion.

## **5.1 Peculiarities of Statelessness in Tanzania**

Peculiarities of statelessness in Tanzania can be rightly placed firstly in the conflict between letters of law and official interpretation. As it was noted in the previous chapter, like its counterpart countries that befell under British colonial system, letters of law that were set to guide citizenship status determination after independence imported the *jus soli* mode of determining citizenship by birth. While a number of African countries later revised this mode, Tanzania maintained the letters of law for more than five decades to date. A conflict arises then when an official interpretation is in issue. It is apparent that when determining as to whether an individual is stateless or not for the purposes of her or his birth in Tanzania after independence, the *jus sanguinis* mode is followed, as such leaving contradictions.

Another peculiarity lies in the implications of porosity of borders before and after independence, non-enforcement of immigration laws, the Open Door Policy and Ideal of Pan Africanism under the rhetoric of the First President of Tanganyika Mwalimu Julius Kambarage Nyerere, non identification system and the confidence held by migrants as being citizens.

Prior to and even after independence of Tanganyika migrations from neighbouring countries were a common feature. Coupled with the above mentioned factors, in most cases those who migrated into Tanzania had confidence that they were Tanzanians as such when told that they are non Tanzanians it remains challenging to them.

## **5.2 Groups at Risk of Statelessness**

### **5.2.1 Persons Born in Tanzania to Parents from Non-Commonwealth Countries**

Tanganyika and Zanzibar had a share of migrants originating from territories that were under non-Commonwealth powers such as the Belgian, Portuguese and French. Upon independence of Tanganyika and Zanzibar Revolution respectively a favour in attainment of citizenship was placed largely to those originating from Commonwealth territories. Those who were not from the latter were required to naturalise. Particularly Africans, however such an exercise was not that much followed given the fact that citizenship was a non-contentious issue at the time.[[302]](#footnote-303) Some even considered themselves citizens due to their long stay and others being in Tanzania before independence. Descendants of these persons are at risk of statelessness given the official interpretation of citizenship law. In Zanzibar these groups comprise of the Ngazija and Makonde.

The Ngazija have a long history in Zanzibar. They arrived since 19th century before the Oman Sultanate of Zanzibar. When the 1911 Nationality and Naturalisation Decree was enacted when Zanzibar was under British “protection” the Ngazija were amongst groups excluded to benefit an automatic *jus soli* entitlement since they were French subjects. Being regarded as aliens, their only choice was to naturalise. The 1952 Nationality Decree and the 1963 Zanzibar Constitution either way did not change this situation. Little known of this negative implication to them, most of them remained considering themselves citizens. After the Union of Tanganyika and Zanzibar in 1964, the Extension and Amendment of Laws Decree No.5 of 1964 had no remedial impact to this group. Neither was the situation changed after the consolidation of citizenship laws in 1995 to form the Tanzania Citizenship Act.

Persons of Comorian descent continue to compose a group of persons whose citizenship status is at risk of statelessness. In the 1968, following the political turmoil of Abdulrahman Mohammed Babu of Comorian and Yemeni descent, Sheikh Abeid Aman Karume declared persons of Comorian descent subject to deportation unless they had to renounce French citizenship and naturalise. A series of challenges continue to face them especially during application for passports and even a handful of those who happen to already possess them are told to have been issued in error.[[303]](#footnote-304)

With the attainment of independence of Comoro in 1975 thousands of Comoros living in the Isles remained attached to Zanzibar considering themselves as Zanzibaris. Denial of citizenship to this group leaves them at risk of statelessness given the fact that even the choice of naturalisation is not easy to them since the process is discretional, arduous and very expensive.[[304]](#footnote-305)

Another group in this part is the Makonde. These are descendants of Makonde who migrated to Zanzibar as early as 1950s through1960s when the Mozambican liberation movements under FRELIMO had a base in Zanzibar. Under the 1952 Nationality Decree and laws subsequent thereto, the group was excluded since the individuals were not British subjects rather under the Portuguese. Like their counterpart Comorians, a thousand of this group who are attached to Zanzibar remains at the risk of statelessness.

### **5.2.2 Long term migrants, refugees and their children**

Before independence of Tanganyika a number of migrants entered and settled much more resulting from the British policy of recruiting labourers in its sisal and coffee plantations. Labourers came as far as from Rwanda-Urundi, Congo, Mozambique and other countries like Kenya and Uganda. For example, through the British Sisal Labour Bureau (SILABU) it is estimated that more than 100,000 people a year were recruited to work through the scheme in 1950s.[[305]](#footnote-306) In fact not all of these migrants returned to their original places but migrated and integrated with the local population.

At independence, the law excluded those who had originated from non-British territories. Their entitlement to citizenship would only be through naturalisation within the two years’ deadline. Particularly to Africans, naturalisation was not known to most of them and the situation was that citizenship was not contentious to them. As such most of them didn’t naturalise. It was estimated that amongst 120,000 people who were entitled to register as citizens, only 77 Africans registered.[[306]](#footnote-307) Nyerere’s rhetoric, support of liberation movements and Pan Africanism vision further led to a welcome of migrants, freedom fighters and refugees amongst them who settled and integrated permanently with the local population. While the 1965 Refugee Control Act required refugees to register themselves, not all did register. A number of them self settled. In fact it was not until the enactment of the 1972 Immigration Act that immigration restrictions started to apply to Africans. Tanzania is hailed to have been benevolent to migrants and refugees. Various programs of naturalisation have been undertaken. However, not all refugees have benefited from these programs particularly those self settled and their descendants. In some cases, children of those who were naturalised were thought to also have been naturalised while actually they were not.

The making of these historical implications to long term migrants, refugees and their children has a share in the foundations and philosophy of citizenship under the Mwalimu Julius Kambarage Nyerere’s tenure. Considerations as to what connection an individual would be considered Tanzanian citizen under his rhetoric and the later changes after his tenure leave the above group of persons at risk of statelessness which was previously not thought of. His was even referred to as an Open Door Policy which in practice ended in the 1980s particularly after his retirement from his Presidential position. The Open Door Policy was rooted in his vision of Pan Africanism, commitment to equality of human beings and liberation movements of the African continent against colonialism. Having identified himself with these principles even before independence of Tanganyika, Mwalimu had to live his principles in deeds through Tanganyikan direction on its attainment of independence.

Upon independence of Tanganyika, Mwalimu underscored the omnipotence of citizenship in dealing against the vices of discrimination and inequality of human beings which were conducted by colonialists. It is therefore important to note as to what was his view of Tanganyikan citizenship revealed during debates of the Tanganyika Citizenship Bill.[[307]](#footnote-308) The principle proposed to be followed in determining citizenship at independence was rhetorically stated to be loyalty. While addressing the National Assembly in his own words he stated:

“Now, Sir, what are we trying to do? We are establishing a citizenship of Tanganyika. What is going to be the basis of this citizenship of Tanganyika? We, the Government, elected by the people of Tanganyika say loyalty to the country is going to be the basis of determining the citizenship of our country. In order to be certain, as far as humanly possible to be certain, that citizens of Tanganyika are going to be loyal to Tanganyika and Tanganyika only, we have said, although other countries do accept it,[…]we are not going to accept dual citizenship in Tanganyika.” [[308]](#footnote-309)

This principle was closely connected to his categorical position on equality of human beings particularly in matters of citizenship. He added:

“If we begin now in Tanganyika saying that all people in Tanganyika are equal except the Indians, and the Arabs and the Europeans, and the China men, who happen to live in Tanganyika, we shall have broken a principle. It won’t let us stop there. If we in Tanganyika are going to divorce citizenship from loyalty and marry it with colour, we won’t stop there, Sir. We will go on breaking that principle, and I have heard people here already doing it. I have heard several times, and was noting it, the phrase ‘indigenous African.’ They are beginning to draw a distinction between Africans too. This is the beginning of breaking that major principle and going downhill until you break up the country, until that country is left without an ethic at all…[…] a day will come when we will say all people were created equal except the Masai, except the Wagogo, except the Waha, except the polygamists, except the Muslims, etc. We will continue breaking these principles.[[309]](#footnote-310)”

Although it was not a smooth path to allow these perspectives amongst nationalists who had witnessed all vices of colonial discrimination and inequality and thus wishing to retaliate, the principle survived to impact other areas that made Tanzania to be seen benevolent to refugees and other migrants such as freedom fighters who entered in Tanzania in different scores. Especially to Africans who enjoyed unrestricted migrations at least until the enactment of the 1972 Immigration Act, it reached a moment that those who had permanently settled in Tanzania considered themselves as citizens given the circumstances under Mwalimu Nyerere’s vision.[[310]](#footnote-311) The modalities of connection that entitled an individual to Tanzanian citizenship were thus influenced by the wide perspectives of Mwalimu.

This thesis is of the contention that there has been a divergence from the position under the rhetoric of Mwalimu though under contribution of other factors such as the 1990s shift to multiparty politics and global economic changes that swayed in the 1980s through 1990s. Such a divergence has embraced elements that were categorically dealt against by Mwalimu such as the notion of origin which in its effect has reaped other negative implications such as unequal treatments of individuals in determining citizenship status, fragility in the right to a nationality and risks of statelessness especially to those persons who had considered themselves as citizens under the auspices of Mwalimu’s vision.

In 2015, the Immigration (Amendment) Regulations [[311]](#footnote-312) were enacted. Amongst its amendments was the introduction of a Migrant Pass.[[312]](#footnote-313) The latter was aimed to be issued to persons of African descent from bordering countries who migrated into the United Republic before the year 1972 for various reasons and have been continuously living in the United Republic without having a passport or an Identification Document of any other country and have the following qualifications: have adequate knowledge of Kiswahili and any other local dialect, have not been convicted of an offence and sentenced to imprisonment for a term of three years or longer and intend upon being issued with the Migrant Pass to continue to reside in the United Republic. As per the Regulations, a Migrant Pass can be issued to a descendant of a migrant referred to above who is not a citizen and having been born and continues to reside in the United Republic. Further, a Migrant Pass is according to the Regulations not limited to persons of African descent and who are located in border regions, rather also to any other person who migrated into the United Republic before 1972 and has been continuously living in the United Republic and any of his descendant who is not a citizen having been born and continue to reside in the United Republic without having a Passport or an Identification Document of any other country.[[313]](#footnote-314)

As observed earlier, given the peculiarities of citizenship and migration related history of Tanzania, it is an undeniable fact that there are thousands of persons of this category. The persons having migrated even before independence of Tanganyika and Zanzibar and their countries of origin, have most of them lost connections of their countries of origin. Most of them, especially those who lived to witness the era of Mwalimu Julius Kambarage Nyerere’s tenure and his commitment to Pan Africanism, commitment to liberation movements and treatment of equality to human beings, considered themselves (together with their descendants) as citizens of the United Republic. Given the loss of connections to their countries of origin, the lack of passports or any identification document from those countries coupled with the state of the art of the Tanzanian citizenship law which does not recognise them as Tanzanian citizens, it follows that this kind of group of individuals is at a high risk of statelessness. More particularly due to the fact that the said passes are not yet fully entrenched among these groups.

Notwithstanding the position of the Migrant Pass, however the limitations of duration of the same also have negative implications to the said group. Regulation 18(5) of the Immigration (Amendment) Regulations states that a Migrant Pass is to be issued for a period of five years and may be renewed for a period of two years of which the aggregate must not exceed seven years. It can be imagined an individual who has been residing in the United Republic as a migrant under all the above considerations to be issued with a Migrant Pass under such a limitation of seven years. This implies that upon reaching an aggregate of seven years, she/he is by virtue of law required to leave the country or apply to be naturalised as a citizen of the United Republic. These are the only available options since there is no other document that she/he may seek under the Tanzanian citizenship and immigration scheme. Tanzania does not issue permanent residence cards which would at least mitigate the situation.

The first option of leaving the country to the country of origin is in fact impractical. An individual, for example who left the country of origin even before independence of the respective country, having no passport or any identification document from the said country, having lost all connections and having descendants and all her/his means of living in the soil of the United Republic, such an option would sound a harassment to humankind. With regard to the second option of application for naturalisation, as it was noted in chapter four, the route of acquisition of Tanzanian citizenship by naturalisation is not easy to follow. Amongst its constraints are high discretions in decision as to whether an applicant should be naturalised or not, exorbitant fees and difficult administrative procedures in the whole process. All in all, both the state of the art of the law on Tanzanian citizenship and the practice in place leave this kind of group of migrants at a high risk of statelessness.

### **5.2.3 Children born outside Tanzania to parents who are citizens by descent and**

### **those Presumed to have dual nationality**

The Tanzania citizenship law recognises Tanzanian citizenship by descent. However a child born to parent(s) who is/are Tanzanian citizen by descent is precluded from being citizen. Conditions require the child to be naturalised. This condition is at times not known to individuals in this situation. Challenges of this situation are further made complicated when a country where the respective child is born does not follow the *jus soli* mode. For example, if P can grow as a stateless person until he fulfills the requirements of naturalisation. The latter is a discretionary based process and denial to naturalisation would lead to *de jure* statelessness. Persons who fall in this group formulate individuals at risk of statelessness.

There are also persons who, not necessarily having been born outside Tanzania who are presumed to have dual nationality and thus required to renounce such other nationality upon reaching eighteen years. Such persons are also at risk of statelessness if they find themselves not knowing of the requirement. The Members of Parliament while debating the 1995Tanzania Citizenship Bill had the following words echoing this perspective:

“Halafu lipo la pili linalofuatana na hilo, Mheshimiwa Spika, kwamba watu wengi huko vijijini, masuala haya ya kisheria kwamba ukisema unapewa uraia wa kuzaliwa, na unawezekana siku unapozaliwa ukapata uraia wa Tanzania, lakini pia una uraia wa nchi nyingine. Sheria inakutaka ukishapata umri wa mtu mzima, na tunasema miaka 18, uukane mmojawapo wa uraia ule kama unataka kuendelea kuwa raia wa Tanzania, basi uukane uraia ule mwingine. Tulichokisema katika Kamati ni kwamba hivi tuna hakika gani kwamba wananchi wetu wa kawaida, akizaliwa katika hali hiyo, hii kitu ya msingi wa sheria haitamfikisha mahali, katika lugha ya kiingereza wanasema *stateless person,* unakuwa ni mtu huna uraia, na inawatokea watu kwa utaratibu tu wa kisheria ambao wananchi wetu hawaujui.”[[314]](#footnote-315)

Literally translated by the researcher:

“There is also the second related matter, Honourable Speaker, that many persons in villages do not know these matters of law that a person can be Tanzanian upon her/his birth but at the same time be non Tanzanian. The law requires such a person to renounce such other citizenship upon attaining adulthood, and we say 18 years. What we said in the Committee is that how far are we sure that our local citizens born in this status will this not lead them to a situation held in English language as a stateless person where you become a person who has no citizenship. And this situation occurs due to failure in legal procedures which most of our local citizens do not know.”

