

COMPLEX VULNERABILITY AND ACCESS TO JUSTICE FOR
FORMER REFUGEE POPULATIONS: THE CASE OF THE SOMALI
ZIGULA IN TANZANIA

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EXECUTIVE SUMMARY

Drawing on interviews conducted in 2017 with support from JUSTRAC,^{*} this report examines the case of the Somali Zigula in Tanzania, a former refugee population granted citizenship through a resettlement process—a “durable solution” to a refugee crisis. Since naturalization, Somali Zigula citizens rarely seek opportunities to engage formal institutions of justice, often because of an overwhelming lack of knowledge, fear of the justice sector, lack of financial resources, or assumptions formed about the state through abusive police interactions. Instead, they rely more on traditional forms of justice, despite their shortcomings. To address those challenges for the Somali Zigula and other former refugee groups, “durable solutions” require the creation of multi-sector protection plans that emphasize the overlap of legal, social, and civic protections for rights to ensure full social participation as citizens. This paper discusses the complex forms of vulnerability faced by the Somali Zigula in Tanzania, as well as how they relate to access to justice, and offers recommendations for practitioners engaged in durable solutions programming and other programming for former refugee populations.

Refugees face a unique form of vulnerability after naturalization. Despite this legal change in status, refugees’ experiences with violence, persecution, and torture at the hands of justice sector institutions, or the state more broadly, in their country of origin or refuge, may deeply influence their relationship and orientation to their new home country, including its laws and legal institutions. For the Somali Zigula, multiple, intersecting experiences of vulnerability create a vicious feedback loop in

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which a lack of access to legal information and negative interactions with police undermine trust in the justice sector, which exacerbates vulnerability and alienation for Somali Zigula.

This paper offers general recommendations for the United Nations High Commissioner for Refugees (UNHCR), UNHCR partner governments, donors that support durable solutions and durable solution programming, and host governments, as well as recommendations that are unique to the Somali Zigula case in Tanzania. The recommendations focus on thematic areas that influence justice sector access, including educating former refugees on their new country's laws and the concept of rights; the ways that former refugees' experiences in their country of origin shape their ability to access justice sector institutions and understand laws post-naturalization; the important role police play in creating durable solutions through citizenship programs; the multi-sectoral nature of solutions to problems with former refugees' access to justice; and country-specific recommendations for the Somali Zigula and similar citizenship programs.

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I. INTRODUCTION

Former refugees face unique challenges to accessing justice, for example economic hurdles, language barriers, social marginalization, institutional discrimination, and a lack of access to legal information, among others.¹ In some cases, populations experience multiple, intersecting forms of vulnerability, a concept akin to what is referred to in some fields as “intersectionality”² or “concentrated disadvantage.”³

This report focuses on a case study of Somali Zigula former refugees who received citizenship in Tanzania. The Somali Zigula citizenship process in Tanzania—discussed in Background, below—is an example of a “durable solution” for refugee crises, at the heart of which is a process with relevance for any marginalized group: the realignment of the relationship between individuals and the state via a legal status that allows mobility, work, education, security, and access to health care.⁴ To take another example, a similar program in Tanzania for the 1972 Burundian community has encountered challenges with the citizenship process, knowledge of legal rights and responsibilities, and engagement with formal institutions that mirror the Somali Zigula challenges, only on a greater scale.⁵

Achieving the aims of durable solutions requires the creation of multi-sector protection plans that emphasize the overlap of legal, social, and civic protections for rights to ensure full social participation as citizens.⁶ This includes overlaps covered in this report, such as the need for both basic literacy programs and civic and legal literacy programs, in order to ensure that citizens can be fully engaged in their societies without fear. The Somali Zigula case provides insights into how these dynamics occur on the ground and demonstrates how former refugee status interacts with place-specific dynamics to further marginalize already vulnerable former refugee populations.

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The report's findings suggest that intersecting experiences of vulnerability for former refugee populations shape access to and engagement with the justice sector by creating a vicious feedback loop. In that loop, the relationship of trust with the state is undermined through the state's failure to provide former refugees with education about, as well as access to, the justice sector. The erosion of trust, in turn, shapes that group's perception of the legitimacy of justice sector institutions, rendering the group fearful of engagement with the justice sector in a way that ultimately increases vulnerability and social marginalization. The feedback loop may originate with a mistrust of justice sector institutions from previous experiences of persecution. Consequently, turning this vicious cycle into a virtuous one requires a nuanced understanding of these complex dynamics, reform of formal justice sector institutions, and greater social inclusion for the vulnerable group itself. Based on the author's research methodology and findings, the report concludes with recommendations for justice sector programs designed to promote access to justice for populations whose multiple, intersecting forms of vulnerability render them susceptible to this cycle of marginalization and refugees in particular.