### **5.2.4 Foundling and Abandoned Children**

The Tanzania citizenship law does not provide for citizenship status of foundling children. The growing number of children in the foster care system, some resulting from the phenomenon of abandonment of children has an impact in the citizenship status of the children. Given the fact that it is parents who are well versed with the evidence of birth of their children, the lack of their information gives room for the children’s risk of statelessness.

### **5.2.5 Adopted Children**

Like foundling and abandoned children, the Tanzanian citizenship law is silent on citizenship status of an adopted child. The available means to acquire citizenship for a non-citizen adopted child is through naturalisation. Given the procedural challenges associated with the latter process, it follows that adopted children whose citizenship laws of origin exclude them upon adoption by Tanzanians and its consequential failure to naturalise render such children to a high risk of statelessness. The 2014 Proposed Constitution of the United Republic of Tanzania had included aspects of foundling, abandoned and adopted children. Article 70(4) stated that a child below seven years found in the territory of the United Republic of Tanzania in an environment that her/his parents are not known will be presumed to be citizen of the United Republic by birth. This presumption would be rebutted under article 70(4) if it could be found that the parents of the child are not citizens of the United Republic where her/his Tanzanian citizenship ceases. On the other hand for an adopted child, article 71(5) provided that a child under eighteen whose parents are not citizens of the United Republic when adopted by a citizen of the United Republic, her/his adoption entitles her/him to be citizen by naturalisation. The proposed constitution was brought to a halt in the year 2014.

### **5.2.6 Persons Originating From Border Regions and Those with Cross Border Affinities**

It was introduced in chapter one and further analysed in chapter four on the attachment of the notion of origin in deciding as to whether an individual qualifies to be a Tanzanian citizen or not. The most risky group affected by this notion are persons originating from border regions. These are persons who are closely linked to countries they border. When it comes to citizenship test, persons originating from border regions are subject to rigorous test in order to distinguish them from persons who do not qualify to be citizens. Some of the means used to decide whether they are citizens such as their physiological make up, phonetic effects and common knowledge tests at times leave most of them sidelined by the tests. At an extreme case when the notion of origin persists, even documents such as birth certificate, passport and national Identity card when produced to prove citizenship, they are even likely to be not accepted and further proofs required. Those who find themselves with names that sound similar to those found in their neighbourhood countries even find themselves subject to strict vetting. Indeed, persons originating in such areas and those who have close cross border affinities are among groups at risk of statelessness. An illumination of implications of statelessness of this group can also be reflected in the discussion above under 5.2.2 above.

## **5.3 Conclusion**

Tanzania is not shielded from statelessness. The groups above identified are the most risky of being stateless. It is not easy to ascertain as to what exactly is the number of persons who are indeed stateless or who are likely to be stateless. But as it stands, thousands are at risk of stateless. The question as to which working definition of statelessness should be under the Tanzanian situation can be reflected in the way a person is treated when applying for state documents such as passport and national Identity Card and during exercises that involve identification of citizens against non-citizens. The case of Tanzania is peculiar given the implications of its history of benevolence to migrants, refugees, Open Door Policy, Pan Africanism vision, rhetoric of Mwalimu Julius Kambarage Nyerere and the latter’s commitment to liberation movements. Disparities in actions undertaken by authorities in determining citizenship particularly through the notion of origin of an individual have negative implications that exemplify how statelessness in Tanzania remains pervasive.

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# **CHAPTER SIX**

# **CONCLUSION AND RECOMMENDATIONS**

## **6.1 Introduction**

This chapter summarizes key findings of the study, provides a conclusion, recommends for areas of improvement and points out areas for further research. It is thus divided into four main components. The first is a presentation of key findings, the second is a conclusion, the third composes recommendations and the fourth part composes areas for further research.

## **6.2 Key Findings**

The present study has revealed an existence of gaps in law and practice related to determination and proof of Tanzanian citizenship. These gaps can negatively impact the right to a nationality and create statelessness. There have been noted discrepancies in the letters of law related to determination of citizenship by birth against interpretation in practice. This has led to differed treatment of the Tanzanian citizenship regime by those who base their interpretation by reading solely the Tanzania Citizenship Act. As such secondary sources consider Tanzania as a country following the *jus soli* principle while the real practice places Tanzania in the *jus sanguinis* mode. Available mechanisms of proof of citizenship are also inherent with shortfalls with exception of a certificate of naturalisation dully issued. The study thus sought to analyse as to what should be a connection entitling a person to citizenship and who is stateless in Tanzania given the application of the law in practice. In achieving this, three research questions were formulated:

1. How is Tanzanian citizenship determined and proved?
2. To what extent do the mechanisms of determination and proof of Tanzanian citizenship safeguard the right to a nationality and avoidance of statelessness?
3. What strategies should be considered and employed in formulating an effective mechanism for determination and proof of Tanzanian citizenship?

Research employed both doctrinal and empirical legal research methods. However doctrinal legal research was the main method and empirical legal research became supplementary.

In respect to research question number one, chapter four has shown that aspects that constitute proof of Tanzanian citizenship are both documentary and non-documentary. Documentary aspects of proof are certificate of naturalisation or registration, passport and travel document, birth certificate, national identity card, affidavit of birth, voter’s identity card, letter of confirmation for Tanzanian citizenship and school leaving certificates while non-documentary aspects are interrogations on one’s place of birth, scrutiny into one’s tribe and local language, scrutiny of names, race and physiological features, historically-related matters and general knowledge. None of all these have proved to be adequate in proving solely on Tanzanian citizenship with exception of a certificate of naturalisation dully issued. Inadequacy of these aspects has been revealed under chapter four which critically revisits all those aspects.

Under the same question, it has also been shown that the Tanzania Citizenship Act is a *jus soli* principled Act contrary to what authorities do interpret. By virtue of this section, a person born on or after independence of Tanganyika is considered a citizen notwithstanding citizenship status of his parents. Chapter three points out that most of former British colonies including Tanganyika inherited the *jus soli* mode of determining citizenship by birth. A reflection of this was shown in chapter four.

Research question three is also answered in chapter four and five. In principle it has been shown that to a large extent the mechanisms of determination and proof of Tanzanian citizenship subject the right to a nationality to fragility and the risk of statelessness always high. Much emphasis on this has been attributed to the attachment of the notion of origin of individuals particularly those from border regions in determining citizenship. In similar vein, the discrepancies in what appears in the letters of law against what is actually followed in determining Tanzanian citizenship further create an avenue for statelessness.

The following are necessary strategies: law reform, human power capacity development, civic education, institutional capacity and coordination, technological considerations, policy considerations and international cooperation. These are further reflected in the recommendations section below.

## **6.3 Conclusion**

The study results have reaffirmed that the position of law on what constitutes Tanzanian citizenship is not in consonant with the letters of law against practice. Thus the tendency has been that the position is ascertained while actually it is not. It has also revealed that the modalities of determining as to what connection should be entitling a person to Tanzanian citizenship to a large extent succumb the right to a nationality to fragility and create avenues for statelessness. On the other hand, with exception of a certificate of naturalisation or registration duly issued, available aspects of proof of Tanzanian citizenship are inherently coupled with shortfalls and thus inadequate in themselves to stand to prove citizenship. The study has contributed to knowledge in various ways. It has revealed the contradictions underpinning interpretation of the Tanzania Citizenship Act on what constitutes Tanzanian citizenship by birth. It has also shown gaps that are inherent in modes of proof of Tanzanian citizenship. The study went as far as pinpointing strategies that can be considered by authorities in creating an effective legal framework for matters related to determination and proof of Tanzanian citizenship all of which being essential in protecting the right to a nationality underlined in chapter three of this thesis.

## **6.4 Recommendations**

Based on its findings and conclusion, the study recommends for the following:

The first is based on law reform. The latter is a very significant consideration in addressing the gaps that have been identified in this study. This recommendation is made particularly to the Tanzania Immigration Services Department which is the custodian of matters of citizenship, but also to other relevant institutions.

Of large consideration in this reform is the amendment of the Tanzania Citizenship Act which has been seen as the backbone of Tanzanian citizenship legal regime. Amendment of the Tanzania Citizenship Act is expected to go in tandem with consequential amendments to other relevant laws that touch upon citizenship matters such as the Immigration Act, Registration and Identification of Persons Act, Tanzania Passports and Travel Documents Act, Births and Deaths Registration Act, Evidence Act and Law of the Child Act.

With regard to determination of citizenship in the purview of this study, section 5 of the Act needs to be amended. To align with the long rooted practice of citizenship by birth being pegged to parent(s)’ citizenship (or under the *jus sanguinis* model), the law needs to remove the ambiguities imported by the word “and” in subsection (2) (a). It may be done by dissociating the words related to possession of immunity from (2) (a) and creating another separate sub provision for it. Given the implications of the amendment that shifts the actual position of law which is based on *jus soli* to *jus sanguinis* model, considerations of retrospection of law must however be taken into consideration.

In the same title, amendments need to be made with regard to proof of Tanzanian citizenship. The Tanzanian citizenship Act and its regulations need to set clear rules of determination of Tanzanian citizenship and means to prove the same. Room for omnibus discretionary impositions of proof of citizenship should be curtailed. On the other hand, both administrative and judicial appeals should be readily available in this case. These rules need also to be commensurate with the situation actually in place in Tanzania. In other words, means of proof of citizenship should be objective, reasonable and not punishable upon parties who are obliged to provide proof. Criteria of proof need to be set in a standard that balances rights and obligations between state authorities and the parties obliged to prove their citizenship.

Further to persons born in border regions and with cross border affinities, their treatments in this regard need to align with the principle of equality before the law as enshrined under article 13 of the Constitution of the United Republic of Tanzania. Preconceptions of “foreignness,” that is, presuming an individual born in border region as a foreigner even before interrogation should not precede objective preconceptions amongst authorities charged with the task to determine and prove citizenship of individuals in this group. Such presumption can lead to biasness in the whole process of determination of citizenship.

In a similarly related consideration refers to persons who migrated into the United Republic before the year referred to and discussed in Chapter Four. It is recommended that enhanced measures to rescue this group from statelessness should be undertaken. To begin with, the Migrant Pass should be advocated and utilized fully. However, to be more objective and realistic, the seven years’ aggregate limitation of duration of renewal of the pass should be made to be unlimited until the migrant acquires effective citizenship. Otherwise considerations should be made to grant permanent residence to this kind of individuals since amongst its qualifications of its grant is that the applicant must intend to continue to reside in the United Republic. [[315]](#footnote-316)

Further to reduction of statelessness, reconsideration of citizenship by registration is recommended to the above group of persons and all others who have high connections to the United Republic such as children born outside the United Republic to parent(s) who is/are citizen(s) of the United Republic in lieu of citizenship by naturalisation whose procedures have been shown to be challenging. The latter, it is proposed should remain operational to aliens who have no citizenship-implied connections to the United Republic.

Law reform alone however cannot cure gaps identified. Other considerations that are not directly related to reform of law related to citizenship need to be considered. It is at this juncture pertinent to note the second group of considerations namely enhancement of capacity of institutions charged with matters related to citizenship determination and proof. This recommendation is made to the Central Government in consideration of its budgetary allocations. Of particular note is the Tanzania Immigration Services Department. Being the principal institution charged with matters of citizenship in the United Republic, this institution needs to be enhanced of its capacity in terms of its budgetary allocations, transport facilities, modern equipment and human power.

Related to the above is the third consideration on empowering professionalism amongst immigration officers who are charged with tasks to determine and approve proof of Tanzanian citizenship. This ranges from clear understanding of law on what constitutes Tanzanian citizenship to objective and reasonable treatments of individuals while determining and ascertaining proof of citizenship. This is due to the observable challenges amongst some immigration officers which call for need of raising standards of professionalism in the above aspects.

The fourth consideration is also made to the Central Government to enhance applications of modern technologies in matters of proof of citizenship. Of particular reference is the creation of the national database centre for citizens coupled with detailed descriptions of their status. The Tanzania Immigration Services Department should be the custodian of this database since it is the principal institution charged with matters of citizenship.

The fifth aspect to consider is enhancing institutional coordination in all matters related to citizenship determination and proof. Coordination between NIDA, RITA and ZANID for example are optimal. All registrations done by these institutions that pertain to citizenship determination should be made directly available to the Immigration Department. The latter should also be actively involved by the said institutions if determination of citizenship forms a pre-condition for such registration.

The sixth recommendation is by reconsidering the role of local leadership. Involvement of the local leadership in matters of determination and proof of Tanzanian citizenship needs to be rejuvenated. Rules need to be set out clearly to actively engage local leadership in identifying persons. Where necessary their statements regarding identification of persons in matters related to citizenship proof can be made on oath and used as evidence, given challenges of proof of Tanzanian citizenship. This recommendation is made to the Immigration Department in cooperation with relevant Government institutions and the Judiciary.

Enhancing civic education in matters of citizenship forms the seventh recommendation. In order for matters of citizenship proof to progressively develop efficiently, civic education in matters of civil registrations, family tree familiarization and records keeping beginning at an individual’s family level need a special attention. Persons need to be taught as to what constitutes Tanzanian citizenship beginning at Primary School Curricula. Importance of records keeping by registration of births and deaths and creation of family trees that show individual clan chronology are of paramount importance. In respect of the local leadership mentioned above, they need to be taught as to what constitutes Tanzanian citizenship in order to manage consciously all matters related to citizenship identifications. The education sector in cooperation with the Immigration Department plus any other relevant institution, are to whom this recommendation is made.

The eighth recommendation is related to policy reforms. In order to have a stable framework for matters related to determination and proof of Tanzanian citizenship all policies that have a hand in matters of identification of persons in the United Republic should align with the optimal importance of ascertainment of the aspect of citizenship status as per Tanzania Citizenship law. There must also be a standing and comprehensive policy on matters of citizenship.[[316]](#footnote-317)

Finally, the ninth recommendation is enhancing international cooperation in matters related to determination of citizenship particularly to persons whose citizenship is in doubt. Whenever a doubt on citizenship status arises, coordination with the respective country of which doubt is casted should be made and upon conclusion a certificate be issued accordingly. Bi and multilateral commissions relevant to this task can be established with neighbouring countries. Similarly, embassies and consulates can also be actively involved in this undertaking.

This can also be applied in cases where a person is presumed to have dual or multiple nationalities. Arrangements can be made to ascertain as to whether for example a person born in the United Republic to a father who is a citizen of Uganda and a mother who is a citizen of Tanzania is considered citizen of Uganda or not. This can apply also if a person is born for example in Iran to a father who is a Tanzanian citizen and mother who is a citizen of Iran. When it is confirmed under the law of the respective state that the presumed foreign citizenship does not actually exist, then requirements of renunciation of such other citizenship should not be made a pre-condition of being considered Tanzanian. This recommendation is made to Immigration Department in cooperation with the Ministry responsible for foreign affairs.

## **6.5 Future Research Agenda**

The following are proposed future research agenda:

The first is an application of modern technologies in matters of proof of Tanzanian citizenship such as gene mapping. The global growth of modern technologies can contribute to creation of an avenue for means of proof of citizenship. While this research saw an insight in this area, it could not go into its details. Further research in this area therefore can help exploring such avenues.

The second area that needs further research is with regard to implications of cross border affinities in determination and proof of Tanzanian citizenship. Notable in this research were observable challenges of determination and proof of Tanzanian citizenship to persons born in border regions and with cross-border affinities. The researcher wanted to focus on two regions namely Kigoma and Kagera but due to budgetary constraints only a portion of Kigoma region was revisited. It would also be preferable to conduct an intensive research on implications and challenges of determination and proof of Tanzanian citizenship resulting from interactions with individuals originating from border regions and who have as such cross-border affinities. This will be of help not only to the individuals but also to officials responsible in determining citizenship of the said individuals.

The third proposed area for future research is the growing role and status of national identity card in proving Tanzanian citizenship. It was notable in this research how a national identity card is growing in use replacing a voter’s registration card in circumstances that require identifications as Tanzanian citizens. Given the fact that dissemination of the national identity cards is still on-going, there is still a room to conduct an intensive research in the growing role and status of the said identity card in proving Tanzanian citizenship. As it can be observed, replacement of new electronic passports for example demand production of a national identity card, yet other requirements for proof of citizenship such as birth certificate or affidavits for both an applicant and parent(s) are also required. It is worth studying the implications of this practice and whether it will continue. The researcher also saw an insight in this area but could not go into the detailed practical study with the National Identification Authority. An in-depth study in this area would be significant.

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# **APPENDICES**

**APPENDIX I**

**QUESTIONNAIRE 1**

**Title: DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP**

**PhD Data Collection**

**Questionnaire Series I: Authorities**

**1.0 Introductory**

Sex...................Male ( ); Female ( )

Age..................18-30 ( ); 31 and above ( )

Occupation/Business/Profession................................................................

Highest Education reached..........Secondary ( ); Certificate ( ); Diploma ( ); Advanced Diploma ( ); Undergraduate Degree ( ); Post graduate Diploma ( ); Master’s Degree ( ); PhD ( ); Post Doctoral ( )

* 1. **Topical Questions**
  2. **Determination of Tanzanian Citizenship**

1. From your own understanding what makes a person to be called a citizen of Tanzania?.......................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
2. Does birth alone in the United Republic entitle a person to be called a citizen of Tanzania? Yes ( ); No ( ) If no, are there any additional qualifications? Yes ( ); No ( ). If Yes, what are they?...........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
3. Do you know the main statute (s) governing matters of citizenship in the United Republic? Yes ( ); No ( ) If Yes, what is/are the statute (s)?............................................................................................................................................................................................................................
4. Do you know a provision (s) from the statute(s) mentioned which tell(s) as to who is a citizen of Tanzania by birth? Yes ( ); No ( ) If Yes, mention the provision(s).............................................................................................................................................................................................................................................................................................................................
5. If you are given a task to interpret the above provision(s), do you face any difficulty in interpreting the provision (s)? Yes ( );No ( ) If Yes, what specifically is the difficulty?..................................................................................................................................................................................................................................................................................................................................
6. From your interpretation, does the provision (s) entitle a person born in the United Republic to be a citizen of Tanzania by birth only? Yes ( ); No ( ) If Yes or No, why?.............................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
7. What do you think is the correct interpretation of the above provision(s)? Does it mean an automatic Tanzanian citizenship when birth occurs in the United Republic or considerations of additional factors?......................................................................................................................................................................................................................................................................................................................................
8. If the answer in Question (vii) reflects requirements of additional factors in determining citizenship by birth, what are those other factors apart from being born in the United Republic?......................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
9. Do you know of any challenge faced in determining Tanzanian citizenship? Yes ( );No ( ) If yes, what is/are the challenge(s)?...............................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
   1. **Proof of Tanzanian citizenship**
10. What do you think are the means available to prove Tanzanian citizenship?..................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
11. Do you think the means you have mentioned in Question (i) are available to all those who are really Tanzanian citizens? Yes ( ); No ( )
12. Are there any defects or unsuspected dangers in using the means you have listed? Yes ( ); No ( ) If yes, what are the defects or unsuspected dangers in using the listed means to prove that a given person is really a Tanzanian citizen?...........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
13. Are there clear and ascertained means to prove Tanzanian citizenship? Yes ( ); No ( ) If yes, what are the means? If no, why?..............................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
14. Do you think persons born in border regions as well as those whose names seem foreign need special treatment in proving their Tanzanian citizenship? Yes ( ); No ( )If yes, how?.........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
15. What are your opinions on the practicability of the burden of proof of Tanzanian citizenship as provided for under section 44 of the Immigration Act Cap 54 Revised Edition 2016? (the section provides: *Where in any proceedings under or for any of the purposes of this Act, any of the following questions is in issue, namely: whether any person is or is not a citizen of Tanzania;........the burden to prove that that person is a citizen of Tanzania.....shall lie upon the party contending that that person is a citizen of Tanzania*......) ........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................

**2.3Strategies of improvement**

* + 1. **Both in determining and proving Tanzanian citizenship**

1. Do you think the law governing matters of citizenship in Tanzania needs any improvement in matters of determination of Tanzanian citizenship? Yes ( ); No ( ) If yes, what is/are your suggestion (s) of improvement?................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
2. Do you think the available means to prove Tanzanian citizenship are adequate? Yes ( ); No ( ) If not what means do you suggest to be used in proving Tanzanian citizenship?....................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
3. What would you recommend to reduce difficulties faced in determining and proving citizenship to Tanzanians born in border regions?..........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
4. Generally, what are your opinions on the way you see the law and practice of determination and proof of Tanzanian citizenship and how the citizenship legal regime can be improved?

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**Thank You VERY MUCH!**

**APPENDIX II**

**QUESTIONNAIRE II**

**Title: DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP**

**PhD Data Collection**

**Questionnaire Series II: General Public**

**1.0 Introductory**

Sex...................Male ( ); Female ( )

Age..................18-30 ( ); 31 and above ( )

Occupation/Business/Profession................................................................

Highest Education reached..........Secondary ( ); Certificate ( ); Diploma ( ); Advanced Diploma ( ); Undergraduate Degree ( ); Post graduate Diploma ( ); Master’s Degree ( ); PhD ( ); Post Doctoral ( )

* 1. **Topical Questions**
  2. **Determination of Tanzanian Citizenship**

1. Have you ever been formally questioned by authorities (such as immigration officers, police officers, registration officers from National Identification Authority [NIDA], etc...) whether you are a citizen of Tanzania? Yes ( ); No ( )
2. If yes in (i) above, at what instance/occasion were you questioned?

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1. How and why did you respond that you are or are not citizen of Tanzania?

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1. What was the decision on whether you are or are not citizen of Tanzania?

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1. What procedures were followed by the authorities to decide that you are or are not citizen of Tanzania?

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1. From your own understanding what makes a person to be called a citizen of Tanzania?.......................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
2. Do you find challenge (s) faced in determining Tanzanian citizenship? Yes ( );No ( ) If yes, what is/are the challenge(s)?.................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
   1. **Proof of Tanzanian citizenship**
3. Have you ever been required by authorities such immigration officers to provide proof that you are a citizen of Tanzania? Yes ( ); No ( )
4. If Yes in (i) above, at what occasion/instance?

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1. What means did you use to prove before the authority (ies) that you are a citizen of Tanzania?

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1. Were the authorities in (iii) above satisfied with the means you used and cleared that you are a citizen of Tanzania? Yes ( ); No ( ) If no, why and what further procedures were followed?

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1. What are your opinions on the way Tanzanian citizenship is proved?

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1. Are there equal, clear and ascertained means to prove citizenship of Tanzanians by authorities? Yes ( ); No ( ) If no, why?..............................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
2. Do you think persons born in border regions as well as those whose names seem foreign need special treatment in proving their Tanzanian citizenship? Yes ( ); No ( ) why and how?

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**2.3Strategies of improvement**

* + 1. **Both in determining and proving Tanzanian citizenship**

1. Do you think matters of determination and proof of citizenship in Tanzania need any improvement? Yes ( ); No ( ). If yes, what is/are your suggestion (s) of improvement?................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
2. Do you think the available means to prove Tanzanian citizenship are adequate? Yes ( ); No ( ) If not what means do you suggest to be used in proving Tanzanian citizenship?....................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
3. What would you recommend to reduce difficulties faced in determining and proving citizenship to Tanzanians born in border regions?..........................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................................
4. Generally, what are your opinions on the way you see the law and practice of determination and proof of Tanzanian citizenship and how the citizenship legal regime can be improved?

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**Thank You VERY MUCH!**

**APPENDIX III**

**INTERVIEW GUIDE**

**Title: DETERMINATION AND PROOF OF TANZANIAN CITIZENSHIP**

**PhD Data Collection**

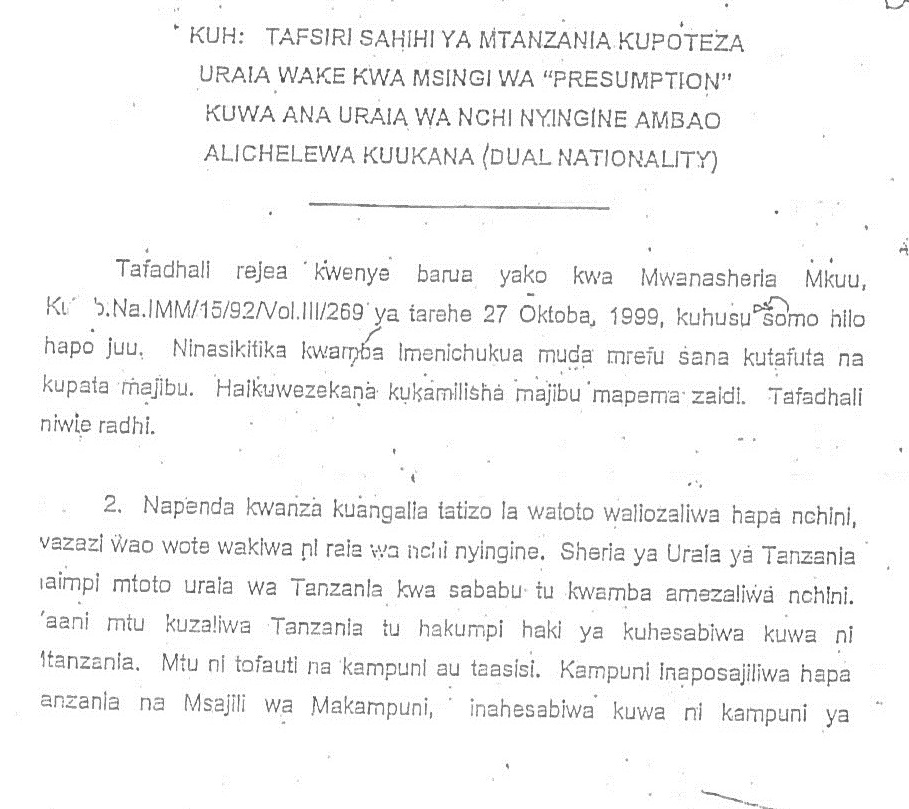
**Interview Series**

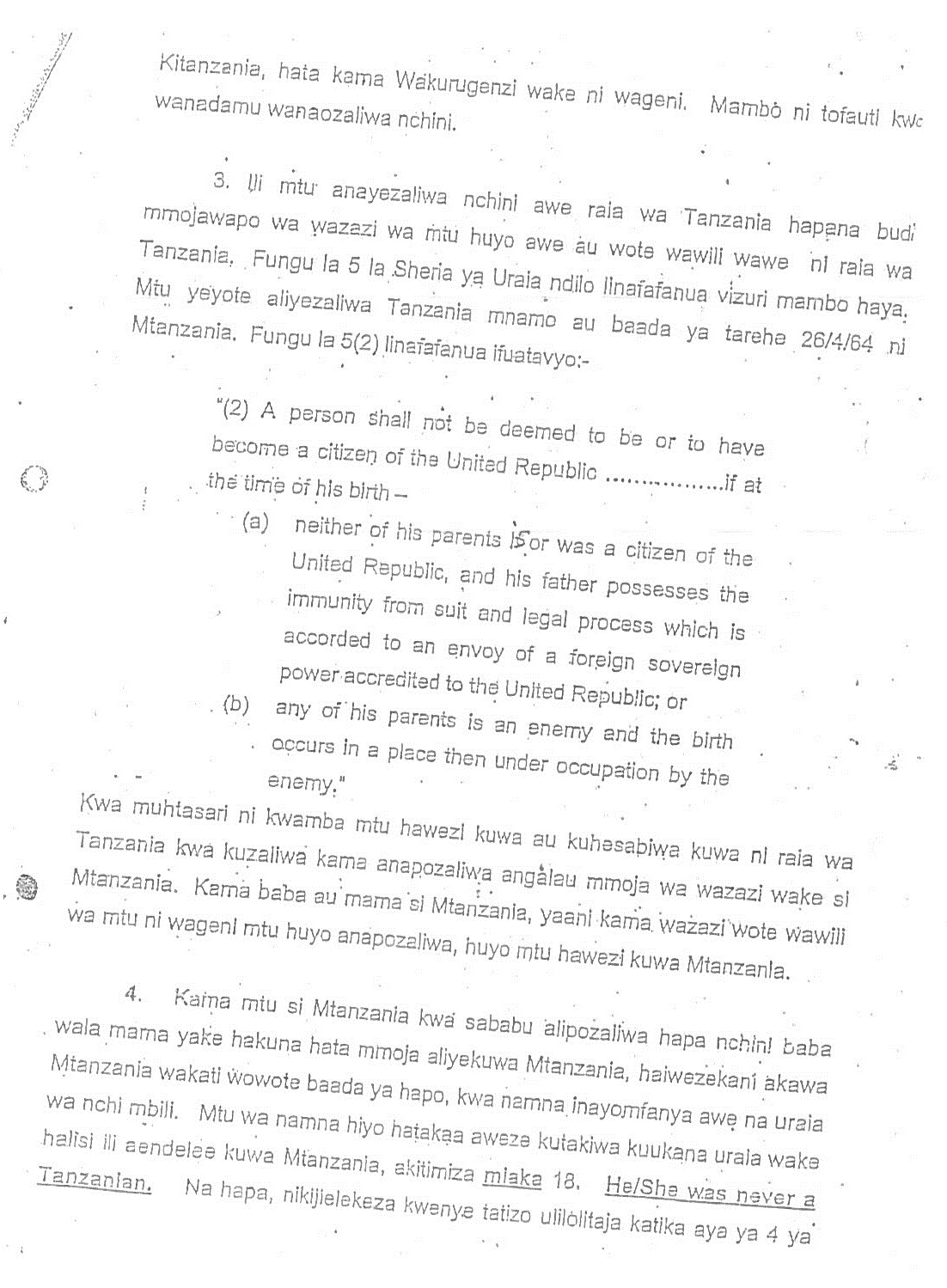
* 1. **Topical Questions**
  2. **Determination of Tanzanian Citizenship**

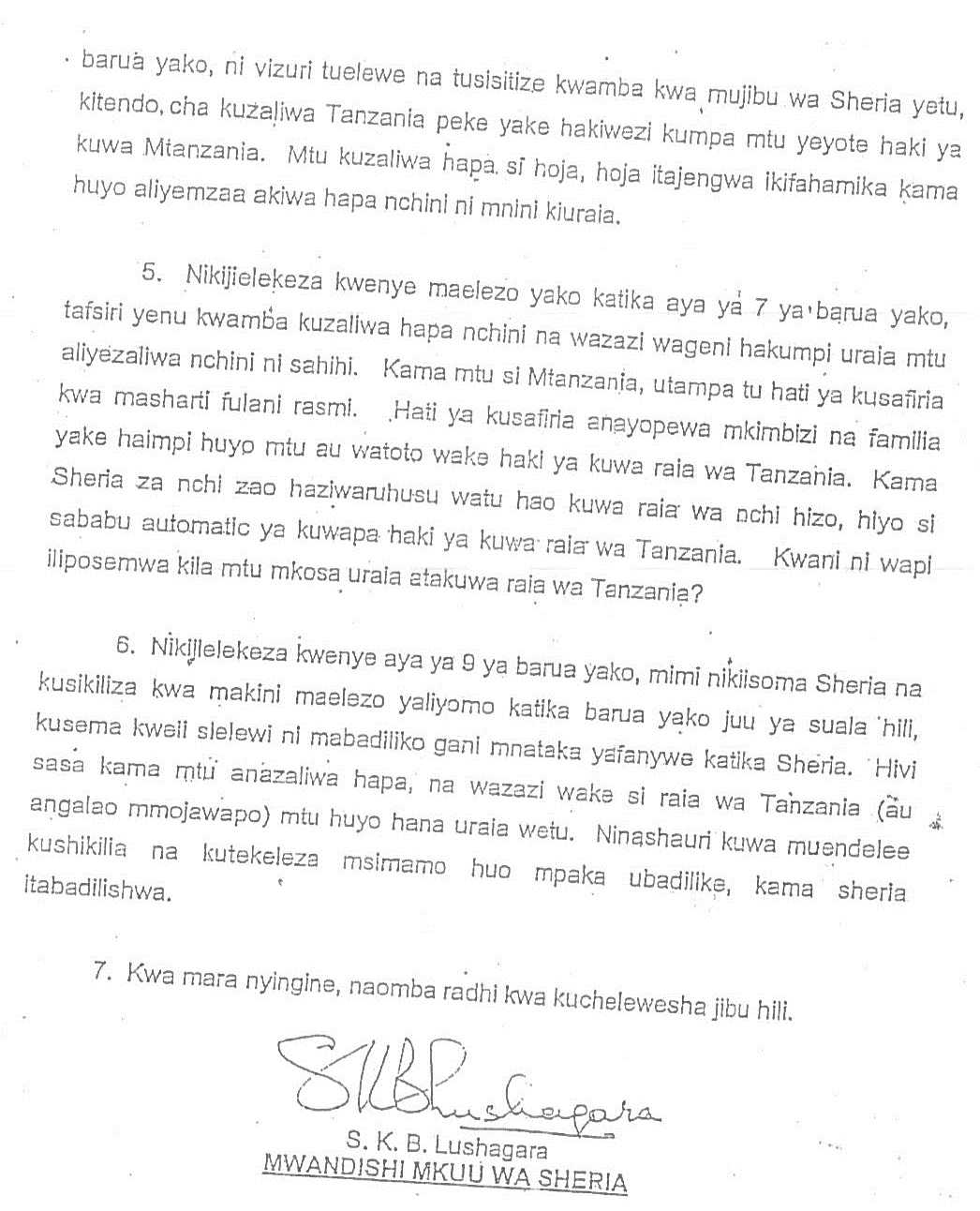
1. From your own understanding and experience, what makes a person to be termed as a citizen of Tanzania?
2. Does birth alone in the United Republic entitle a person to be a Tanzanian citizen? If not why?
3. How has citizenship law in the United Republic evolved?
4. Did the amendment of citizenship law in the United Republic in 1995 import any changes to the previous citizenship regime? If Yes, what are the changes?
5. How do you interpret section 5(1) of the Tanzania Citizenship Act Cap 357 R.E 2002?
6. Does your interpretation in (v) above differ from the way authorities interpret the provision?
7. From your experience is there any challenge (s) existing both in law and practice in determining Tanzanian citizenship?
8. Did the 2013/2014 Constitutional review process aim at, among others, making changes/amendments in matters of determination of Tanzanian citizenship? If Yes, what were the amendments?
   1. **Proof of Tanzanian citizenship**
9. What do you think are the means legally available to prove Tanzanian citizenship?
10. Are the means you mentioned in (i) above satisfactory in proving Tanzanian citizenship?
11. Are there any shortfalls in the available means to prove Tanzanian citizenship? If Yes, what are they?
12. Do you think persons born in border regions need special treatment in proving their citizenship? If Yes, how?
13. What are your opinions on the practicability of the burden to prove Tanzanian citizenship as provided for under section 44 of the Immigration Act Cap 54 R.E 2016? (the section provides: *Where in any proceedings under or for any of the purposes of this Act, any of the following questions is in issue, namely: whether any person is or is not a citizen of Tanzania;........the burden to prove that that person is a citizen of Tanzania.....shall lie upon the party contending that that person is a citizen of Tanzania*......)
    1. **Strategies of improvement both in determining and proving Tanzanian citizenship**
14. Do you think the law governing matters of citizenship in Tanzania particularly in determination and proof of citizenship need any changes? If Yes, how?
15. Is there any necessity of constitutional amendment(s) with regard to matters of citizenship? Why?
16. Do you think the available means to prove Tanzanian citizenship need to be reviewed? If Yes, what are you suggestions for improvement?
17. Generally, what are your opinions on the way you see the law and practice of determination and proof of Tanzanian citizenship and how the citizenship legal regime can be improved?

**Thank You VERY MUCH!**

**APPENDIX IV**

**LETTER FROM THE OFFICE OF THE ATTORNEY GENERAL**

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1. The term citizenship is synonymously used with the term nationality. Under this research the terms are used to refer to a particular legal relationship existing between the state and the individual. The term nationality is most commonly used in international treaties compared to the term citizenship which is mostly used under the Anglo-Saxon tradition to describe this same legal bond and the rules adopted at the country level by which it is decided whether a person qualifies to be a member of a given country and his status thereof. See UNHCR, Statelessness and Citizenship in the East African Community, September 2018 at page (iii). [↑](#footnote-ref-2)
2. Benoit, C, *Force and Effect: A Look at the Passport in the Context of Citizenship*, Fordham Law Review, 2014, Vol. 82, No.6, pp 3307-3340. [↑](#footnote-ref-3)
3. The international definition of a stateless person is provided for in article 1(1) of the 1954 Convention relating to the status of Stateless Persons. Under the article, a stateless person is defined as a person who is not considered as a national by any state under the operation of its law. [↑](#footnote-ref-4)
4. Defined and treated in chapter two as the right to acquire, change and retain nationality. [↑](#footnote-ref-5)
5. See article 15 of the Universal Declaration of Human Rights (UDHR). [↑](#footnote-ref-6)
6. See for example article 39(1)(a) of the Constitution of the United Republic of Tanzania Cap 2 R.E 2005. [↑](#footnote-ref-7)
7. See section 20 of the Land Act Cap 113 R.E 2011. [↑](#footnote-ref-8)
8. Other rights include the freedom to enter, exit, re-enter, reside and move freely within the United Republic as per the Constitution of the United Republic. [↑](#footnote-ref-9)
9. The African Commission on Human and Peoples’ Rights observes that the right to a nationality is not really protected in Africa. See African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015 at page 3. [↑](#footnote-ref-10)
10. Quoted from Mubanga, C.B, *The Right to Nationality and Its Burden of Proof in Tanzania: An Illumination in the Case of Anudo Ochieng Anudo versus the United Republic of Tanzania,* the Tanzania Lawyer, 2019, Vol.1, No.1, pp.161-178 at p.175. [↑](#footnote-ref-11)
11. A state owned broadcasting corporation. [↑](#footnote-ref-12)
12. This being just a portion of the region of Kagera, like its counterpart border regions such as Mara, Kigoma, Rukwa, Mtwara, Songwe, Ruvuma, let alone other internal cases of citizenship in doubt imply that thousands of persons are likely to face similar situations. [↑](#footnote-ref-13)
13. The Commissioner General of Immigration is an appointee of the President of the United Republic and she/he is the Chief Executive Officer of the Tanzania Immigration Services Department. See section 5 of the Immigration Act Cap 54 R.E 2016. The Department is the custodian of matters of citizenship in Tanzania. It is also charged with powers to facilitate, control and grant citizenship to qualified alien immigrants. See section 12(1)(d) of the Immigration Act. [↑](#footnote-ref-14)
14. Translated from Swahili by the researcher. [↑](#footnote-ref-15)
15. Padre Privatus Karugendo, “Barua ya wazi kwa Waziri Laurence Masha,” “Open Letter to Minister Laurence Masha” Tanzania Daima, Jumapili, 25 Mei, 2008. The author to this article was a formerly Catholic Priest based in Kagera Region. [↑](#footnote-ref-16)
16. When speaking of matters related to citizenship in Tanzania, the terms citizenship/nationality do not sail in the same boat. Reference here is made on the choice of words to refer to the terms citizenship or nationality. Three words are of reference under this thesis. These are *raia, mwananchi* and *watu.* Reading through Scotton’s article, Taasisi ya Taaluma za Kiswahili (TATAKI) (formerly Taasisi ya Uchunguzi wa Kiswahili TUKI Dictionaries for Swahili-English and English-Swahili versions and the Constitution of the United Republic of Tanzania in both its Swahili and English versions discrepancies in the usage of the terms are notable. The term citizen is named *raia* or *mwananchi* and the term citizenship is named *uraia* in the 2010 Dictionary mentioned while in the 2014 Dictionary, it is named in addition, civilian. In the same dictionaries, the term nationality is named as *uraia* and *utaifa* respectively*.* A booklet published by the United Nations Department of Public Information in Dar Es Salaam and translated in *Swahili* translates article 15(1) of the Universal Declaration of Human Rights, 1948 (which states everyone has the right to a nationality) as follows:“*Kila mtu ana haki ya* ***utaifa****”* (emphasis added).The Constitution of the United Republic of Tanzania on the other hand uses the word *wananchi* to mean people while it also refers to the term citizen as *raia* in other provisions*.* Much as consistency is desired in conception of the use of the term, there is need to be very careful in the usage of the Swahili terms *uraia, utaifa, mwananchi* and *watu* while referring to the concepts citizenship and nationality. Failure to maintain this consistency may render the concepts citizenship and nationality to a careless interpretation and misconception. Under this thesis, the Swahili conception for the terms *uraia* and *utaifa* are to read citizenship and nationality respectively. [↑](#footnote-ref-17)
17. A similar challenge of determination is described in this thesis under the title “*Operesheni Kimbunga*” where related mechanisms of identification and determination of citizenship status were employed. Determination and proof of Tanzanian citizenship employed such mechanisms of having a long nose and articulation of cross border vernacular languages. [↑](#footnote-ref-18)
18. Former Chairman of a political party namely Democratic Party (DP). [↑](#footnote-ref-19)
19. See (respectively) Gasarasi, C, The Question of the Recent Expulsion of Rwandans from Tanzania, Journal of African Conflicts and Peace Studies, 2008, Vol.1, No.9, pp.111-125 atp.120 and Faustine Kapama, “Tanzania: Statements on Mkapa’s Citizenship Misplaced,” Daily News, Sunday, 11 August 2002. Available at [www.citizenshiprightsafrica.org/tanzania-statement-on-mkapas-citizenship-misplaced](http://www.citizenshiprightsafrica.org/tanzania-statement-on-mkapas-citizenship-misplaced). (Accessed 10/09/2018). [↑](#footnote-ref-20)
20. Kamazima, S.R, *Towards understanding of citizenship problems shaking contemporary Tanzania and strategies to evade similar dilemmas in the future,* International Journal of Advanced Scientific Research and Management, 2018, Vol.3, No.1, pp16-29. [↑](#footnote-ref-21)
21. See African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015; Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edn, Open Society Foundations, Johannesburg, 2016; Manby, B, Citizenship in Africa: The Law of Belonging, 1st Edn, Hart Publishing, Oxford, 2018; Aloo, L.O and Ng’weno, B, Irony of Citizenship: Descent, National Belonging, and Constitutions in the Postcolonial African State, Law and Society Review, 2019, Vol.53, No.1, pp.141-172. [↑](#footnote-ref-22)
22. African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, at page 36 and Manby, B, Citizenship in Africa: The Law of Belonging, *ibid*  Chapter 6. [↑](#footnote-ref-23)
23. Section 44 of the Immigration Act casts the burden to prove citizenship to a person who claims to be Tanzanian. [↑](#footnote-ref-24)
24. An Identity Crisis? A Study on the Issuance of National Identity Cards in Kenya, 2007. [↑](#footnote-ref-25)
25. Access to Documentation and Risk of Statelessness, 2017. [↑](#footnote-ref-26)
26. Identity, Citizenship, and the Registrar General: The Politicking of Identity in Zimbabwe, 2012; A Right or Privilege: Access to Identity and Citizenship in Zimbabwe. [↑](#footnote-ref-27)
27. This type is chosen owing to the fact that the other categories of descent and naturalization do not pose a challenge if at all correctly followed. [↑](#footnote-ref-28)
28. See Mubanga, C.B, Accessing Tanzania Immigration Services: A Question and Answer Guide Book, Nesmap Printing Technology, Dar Es Salaam, 2018 at page 71. [↑](#footnote-ref-29)
29. Registration and Identification of Persons Act Cap36 R.E 2012. [↑](#footnote-ref-30)
30. Described in the background section. [↑](#footnote-ref-31)
31. Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edition, Open Society Foundations, Johannesburg, 2016; Manby, B, Struggles for Citizenship in Africa, Zed Books, London, 2009; Manby, B, Citizenship and Statelessness in Africa: Citizenship in Africa: The Law of Belonging, 1st Edn, Hart Publishing, Oxford, 2018; UNHCR, Statelessness and Citizenship in the East African Community, Nairobi, September, 2018, [KENNARSH@unhcr.org](mailto:KENNARSH@unhcr.org); African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015; International Refugee Rights Initiative (IRRI), “I can’t be a citizen if I am still a refugee” Former Burundian Refugees Struggle to Assert their new Tanzanian citizenship, Citizenship and Displacement in the Great Lakes Region, Working Paper 8, March 2013; Centre for Forced Migration, International Rights Initiative and the Social Science Research Council, “Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania,” Citizenship and Forced Migration in the Great Lakes Region, Working Paper No.1, November, 2008. [↑](#footnote-ref-32)
32. Particularly the Tanzania Immigration Services Department. See also a formal interpretation by the Office of the Attorney General in Appendix IV of this thesis. [↑](#footnote-ref-33)
33. See the response by the Commissioner General of Immigration to the residents of Bugando in the background section. [↑](#footnote-ref-34)
34. Nowadays even birth certificates are printed with the following words in bold letters “This certificate is not proof of citizenship.” [↑](#footnote-ref-35)
35. See section 44 of the Immigration Act Cap 54 R.E 2016. [↑](#footnote-ref-36)
36. See Manby, B, Citizenship in Africa: the Law of Belonging, First Edn, Hart Publishing, Oxford, 2018. See also the position of the commissioner General of Immigration in part 1.1. [↑](#footnote-ref-37)
37. See article 1(1) of the 1954 Convention on the Status of Stateless Persons. [↑](#footnote-ref-38)
38. See Manby, B, Citizenship Law in Africa: the Law of Belonging, *supra* at page 20. [↑](#footnote-ref-39)
39. See African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015; Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edn, Open Society Foundations, Johannesburg, 2016; Manby, B, Citizenship in Africa: The Law of Belonging, 1st Edn, Hart Publishing, Oxford, 2018; Aloo, L.O and Ng’weno, B, Irony of Citizenship: Descent, National Belonging, and Constitutions in the Postcolonial African State, Law and Society Review, 2019, Vol.53, No.1, pp.141-172; Owen, D, On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights, Netherlands Law Review, 2018, Vol.No.65, pp 299-317. [↑](#footnote-ref-40)
40. Citizenship in Africa: the Law of Belonging, supra at page 337. [↑](#footnote-ref-41)
41. *supra* at page 337. [↑](#footnote-ref-42)
42. Kamazima, S.R, *Towards understanding of citizenship problems shaking contemporary Tanzania and strategies to evade similar dilemmas in the future*, International Journal of Advanced Scientific Research and Management, 2018, Vol.3, No.1, pp 16-29. [↑](#footnote-ref-43)
43. African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, *supra.*  See generally pp.22-33. [↑](#footnote-ref-44)
44. Wehmeier, S *et al* (Eds),Oxford Advanced Learner’s Dictionary of Current English, 7th Edn, Oxford University Press, Oxford, 2005 at p.520. [↑](#footnote-ref-45)
45. *Ibid* at p.1072. [↑](#footnote-ref-46)
46. See articles 22 and 27 of the Liberian Constitution 1986; article 12 of Act No.95-70 of 25 August 1995 amending Act No.62-18 of 3 February 1962 on the Malian Nationality Code; article 25 of the Constitution of the Republic of Nigeria 1999; article2 of Law No. 28 of 22 December 1962 on Somali Citizenship; article 35 of the Ivorian Constitution 2000 and Act No.04-024 of 12 November 2004 on Congolese Nationality. [↑](#footnote-ref-47)
47. Gasarasi, C*, The Question of the Recent Expulsion of Rwandans from Tanzania*, Journal of African Conflicts and Peace Studies, 2008, Vol.No.9, pp 111-125. [↑](#footnote-ref-48)
48. Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edition, Open Society Foundations, Johannesburg, 2016; Manby, B, Struggles for Citizenship in Africa, Zed Books, London, 2009; Manby, B, Citizenship and Statelessness in Africa: Citizenship in Africa: The Law of Belonging, 1st Edn, Hart Publishing, Oxford, 2018; UNHCR, Statelessness and Citizenship in the East African Community, Nairobi, September, 2018, [KENNARSH@unhcr.org](mailto:KENNARSH@unhcr.org); African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015; International Refugee Rights Initiative (IRRI), “I can’t be a citizen if I am still a refugee” Former Burundian Refugees Struggle to Assert their new Tanzanian citizenship, Citizenship and Displacement in the Great Lakes Region, Working Paper 8, March 2013; Centre for Forced Migration, International Rights Initiative and the Social Science Research Council, “Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania,” Citizenship and Forced Migration in the Great Lakes Region, Working Paper No.1, November, 2008; Shah, R.K.D, *Britain and Kenya’s citizenship law: a conflict of laws?* Immigration and Nationality Law and Practice, 1992, Vol.6, No.4, pp 120-125. All these literatures reflect section 3 of the 1961 Citizenship Act (which currently is section 5 of the Tanzania Citizenship Act Cap 357 R.E 2002) as a *jus soli* provision. [↑](#footnote-ref-49)
49. Application No.013/2015 judgment passed on 28 November 2019. [↑](#footnote-ref-50)
50. Cap 357 R.E 2002. [↑](#footnote-ref-51)
51. Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edition, Open Society Foundations, Johannesburg, 2016. [↑](#footnote-ref-52)
52. *Supra.* [↑](#footnote-ref-53)
53. Manby, B, Struggles for Citizenship in Africa, Zed Books, London, 2009. [↑](#footnote-ref-54)
54. Manby, B, Citizenship in Africa: The Law of Belonging, *supra.* [↑](#footnote-ref-55)
55. Manby, B, ‘Tanzanian constitutional review proposes radical changes to citizenship law’ <http://citizenshiprights> Africa.org (accessed 17/09/2018). [↑](#footnote-ref-56)
56. 2014 particularly part six. This part provides under article 68 (2) that Tanzania citizenship would be of two types, namely citizenship by birth and by naturalisation. Under article 70(1), citizenship by birth is given on the basis of parentage. That is, in order for one to be considered as a citizen of Tanzania, he or she must be born in Tanzania to a mother or father who is a citizen of Tanzania. The proposed constitutional changes failed to proceed. This position was divergent from that in the Tanzania Citizenship Act which is unclear and posited by the author as a birthright model of attribution of citizenship. [↑](#footnote-ref-57)
57. UNHCR, Statelessness and Citizenship in the East African Community, Nairobi, September, 2018, KENNARSH@unhcr.org. [↑](#footnote-ref-58)
58. Issa, M.I, The Efficacy of the National Laws in Tanzania on Citizenship by Birth, LL.M Dissertation, Mzumbe University, Tanzania, 2013. [↑](#footnote-ref-59)
59. African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015. [↑](#footnote-ref-60)
60. International Refugee Rights Initiative (IRRI), “I can’t be a citizen if I am still a refugee” Former Burundian Refugees Struggle to Assert their new Tanzanian citizenship, Citizenship and Displacement in the Great Lakes Region, Working Paper 8, March 2013. [↑](#footnote-ref-61)
61. Centre for Forced Migration, International Rights Initiative and the Social Science Research Council, “Going Home or Staying Home? Ending Displacement for Burundian Refugees in Tanzania,” Citizenship and Forced Migration in the Great Lakes Region, Working Paper No.1, November, 2008. [↑](#footnote-ref-62)
62. Shah, R.K.D, *Britain and Kenya’s citizenship law: a conflict of laws?* Immigration and Nationality Law and Practice, 1992, Vol.6, No.4, pp 120-125. [↑](#footnote-ref-63)
63. Notably immigration officers under the Tanzania Immigration Services Department who undertake matters related to citizenship. [↑](#footnote-ref-64)
64. Mubanga, C.B, “*Who is a Tanzanian Citizen? An Appraisal of the Mechanisms of Proof of Tanzanian Citizenship*.”Open University Law Journal. 2013, Vol. 4, No.1, pp 7-19. [↑](#footnote-ref-65)
65. Kamwaga, E, ‘Rafu zatawala dhidi ya wahamiaji Haramu,” Raia Mwema, No. 316.18 September, 2013 <http://www.raiamwema.co.tz.rafu-zatawala-dhidi-ya-wahamiaji–haramu>. (Accessed 10/09/ 2018). [↑](#footnote-ref-66)
66. This was an operation initiated by the retired President of the United Republic of Tanzania His Excellency Jakaya Mrisho Kikwete in August, 2013. The operation was declared to be conducted in the country, especially in the border regions of Kigoma, Kagera and Geita following the state of growing insecurity. The operation was preceded by a two-week period of voluntary repatriation of illegal immigrants. The operation involved all state security organs including the Tanzania Immigration Services Department, Police Force, Tanzania People’s Defense Forces (TPDF) and the Intelligence Unit. [↑](#footnote-ref-67)
67. The list is comprehensively provided by Gasarasi, C, *The Question of the Recent Expulsion of Rwandans from Tanzania,* Journal of African Conflicts and Peace Studies, 2008, Vol.No.9, pp 111-125. [↑](#footnote-ref-68)
68. KHRC, Foreigners at Home, the Dilemma of Citizenship in Northern Kenya, Nairobi, Kenya, 31st October, 2015, <https://www.khrc.or.ke/mobile-publications/equality-and-anti-discrimination/66-foreigners-at-home-the-dilemma-of-citizenship-in-northern-kenya.htmail?path=equality-and-anti-discrimination> (Accessed 06/03/2019). [↑](#footnote-ref-69)
69. Goldstone, J.A, *Holes in the Rights Framework: Racial Discrimination, Citizenship and the Rights of Non-citizens,* Ethics and International Affairs, 2006, Vol.20, No.3, pp 321-347. [↑](#footnote-ref-70)
70. See Kombo, D.K and Tromp D.L.A, Proposal and Thesis Writing, Paulines Publications Africa, Nairobi, 2006, p.71. [↑](#footnote-ref-71)
71. Makulilo, A.B, Protection of Personal Data in Sub-Saharan Africa, PhD Thesis, University of Bremen, Germany, 2012, p.59. See also Higgins, E and Tatham, L, Successful Legal Writing, 2nd Edn, Sweet and Maxwell, London, 2012 at pp 85-86. [↑](#footnote-ref-72)
72. Explanations are further provided in 1.7 below on “Scope and limitation of the study.” [↑](#footnote-ref-73)
73. Cane, P and Kritzer, H (Eds), ‘Qualitative Approaches to Empirical Legal Research,’ Oxford Handbook of Empirical Legal Research OUP, 2010, Chapter 38. [↑](#footnote-ref-74)
74. See Kombo, D.K and Tromp D.L.A, *supra*, pp.118-119. [↑](#footnote-ref-75)
75. *Supra.* [↑](#footnote-ref-76)
76. Specifically during application for national identity cards with NIDA. [↑](#footnote-ref-77)
77. Preliminary research showed that, applicants for passports and national identity cards from this region called for tightened citizenship test requirements compared to other border regions. [↑](#footnote-ref-78)
78. PCIJ Ser. B, No.4 (1923). [↑](#footnote-ref-79)
79. For a further clarification of this lack of binding character, compare it with article 20 of the Inter-American Convention on Human Rights which is a binding instrument in that it creates a right to a nationality to any person in whose territory he or she is born if at all the individual does not have any other nationality and would thus be stateless if not acquiring such nationality. [↑](#footnote-ref-80)
80. See Batchelor, C.A, *Transforming International Legal Principles into National Law: the Right to a Nationality and the Avoidance of Statelessness,* Refugee Survey Quarterly, 2006, Vol.25, No.3, pp 8-25 at p 14. [↑](#footnote-ref-81)
81. Manby, Law of Belonging *supra* at page 23. [↑](#footnote-ref-82)
82. Advisory Opinion No.4, Nationality Decrees Issued in Tunis and Morocco, Permanent Court of International Justice, (1923) PCIJ, Ser. B, No.4. [↑](#footnote-ref-83)
83. Manby, Law of Belonging, *supra* at page 13. [↑](#footnote-ref-84)
84. Owen, D, *On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights,* Netherlands International Law Review, 2018, Vol.No.65, pp 299-317 at page 311. [↑](#footnote-ref-85)
85. This position was amended by the enactment of the British Nationality Act 1981. This Act aimed at giving all existing CUKCs a citizenship status which reflected their circumstances especially their connection with the UK. The Act received Royal Assent on 30 October, 1981 and its main provisions came into effect on 1 January, 1983. It amended the Immigration Act 1971 in order for the right of abode to reflect the new citizenships created. Under the Act citizenship of the UK and Colonies was replaced by with three separate citizenships namely: British citizenship, for people closely connected with the UK, British Dependent Territories citizenship for people connected with dependencies and finally British Overseas citizenship, for CUKCs who did not acquire either of the other citizenships at commencement. See page 5 of the Home Office’s Historical background information on nationality Version 1.0 Published for Home Office Staff on 21 July 2017. [↑](#footnote-ref-86)
86. See also Fransman’s British Nationality Law, 3rd Edition, Bloomsbury Professional, 2011 at p 198. [↑](#footnote-ref-87)
87. McClean, D and Abou-Nigm, The Conflict of Laws, 1st Edn, Sweet and Maxwell, 2012 at p 20. [↑](#footnote-ref-88)
88. Nottebohm Case (Liechtenstein v. Guatemala) (Second phase), Judgment of 6 April1955, ICJ Reports 1955, at p 23. [↑](#footnote-ref-89)
89. The Regional Statelessness Unit at the UNHCR Regional Service Centre (RSC) in Nairobi, for example is actively engaged in dialogues with states in order to combat matters related to statelessness and ultimately end statelessness by 2024. A total of nineteen countries located in the East, Central and Horn of Africa are engaged namely, Central African Republic, Cameroon, Chad, Republic of Congo, Democratic Republic of Congo, Burundi, Rwanda, South Sudan, Somalia, Kenya, Sudan, Tanzania, Uganda, Ethiopia, Djibouti, Eritrea, Sao Tome y Principe, Equatorial Guinea and Gabon. Other efforts are undertaken by the African Union Member states. In a bid to legally address this challenge, among others a draft protocol to the African Charter on Human and Peoples’ Rights on the specific aspects of the right to nationality and eradication of statelessness in Africa is being developed for final adoption. There are also regional organisations’ efforts such as the International Conference of the Great Lakes Region (ICGLR). Its twelve member states (Angola, Burundi, Central African Republic, Republic of the Congo, Democratic Republic of Congo, Kenya, Rwanda, Sudan, South Sudan, Tanzania, Uganda and Zambia) adopted in October, 2017 the Brazzaville Declaration and Action Plan of ICGLR on Eradication of Statelessness in the Great Lakes Region; 2017-2019 (ICGLR Declaration and Action Plan). In April 2019 the duration of the Action Plan was extended to 2024. [↑](#footnote-ref-90)
90. See Owen, *supra* at p 303. [↑](#footnote-ref-91)
91. Waas, L.V, Nationality Matters: Statelessness Under International Law, PhD Thesis, University of Tilburg, Germany, 2008. [↑](#footnote-ref-92)
92. International treaties include: the Charter of the United Nations, 1945; Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930; Convention Relating to the Status of Refugees, 1951; Convention Relating to the Status of Stateless Persons, 1954; Convention on the Reduction of Statelessness, 1961; Vienna Convention on Diplomatic Relations, 1961; Vienna Convention on Consular Relations, 1963; Optional Protocol Concerning Acquisition of Nationality to both the Vienna Convention on Diplomatic Relations, 1961 and Vienna Convention on Consular Relations, 1963; International Covenant on Civil and Political Rights, 1966; Vienna Convention on the Law of Treaties, 1969; Convention on the Elimination of All Forms of Discrimination Against Women, 1979; Convention on the Rights of the Child, 1989; International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, 1990 and Convention on the Rights of Persons with Disabilities, 2006. On the other hand, declarations and other non-treaty documents of the UN include: the Universal Declaration of Human Rights, 1948; Declaration of the Rights of the Child, 1959; Declaration on Principles of International Law Concerning Friendly Relations and Cooperation among States, 1970; International Law Commission (ILC) Draft Articles on Nationality of Natural Persons in Relation to the Succession of States, 1999; International Law Commission Draft Articles on Diplomatic Protection, 2006; the Concept of Stateless Persons under International Law (the “Prato Conclusions”), UNHCR 2010; Statelessness Convention and Avoiding Statelessness resulting from Loss and Deprivation of Nationality (the “Tunis Conclusions”), UNHCR 2013; Interpreting the 1961 Statelessness Convention and Preventing Statelessness among Children (the “Dakar Conclusions”), UNHCR 2010; Guidelines on Statelessness No.2; Procedures for determining whether an individual is a stateless person, UNHCR 2012; Guidelines on Statelessness No.3; The Status of Stateless Persons at National Level, UNHCR, 2012; Guidelines on Statelessness No.4: Ensuring Every Child’s Right to Acquire a Nationality through articles 1-4 of the 1961 Convention on the Reduction of Statelessness, UNHCR 2012. [↑](#footnote-ref-93)
93. Article 1. [↑](#footnote-ref-94)
94. Second recital in the preamble. [↑](#footnote-ref-95)
95. Article 3. [↑](#footnote-ref-96)
96. Article 12. [↑](#footnote-ref-97)
97. Article 12. [↑](#footnote-ref-98)
98. UN.Doc.A/811. It is an instrument that was voted for by all plenipotentiaries whereas forty eight voted for and none was against. Only Byelorussian S.S.R, Czechoslovakia, Poland, Saudi Arabia, Ukrainian S.S.R, U.S.S.R, Union of South Africa and Yugoslavia abstained. See Brownlie, I, Basic Documents in International Law, 5th Edn, Oxford University Press, New Delhi, 2003 at p 192. [↑](#footnote-ref-99)
99. Article 1. [↑](#footnote-ref-100)
100. Recital 2 of the preamble. [↑](#footnote-ref-101)
101. African Commission on Human and Peoples’ Rights, Resolution No.234 on the Right to a Nationality, 53rd Ordinary Session, 9-23 April 2013, Banjul, The Gambia. [↑](#footnote-ref-102)
102. Article 2. [↑](#footnote-ref-103)
103. Defined in article 2 as the simultaneous possession of two or more nationalities by the same person. [↑](#footnote-ref-104)
104. Recital 4. [↑](#footnote-ref-105)
105. *Supra.* [↑](#footnote-ref-106)
106. Immigration News, Miaka 50 ya Mapinduzi Zanzibar, Toleo Maalum, Januari 2014, pp 12 and 17. [↑](#footnote-ref-107)
107. Cap 134 of 1911. [↑](#footnote-ref-108)
108. Cap 39 of 1952. [↑](#footnote-ref-109)
109. A Zanzibar subject is defined under section 2 of the Decree as a subject of His Highness the Sultan. [↑](#footnote-ref-110)
110. No.1 of 1964. [↑](#footnote-ref-111)
111. *Supra.* [↑](#footnote-ref-112)
112. *Supra.* [↑](#footnote-ref-113)
113. *Supra.* [↑](#footnote-ref-114)
114. No.5 Decree of 1964. [↑](#footnote-ref-115)
115. Atmore, A and Oliver, R, Africa Since 1800, 5th Edn, Cambridge University Press, Cambridge, 2004, pp 136-137. [↑](#footnote-ref-116)
116. Fransman, L, Fransman’s British Nationality Law, 3rd Edn, Bloomsbury Professional, 2011, p.1294. [↑](#footnote-ref-117)
117. *Ibid.* [↑](#footnote-ref-118)
118. Constituent Assembly Act No. 2 of 1962. [↑](#footnote-ref-119)
119. With few amendments contained in Schedule 3 of the Act. [↑](#footnote-ref-120)
120. Cap 512 of 1961. [↑](#footnote-ref-121)
121. Section 2(6) of the Citizenship Act, *supra.* [↑](#footnote-ref-122)
122. Cap 452 of 1961. [↑](#footnote-ref-123)
123. Section 2. [↑](#footnote-ref-124)
124. Section 3. [↑](#footnote-ref-125)
125. Comprising Ifri, Spanish Sahara, Fernando Po, Rio Irani and the Moroccan enclaves. [↑](#footnote-ref-126)
126. Section 4A (1)(b). [↑](#footnote-ref-127)
127. (No.5) Decree of 1964, Schedule 4, paragraphs 1-2. [↑](#footnote-ref-128)
128. On 29 October 1964 the country was renamed the United Republic of Tanzania as per the Union Republic (Declaration of Name) Act, No.61 of 1964. [↑](#footnote-ref-129)
129. *Supra.* [↑](#footnote-ref-130)
130. GN No.658 of 1997. [↑](#footnote-ref-131)
131. Cap 2 R.E 2005. [↑](#footnote-ref-132)
132. Article 64(5) of the Constitution of the United Republic of Tanzania and article 4 of the Constitution of Zanzibar of 1984 R.E 2010 declare this supremacy and underlines that any law that goes contrary to the Constitution becomes null and void to the extent of such contradiction. [↑](#footnote-ref-133)
133. Article 4 read together with the first schedule to the Constitution of the United Republic of Tanzania. [↑](#footnote-ref-134)
134. See article 5(1) on the right to vote; article 17(1) on the right to freedom of movement, article 21 on freedom to participate in public affairs, article 22(2) on entitlement to equal opportunity and right to equal terms to hold any office or discharge any function under the state authority, article 28(1) and (3) on duty of defence of the nation, article 29(3) and (4) on prohibition of conferral of right, status or special position based on lineage, tradition or descent, article 39(1)(a) on qualifications for election as President of the United Republic of Tanzania and article 47(4)(a) on qualifications for election as Vice President of the United Republic of Tanzania. [↑](#footnote-ref-135)
135. The list under footnote 123 above is reserved for citizens only and does not include non citizens. [↑](#footnote-ref-136)
136. Cap 357 R.E 2002. [↑](#footnote-ref-137)
137. See articles 68 to 72 of the Proposed Constitution. The latter was brought to a halt in 2014. [↑](#footnote-ref-138)
138. *Supra.* [↑](#footnote-ref-139)
139. Sections 4 and 5. [↑](#footnote-ref-140)
140. Section 6. [↑](#footnote-ref-141)
141. Section 9. [↑](#footnote-ref-142)
142. Cap 512 of 1961. [↑](#footnote-ref-143)
143. *Ibid.* [↑](#footnote-ref-144)
144. 1961. [↑](#footnote-ref-145)
145. Cap 512 of 1961. [↑](#footnote-ref-146)
146. Cap 357 R.E 2002. [↑](#footnote-ref-147)
147. Cap 512 of 1961. [↑](#footnote-ref-148)
148. Cap 39 of 1952. [↑](#footnote-ref-149)
149. No.1 of 1964. [↑](#footnote-ref-150)
150. Chapter 134, 1911. [↑](#footnote-ref-151)
151. Section 11(1) of the Tanzania Citizenship Act. [↑](#footnote-ref-152)
152. Wizara ya Mambo ya Ndani ya Nchi, Idara ya Uhamiaji, Mwongozo wa Sheria ya Uraia ya Tanzania Sura ya 357, (Rejeo la 2002), Kwa Maofisa Uhamiaji, pp.18-19. [↑](#footnote-ref-153)
153. Wizara ya Mambo ya Ndani ya Nchi, Idara ya Uhamiaji, Mwongozo wa Sheria ya Uraia ya Tanzania Sura ya 357, (Rejeo la 2002), Kwa Maofisa Uhamiaji, pp.19-20. [↑](#footnote-ref-154)
154. *Ibid*  at pp.20-21. [↑](#footnote-ref-155)
155. Wizara ya Mambo ya Ndani ya Nchi, Idara ya Uhamiaji, Mwongozo wa Sheria ya Uraia ya Tanzania Sura ya 357, (Rejeo la 2002), Kwa Maofisa Uhamiaji, pp.21-22. [↑](#footnote-ref-156)
156. *Ibid* at pp.22-23. [↑](#footnote-ref-157)
157. Section 9(2) of the Tanzania Citizenship Act. [↑](#footnote-ref-158)
158. Section 10(1) of the Tanzania Citizenship Act. [↑](#footnote-ref-159)
159. Wizara ya Mambo ya Ndani ya Nchi, Idara ya Uhamiaji, Mwongozo wa Sheria ya Uraia ya Tanzania Sura ya 357, (Rejeo la 2002), Kwa Maofisa Uhamiaji, p.25. [↑](#footnote-ref-160)
160. Section 11(1) of the Tanzania Citizenship Act. [↑](#footnote-ref-161)
161. Wizara ya Mambo ya Ndani ya Nchi, Idara ya Uhamiaji, Mwongozo wa Sheria ya Uraia ya Tanzania *supra* at pp.26-27. [↑](#footnote-ref-162)
162. Section 23 of the Tanzania Citizenship Act. [↑](#footnote-ref-163)
163. Section 12 (2) *ibid.* [↑](#footnote-ref-164)
164. Section 13 (1) of the Tanzania Citizenship Act. [↑](#footnote-ref-165)
165. Section 13 (2) *supra.* [↑](#footnote-ref-166)
166. Section 4. [↑](#footnote-ref-167)
167. Section 7(4) *supra.* [↑](#footnote-ref-168)
168. Sections 14 and 15 of the Tanzania Citizenship Act. [↑](#footnote-ref-169)
169. Section 6 of the Tanzania Citizenship Act. [↑](#footnote-ref-170)
170. See generally part V *ibid.* [↑](#footnote-ref-171)
171. Section 19 *ibid.* [↑](#footnote-ref-172)
172. *Supra.* [↑](#footnote-ref-173)
173. *Supra.* [↑](#footnote-ref-174)
174. *Ibid.* [↑](#footnote-ref-175)
175. General purpose section. [↑](#footnote-ref-176)
176. See section 12(1)(d) of the Immigration Act. [↑](#footnote-ref-177)
177. Section 3. [↑](#footnote-ref-178)
178. Section 2. [↑](#footnote-ref-179)
179. Section 27(1). [↑](#footnote-ref-180)
180. Cap 42 R.E of 2002. [↑](#footnote-ref-181)
181. Section 10 *ibid.* [↑](#footnote-ref-182)
182. Section 11. [↑](#footnote-ref-183)
183. Cap 36 R.E 2012. [↑](#footnote-ref-184)
184. See the general purpose of the Act. [↑](#footnote-ref-185)
185. Section 10. [↑](#footnote-ref-186)
186. No.21 of 2009. [↑](#footnote-ref-187)
187. *Supra*, particularly articles 7 and 8. [↑](#footnote-ref-188)
188. *Supra*, particularly articles 6. [↑](#footnote-ref-189)
189. Cap 343 R.E 2010. [↑](#footnote-ref-190)
190. Cap 108 R.E 2002. [↑](#footnote-ref-191)
191. Cap 36 R.E 2002. [↑](#footnote-ref-192)
192. See section 12 of the Immigration Act, *supra.* [↑](#footnote-ref-193)
193. Section 5(2) of the Immigration Act Cap 54 R.E 2016. [↑](#footnote-ref-194)
194. An immigration officer is defined under section 3 of the Immigration Act to mean an immigration officer of the Department of a rank as defined under the Act and includes the Commissioner General. This title has been a subject of changes from Director of Immigration Services prior to 2007 and later to Principal Commissioner of Immigration Services. This title was amended under the Immigration (Amendment) Act No.8 of 2015 to be Commissioner General of Immigration which is the current title. [↑](#footnote-ref-195)
195. Delegation of these powers is provided under section 10 of the Immigration Act. However, a caution is provided that this delegation does not in any way amount to derogation of the Commissioner General’s powers and duties. [↑](#footnote-ref-196)
196. Section 2 of the Tanzania Passports and Travel Documents Act. [↑](#footnote-ref-197)
197. This is a travel document issued to a person other than a citizen of the United Republic who cannot obtain a passport from the country of which he is a citizen or does not have citizenship of any country for the purpose of travelling outside the United Republic. [↑](#footnote-ref-198)
198. This is a travel document issued to any refugee granted asylum in the United Republic for the purposes of travelling outside the United Republic. [↑](#footnote-ref-199)
199. See generally section 10 of the Tanzania Passports and Travel Documents Act. [↑](#footnote-ref-200)
200. Section 11 of the Tanzania Passports and Travel Documents Act provides that the holding of a passport or travel document shall be prima facie evidence of the nationality or domicile of the holder and of his entitlement to state protection. [↑](#footnote-ref-201)
201. Government Notice Number 122 of 2008. [↑](#footnote-ref-202)
202. Under the Refugees Act *supra.* [↑](#footnote-ref-203)
203. See article 4 and the third schedule of the Constitution of the United Republic of Tanzania Cap 2 R.E 2005. [↑](#footnote-ref-204)
204. See for example section 10 of the Elections Act Cap 343 R.E 2002. [↑](#footnote-ref-205)
205. Government Notice Number 48 of 2018. [↑](#footnote-ref-206)
206. Defined under section 3 of the Tanzania Citizenship Act as the Minister responsible for matters relating to citizenship of the United Republic. [↑](#footnote-ref-207)
207. Section 22 of the Tanzania Citizenship Act. [↑](#footnote-ref-208)
208. Regulation 2(4) of the Citizenship (Forms and Fees) Regulations, GN No.411 of 1998 and 16(3) of the Tanzania Citizenship Regulations, GN No.432 of 2002. [↑](#footnote-ref-209)
209. See section 21 of the Tanzania Citizenship Act. [↑](#footnote-ref-210)
210. See part IV *ibid* and section 18 of the Tanzania Passports and Travel Documents Act. [↑](#footnote-ref-211)
211. See section 23 *ibid.* [↑](#footnote-ref-212)
212. See section 12(4) of the Tanzania Passports and Travel Documents Act. [↑](#footnote-ref-213)
213. Section 17 of the Tanzania Passports and Travel Documents Acts. [↑](#footnote-ref-214)
214. Section 12(1)(d) of the Immigration Act Cap 54 R.E 2016. [↑](#footnote-ref-215)
215. The New Jerusalem Bible, Standard Edition, Alberione Good News Centre, 1985 and Alton, R.A.C, *The Nature of a Passport at the Intersection of Customary International Law and American Judicial Practice,* Annual Survey of International & Comparative Law, *infra* at p.11. [↑](#footnote-ref-216)
216. Section 2, *supra.* [↑](#footnote-ref-217)
217. See the Second Schedule of the Tanzania Passports and Travel Documents (Amendment) Regulations, GN No.121 of 16/03/2018. [↑](#footnote-ref-218)
218. See Turack, D.C, *Selected Aspects of International and Municipal Law Concerning Passports,* William & Mary Law Review, 1971, Vol.12, No.4, pp 805-837, at p.807. [↑](#footnote-ref-219)
219. Section11. [↑](#footnote-ref-220)
220. See generally Turack, D.C, *Selected Aspects of International and Municipal Law Concerning Passports,* William & Mary Law Review, *supra,* Benoit, C, *Force and Effect: A Look at the Passport in the Context of Citizenship,* Fordham Law Review, Vol.82, No.6, pp 3307-3340, Muchmore, A.I, *Passports and Nationality in International Law,* Penn State Law e Library, 2004, Vol.10, No.301, pp 301-355 and Alton, R.A.C, *The Nature of a Passport at the Intersection of Customary International Law and American Judicial Practice,* Annual Survey of International & Comparative Law, 2010, Vol.16, No.1, pp 9-26. [↑](#footnote-ref-221)
221. Turack, D.C, *Selected Aspects of International and Municipal Law Concerning Passports,* William. & Mary Law Review, *supra,* Benoit, C, *Force and Effect: A Look at the Passport in the Context of Citizenship, supra* at p.805. [↑](#footnote-ref-222)
222. Alton, R.A.C, *The Nature of a Passport at the Intersection of Customary International Law and American Judicial Practice, supra* at pp 12-13. [↑](#footnote-ref-223)
223. This Division is charged among others to conduct investigations related to citizenship issues. [↑](#footnote-ref-224)
224. Other two are issued to foreigners residing in the United Republic who have residence permits and to refugees. [↑](#footnote-ref-225)
225. Cap 343 R.E 2002. [↑](#footnote-ref-226)
226. Mubanga, C.B, *Who is a Tanzanian citizen? An Appraisal of the mechanisms of proof of Tanzanian citizenship*, Open University Law Journal, 2013, Vol.4, No.1, pp.7-19 at p.16. [↑](#footnote-ref-227)
227. Interview with an official from RITA. [↑](#footnote-ref-228)
228. Application No.013/2015, 28 November 2019. [↑](#footnote-ref-229)
229. *Supra* 28 [106]. [↑](#footnote-ref-230)
230. African Court on Human and Peoples’ Rights, Application No.012/2015, 22 March 2018. [↑](#footnote-ref-231)
231. Nyerere, J.K, Binadamu na Maendeleo, 1st Edn, Oxford University Press, Dar Es Salaam, 1974, pp 119-120. [↑](#footnote-ref-232)
232. See page 91 of the 18 April 1995 Hansard on the 1995 Citizenship Bill. [↑](#footnote-ref-233)
233. [1996] TLR 156. [↑](#footnote-ref-234)
234. [1985] TLR 148. [↑](#footnote-ref-235)
235. Application No.012/2015. See also generally Mubanga, C.B, *The Right to Nationality and Its Burden of Proof in Tanzania: An Illumination in the Case of Anudo Ochieng Anudo versus United Republic of Tanzania,* the Tanzania Lawyer Journal, 2019, Vol 1, 1: 161-178 and Manby, B, *Case Note Anudo Ochieng Anudo V Tanzania (Judgment)(African Court on Human and Peoples’ Rights, App No 012/2015, 22 March 2018),* Statelessness and Citizenship Review Journal, 2019, Vol.1, No.1, pp170-176. [↑](#footnote-ref-236)
236. Paragraph 80 on page 18 of the Judgement. [↑](#footnote-ref-237)
237. *Supra.* The facts to this case have been provided under 4.2.4.4. [↑](#footnote-ref-238)
238. Penessis case, page 24 paragraph 91. [↑](#footnote-ref-239)
239. *Ibid* at pages 24 paragraph 92 and page 26, paragraph 96. This decision however leaves much to be desired. Indeed the African Court in the *Penessis case* has affirmed its commitment towards protection of the right to a nationality as a fundamental human right enshrined under article 5 of the African Charter and article 15 of the UDHR. It has added to the list of the existing jurisprudence on nationality cases, more particularly aligned with the reasoning in its subsequent (in number) *Anudo case.* The case followed reasoning of the latter case in pinpointing that because the documents in dispute purporting to establish nationality of the Applicant were assumed to be issued by the Respondent State, then it was the burden of the Respondent State to prove otherwise. While this line of reasoning works to protect against an imposition of duty to prove nationality to individuals on the fact that State Agencies are the ones better placed to be custodians of civil records of its nationals, distinguishably in this case the African Court failed to accord weight of the need to ascertain on authenticity of such important documents relied upon its decisions. The latter aspect if not given its due weight can lead to erosion of the sovereignty of States in deciding as to who should be its citizens under their domestic laws. It can open up room for tendencies (by infiltrates) to ‘buy’ citizenship. In the instant case, the African Court admitted that no original birth certificate and travel documents were tendered as evidence. It however affirmed that the certified copies of the latter established that the applicant was Tanzanian citizen by birth and that the Respondent State had not been able to prove the contrary. However, it is trite to note that original birth certificate and emergence travel document do remain in possession of their holder unless the State demands them. On the contrary the African Court placed the burden on the Respondent State to produce the originals. If for example it were to be established that the duo were fraudulent or forged, it would mean that the Respondent State’s civil record system would never have traces of the said documents as it stood arguing that it did not issue the said documents. With regard to birth certificate, a witness from *RITA* adduced how there was no such a record of the tendered Photostat of birth certificate and revealed its technical discrepancies in form and content, but this fact did not receive attention by the Court. Omission of these facts left indelible implications in determining and finally declaring the Applicant as Tanzanian citizen. [↑](#footnote-ref-240)
240. Differentiated from application by a foreigner who is required to show evidence of legal residence in the United Republic such as a valid residence permit and a refugee who is also required to prove as to his/her legal refugee status. [↑](#footnote-ref-241)
241. Section 2 of the Tanzania Passports and Travel Documents Act and the combined effect of the Tanzania Passports and Travel Documents (Amendment) Regulations, Government Notice No.121 of 2018. The latter takes into board institution of electronic passports. [↑](#footnote-ref-242)
242. Section 2 *ibid.* For the purpose of this thesis only an emergency travel document issued to a Tanzanian is considered, leaving aside other travel documents issued under the Act namely, Geneva Travel Document issued to refugees and Certificate of Identity issued to persons whose nationality is unknown or who cannot at the time manage to acquire travel document of their countries of nationality. [↑](#footnote-ref-243)
243. This requirement has commenced since the transformation to electronic immigration in January 2018 where electronic passports started to be issued in replacement of the previous machine-readable passports. The latter’s use was limited to 31 January 2020. [↑](#footnote-ref-244)
244. See Mubanga, C.B, Accessing Tanzania Immigration Services: A Question and Answer Guide Book*,* First Edn, Nesmap Printing Technology, Dar Es Salaam, 2018 at page 70. See also part III of the Tanzania Passports and Travel Documents Regulations, 2004. [↑](#footnote-ref-245)
245. Since the inception of machine-readable passports in 2005, the validity of Tanzanian passports has been ten years. After this period, renewal of the passport follows while prior to 2005 it was five years. Upon expiry of the passport, an extension of five more years was done. Restriction in both cases means reduction of the validity to a lesser validity. This power emanates from the Tanzania Passports and Travel Documents Act read together with regulation 11(2) which states- “Subject to the provisions of the Act and these Regulations relating to passports or any travel documents the Commissioner General of Immigration may vary the period of any Passport or Travel Document to be issued to any person as he may deem fit.” [↑](#footnote-ref-246)
246. National identity cards are issued to persons aged 18 years and above. [↑](#footnote-ref-247)
247. History is replete with examples of this practice. An example is seen in the cases of Attorney General and Two Others v. Aman Walid Kabourou where Azim Premji was declared non-citizen and to that effect required to naturalise as a citizen of Tanzania and in the case of John Sapuli and Two Others v. Rajabu Athumani Mrope and the Attorney General where the first respondent was declared a citizen after a judicial considerations. [↑](#footnote-ref-248)
248. *Infra.* [↑](#footnote-ref-249)
249. See also a similar note in Mubanga, C.B, *Who is a Tanzanian Citizen? An Appraisal of the Mechanisms of Proof of Tanzanian Citizenship,* Open University Law Journal, 2013, *supra* at p.15. [↑](#footnote-ref-250)
250. See the requirements at <http://www.nida.go.tz/swahili/index.php/kitambulisho-cha-taifa> (accessed 03/10/2019). [↑](#footnote-ref-251)
251. Pressure is mounting for example in cases of biometric registration of SIM cards where it is a condition first to possess a national identification number obtainable upon registration with NIDA. December 2019 was set as a deadline for such registration. While this goes on, some stationed individuals in regions such as Kigoma were yet to be reached by the exercise of registration by October, 2019 let alone the ultimate process of issuance of the national identity cards. [↑](#footnote-ref-252)
252. Of further relevant explanations are also given in Mubanga, C.B, *Who is a Tanzanian Citizen? An Appraisal of the Mechanisms of Proof of Tanzanian Citizenship,* Open University Law Journal, 2013, *supra.* [↑](#footnote-ref-253)
253. The practice at Immigration Headquarters upon application for passport has been that an affidavit of birth is acceptable for a person born before 1980, with a view that persons who were born after 1980 are assumed to have or be able to obtain a birth certificate. However, those of European, American or Arabic descent are required to produce birth certificates because it was mandatory under section 26 of the Births and Deaths Registration Act Cap 108 R.E 2002 for them to register their births. Unless there are pertinent reasons for non-possession of birth certificates in this group, the Immigration Authorities do not accept affidavits of birth in this group *in lieu of* birth certificates. [↑](#footnote-ref-254)
254. Cap 34 R.E 2002. [↑](#footnote-ref-255)
255. Cap 12 R.E 2002. [↑](#footnote-ref-256)
256. An exception lies with any advocate who is suspended from practice until the period of suspension ends, any person whose name is removed from the roll of advocates otherwise than at his own request, until his name is restored to the roll of advocates, any person whose name is removed from the roll of notaries public and commissioners for oaths in any reciprocating commonwealth country for professional misconduct, until his name is restored to the roll. See section 3(2) of the Act. [↑](#footnote-ref-257)
257. Mubanga, C.B, *Who is a Tanzanian Citizen? An Appraisal of the Mechanisms of Proof of Tanzanian Citizenship,* Open University Law Journal, 2013, Vol 4, No.1, pp 7-19 at p.15. [↑](#footnote-ref-258)
258. Refer to chapter two on the difference between the two terminologies. [↑](#footnote-ref-259)
259. 1980 witnessed grant of citizenship to refugees who came to Tanzania from Rwanda and Burundi in 1959 and 1960s; 2003 to Somali refugees; 2014 to Burundian refugees; 2008 again to Burundian refugees. President Dr. John Pombe Joseph Magufuli ordered in July 2017 that no further naturalisation of Burundian refugees, whether old or new arrivals. See “Magufuli –No citizenship for Burundi refugees,” the Citizen (Dar Es Salaam), 21 July 2017; “As risks rise in Burundi, refuge in Tanzania is no longer secure,” IRIN, 08 May 2018. Quoted from Manby, B, Statelessness and Citizenship in East Africa, supra at p.67. [↑](#footnote-ref-260)
260. Still a challenge lies in the period prescribed under the law with regard to period of renewal of permits in tandem with the ten years’ rule requirement. Section 32(2) of the Immigration Act Cap 54 R.E 2016 is relevant here. It states that a residence permit may be issued for any period not exceeding three years and may be renewed for any period not exceeding two years by endorsement of renewal effected on it by the Commissioner General but so that the total period of validity of the original permit and of its renewals shall not in any case exceed five years. [↑](#footnote-ref-261)
261. See the Second Schedule to the Immigration (Amendment) Regulations, GN No.246 of 19/08/2016. [↑](#footnote-ref-262)
262. Manby, B, Statelessness and Citizenship in the East African Community, *supra* at page 36. [↑](#footnote-ref-263)
263. GN No.427 of 13/10/2017. [↑](#footnote-ref-264)
264. *Supra.* [↑](#footnote-ref-265)
265. *Ibid.* [↑](#footnote-ref-266)
266. See Zenker, O, *Autochthony, ethnicity, indigeneity and nationalism: Time-honouring and state-oriented modes of rooting individual-territory-group triads in a globalizing world,* Critique of Anthropology, 2011, Vol.31, No.1, pp 63-81 at page 68, Aminzade, R, *From Race to Citizenship: The Indigenization Debate in Post-Socialist Tanzania*, Studies in Comparative International Development, 2003, Vol.38, No.1, pp 43-63, Faustine Kapama, “Tanzania: Statements on Mkapa’s Citizenship Misplaced,” Daily News, Sunday, 11 August 2002. [↑](#footnote-ref-267)
267. Chubwa, P, Waha na Maendeleo, 1st Edn, TMP Book Department, Tabora, 1979 notes that apart from being Bantu, the Ha are a composition of more than forty clans namely, Wasindi, Wafuruma, Wajiji, Wanyongozi,Waranda, Walima, Waragane, Wakimbili, Wazazi, Washubi, Watamya, Wasiba, Wabanga, Wagwana, Wachaba, Watwa, Washingazosi, Wahwehwe, Waholoholo, Wanyamunyu, Wakanda, Washata, Washambo, Wahumbi, Wanyamlega, Wavejuru, Wabhiku, Wanyakasambiro, Wakasa, Wabangisho, Washita, Wahangaza, Wanyanya, Wasase, Wataga, Walazi, Wagunga, Wadyambeba, Wahanza, Wadyami, Wanyeru, Wahundwa, Wahunga, Wayango, Wabombobombo, Wazigaba, Wasaku, Wasentala, Wabende and Wahambwe. [↑](#footnote-ref-268)
268. Amongst all respondents including immigration officers and state attorneys none interpreted section 5 of the Tanzania Citizenship Act to follow *jus soli* mode. They responded affirmatively that the law and practice are in consonant to each other. They found that the law is clear with regard to Tanzanian citizenship by birth that in order to qualify as a Tanzanian citizen by birth one must in addition of being born in the United Republic have either parent or both who is/are citizens of the United Republic, that is the *jus sanguinis* mode. [↑](#footnote-ref-269)
269. See <https://en.wikipedia.org/wiki/Jus> soli and<http://www.law.gov> on Birthright Citizenship Around the World by November, 2018, the Law Library of Congress, Global Legal Research Directorate.(Accessed 20/09/2019). [↑](#footnote-ref-270)
270. Other countries are Antigua and Barbuda, Argentina, Barbados, Belize, Bolivia, Brazil, Canada, Chad, Chile, Costa Rica, Dominica, Ecuador, El Salvador, Fiji, Grenada, Guatemala, Guyana, Honduras, Jamaica, Lesotho, Mexico, Nicaragua, Pakistan, Panama, Paraguay, Peru, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Trinidad and Tobago, Tuvalu and United States. [↑](#footnote-ref-271)
271. See section 113 of the Constitution of Antigua and Barbuda of 1981. Chapter VIII on Citizenship is entitled: Persons who automatically become citizens after commencement of this Constitution. [↑](#footnote-ref-272)
272. See section 4 of the Constitution. [↑](#footnote-ref-273)
273. See section 24 of the Constitution. [↑](#footnote-ref-274)
274. See section 98 of the Constitution. [↑](#footnote-ref-275)
275. See the letter under Appendix IV. [↑](#footnote-ref-276)
276. Fransman, L, Fransman’s British Nationality Law, Third Edn, Bloomsbury Professional, 2011 at pp.198-199. [↑](#footnote-ref-277)
277. Shah, R.K.D, *Britain and Kenya’s citizenship law: a conflict of laws?* Immigration and Nationality Law and Practice, 1992, Vol.6, No.4, pp120-125. [↑](#footnote-ref-278)
278. Page 306 of the Hansard. [↑](#footnote-ref-279)
279. Inter-American Court of Human Rights (IACtHR), 23 November 2006. [↑](#footnote-ref-280)
280. 1998 ZLR 86. [↑](#footnote-ref-281)
281. Manby, B, Citizenship in Africa: The Law of Belonging, *supra* at pp 119-120. [↑](#footnote-ref-282)
282. 211/98. [↑](#footnote-ref-283)
283. See item 1.5. [↑](#footnote-ref-284)
284. See generally African Commission on Human and Peoples’ Rights, the Right to Nationality in Africa, A study undertaken by the Special Rapporteur on the Rights of Refugees, Asylum Seekers and Internally Displaced Persons, Banjul, the Gambia, 2015; Manby, B, Citizenship Law in Africa: A Comparative Study, 3rd Edn, Open Society Foundations, Johannesburg, 2016; Manby, B, Citizenship in Africa: The Law of Belonging, 1st Edn, Hart Publishing, Oxford, 2018; Aloo, L.O and Ng’weno, B, Irony of Citizenship: Descent, National Belonging, and Constitutions in the Postcolonial African State, Law and Society Review, 2019, Vol.53, No.1, pp.141-172; Owen, D, On the Right to Have Nationality Rights: Statelessness, Citizenship and Human Rights, Netherlands Law Review, 2018, Vol.No.65, pp 299-317. [↑](#footnote-ref-285)
285. Manby, the Law of Belonging *ibid.* [↑](#footnote-ref-286)
286. pp 16-17. [↑](#footnote-ref-287)
287. pp 16-17, *supra.* [↑](#footnote-ref-288)
288. See page 337 *supra* and p.15 of this thesis [↑](#footnote-ref-289)
289. P 4 [↑](#footnote-ref-290)
290. Translated from Swahili by the researcher. [↑](#footnote-ref-291)
291. Section 1(1) of the Citizenship Act, *supra.* [↑](#footnote-ref-292)
292. See <https://m.facebook.com/story.php?story_fbid=557566864994325&id=247774705398100> (Accessed on 21/11/2019). [↑](#footnote-ref-293)
293. UNHCR, Statelessness and Citizenship in the East African Community, Nairobi, September 2018 at p.63. [↑](#footnote-ref-294)
294. UNHCR, *supra* at p.64. [↑](#footnote-ref-295)
295. *Supra.* [↑](#footnote-ref-296)
296. Constitution of the state of Zanzibar, 1963 Chapter 1; Tanganyika Citizenship Act 1961 as amended, section 3 and 10(1). See UNHCR, ibid at p.63. [↑](#footnote-ref-297)
297. See p.18 of this thesis. [↑](#footnote-ref-298)
298. “If President Kikwete is Tanzanian, then most Rwandans being expelled are Tanzanians too.” Available at <https://www.newsfrwanda.com/breaking/20078/if-president-kikwete-is-tanzanian-then-most-rwandans-being-expelled-are-tanzanians-too> (Accessed on 05/01/2020). [↑](#footnote-ref-299)
299. *Ibid.* [↑](#footnote-ref-300)
300. Chapter 1, p 5 of this thesis. [↑](#footnote-ref-301)
301. Page 67 of the18 April 1995 Tanzania Citizenship Bill Hansard. [↑](#footnote-ref-302)
302. Miller, C.L, Who are the “Permanent Inhabitants” of a State? Citizenship Policies and Border Controls in Tanzania 1920-1980, PhD Thesis, University of Iowa, 2011. [↑](#footnote-ref-303)
303. UNHCR, Statelessness and Citizenship in the East African Community, Nairobi, September 2018 at page 64. [↑](#footnote-ref-304)
304. The Tanzania Citizenship (Amendment) Regulations, GN. No. 427 of 13/10/2017 tried to take into board of these concerns by reducing fees from USD 5000 to Tshs 2,000,000 for groups of persons born in Tanganyika before independence who were not recognised as citizen under the Citizenship Act, 1961 Cap 512 and subsequent legislations thereto; persons born in Tanganyika before or after independence by parents who were not recognised as citizens under the Citizenship Act; persons who entered in Tanganyika before or after independence and stayed there for a period which in the opinion of the Commissioner General of Immigration in consultation with the Minister, qualify to be granted citizenship under conditions specified herein; persons born in Tanganyika before or after independence and their parents fall under categories 1 and 2 above and persons born outside the United Republic and their parents are citizens of Tanzania by descent. The mention of Tanganyika of Tanganyika, however excludes Zanzibar as such the Comoros and Makonde are not included in the groups. Similarly the fee of Tshs 2,000,000 remains to be exorbitant given the financial standing of most members of these groups. [↑](#footnote-ref-305)
305. Miller, C.L, Who are the “Permanent inhabitants” of a State? *Supra.* [↑](#footnote-ref-306)
306. *Ibid* at page 141. [↑](#footnote-ref-307)
307. Also known as Government Paper No.4. [↑](#footnote-ref-308)
308. Nyerere, J.K, Freedom and Unity (Uhuru na Umoja): A Selection From Writings and Speeches (1952-65), Oxford University Press, London, 1967 at p.126. A person is considered to be a dual citizen if she possesses nationality of more than one state at the same time. S is considered a dual citizen if she is a citizen of country T and W at the same time. She can possess and legally use passports for both country T and W and be entitled for civil and political rights enshrined in the laws of countries T and W. Currently, Tanzanian citizenship legal regime does not allow dual citizenship. However, dual citizenship is presumed to exist and become acceptable for a child who, upon reaching eighteen years is required to renounce any other citizenship she possesses (Read generally section 7 of the Tanzania Citizenship Act). [↑](#footnote-ref-309)
309. Page 128 *supra.* [↑](#footnote-ref-310)
310. For a detailed history on policy changes regarding Tanzanian citizenship see generally Miller, C, Who are the “permanent inhabitants” of the state? Citizenship policies and border controls in Tanzania, 1920-1980, PhD Thesis, University of Iowa, United States of America, 2011. [↑](#footnote-ref-311)
311. GN No.541 of 2015 were enacted to read as one with the Immigration Regulations GN No.657 of 1997. [↑](#footnote-ref-312)
312. Regulation 5(b)(j) and 18 *ibid.*  [↑](#footnote-ref-313)
313. Regulation 18(4) *supra.* [↑](#footnote-ref-314)
314. Page 67 of the 18 April 1995 Hansard *supra.* [↑](#footnote-ref-315)
315. Regulation 18(1)(b) of the Immigration (Amendment) Regulation as amended by the Immigration (Amendment) Regulations, GN No.246 of 19/08/2016. [↑](#footnote-ref-316)
316. This research noted that there was no existing Tanzanian Citizenship Policy. However, formulation of the latter in the name of the National Citizenship and Immigration Policy was in its advanced stages. [↑](#footnote-ref-317)