Many of the challenges that the Somali Zigula face in Tanzania are similar to those faced by Tanzanian-born citizens. However, the report demonstrates the effects of these challenges are amplified for Somali Zigula citizens because of their former refugee status and consequent experiences, including persecution, violence, and long-term encampment. The report's findings demonstrate the importance of conceptualizing former refugee status as a form of vulnerability and emphasize that vulnerability is a multifaceted social experience in developing country contexts. In doing so, the report also exemplifies the importance of research methods that incorporate long-term, iterative, direct engagement with such groups, as explained further in Methods, below.

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Background

Somali Zigula refugees were selected for citizenship in Tanzania on the basis of ethnic identity. More than two hundred years ago, Zigula slaves were taken to Somalia from what is now Handeni District in Tanzania. They ultimately escaped and lived as a marooned community in Southern Somalia in villages on the banks of the Juba River.⁷ As an ethnic and linguistic minority group, the former slaves faced harsh discrimination in Somalia, including periodic exclusion from state institutions such as the justice and education systems,⁸ and they became targets of violence. Consequently, the Zigula fled Somalia for Kenyan refugee camps, where they were grouped with other ethnic minority groups by aid workers and given the ethnonym “Somali Bantu.”⁹

Facing violence in refugee camps on the Somalia-Kenya border, Somali Bantu refugees, including the Zigula, were relocated by the United Nations High Commissioner for Refugees (UNHCR) to Kakuma Refugee Camp on the border with South Sudan.¹⁰ Meanwhile, some Somali Zigula refugees fled Kenyan camps for Tanzania, where they made claims to protection on the basis of ethnicity. Others arrived in Tanzania directly by boat. Later, a small group of Somali Zigula were relocated from Kakuma to Tanzania by the UNHCR. In 2002, the Parliament of Tanzania moved to create a mixed refugee local integration and resettlement program for the Somali Zigula refugees.¹¹

Plans for the Somali Zigula citizenship program in Tanzania were made within a broader context of regional instability and concerns about terrorism, frequently attributed to Somali refugees. As al Shabaab grew in influence and size, and attacks in Kenya and Uganda became regular occurrences, Tanzania braced for its own safety with counterterrorism programs. After the Westgate attack—an al Shabaab-linked mass shooting that took place in 2013 inside the Westgate shopping mall, in Nairobi, Kenya—Tanzanian suspicion of Somalis continued to grow.

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Like other refugee citizenship programs in Tanzania, the Somali Zigula citizenship program experienced some documentation processing issues during the citizenship distribution process. Consequently, some Somali Zigula refugees became citizens and had the paperwork to prove it, while others became citizens in process alone, lacking the documents to demonstrate their new status. For the purposes of this report, the Somali Zigula are all considered citizens, as all have been processed for citizenship, and are entitled to the rights associated with Tanzanian citizenship. This report describes some scenarios in which the lack of citizenship documentation plays a complicating role, for instance interactions with police. In analysis of such interactions, only citizens with official citizenship documentation are considered, for the sake of clarity. This focused analysis is noted where it occurs.

Methods

The data set for this paper is composed of 75 semi-structured qualitative interviews conducted in 2017, as well as archival analysis at the UNHCR Geneva archives in 2018, with support from JUSTRAC. Data were translated, transcribed, and analyzed using qualitative software, using an iterative multi-phase analysis approach to identify thematic areas across interviews and to refine thematic models. The interviews conducted in 2017 build on eleven years of longitudinal ethnographic research conducted by the researcher, including primary data from interviews with the Somali Zigula community, officials in Tanzania, and civil society representatives.

This approach yields several important insights that are relevant for practitioners designing or implementing access to justice programs for former refugee populations that experience multiple forms of vulnerability. First, it demonstrates that analysis must be grounded in long-term observation. Different forms of vulnerability, for example police profiling and a lack of familiarity with basic rights, interact in a vicious feedback loop to increasingly distance the population from the formal justice

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sector, a process that is unobservable in a short project cycle. Second, by engaging interviewees repeatedly over time, a researcher is able to build trust and gain deep knowledge of how interviewees perceive their own vulnerability and the factors preventing them from accessing institutions of justice. Third, it incorporates views from a mix of stakeholders who shape the daily experience of the population itself, in this case the Somali Zigula themselves and local police, providing both a “demand-side” and “supply-side” understanding of why the Somali Zigula fail to access the formal justice sector meaningfully.

To buttress the data set that was collected in 2017, the researcher also conducted archival analysis at the UNHCR Geneva archives, accessing country and regional documents on the planning and implementation of the Somali Zigula citizenship program from the perspective of UNHCR and its implementing partners. Data from the UNHCR Geneva archives were coded in Nvivo and analyzed using hybrid coding schema to examine thematic relationships to the interview data. These findings were used to triangulate interview data and to establish background or relevant content material for additional analysis.

II. ACCESS TO LEGAL INFORMATION

Rights & Responsibility under the Law

After naturalization, the Zigula refugees-turned-citizens struggled with what life as citizens looked like and meant. In Somalia, the Zigula were structurally limited from full membership in society. Without a model to draw upon, full social membership in Tanzania—including the rights and responsibilities of citizenship—was difficult to conceptualize. In the literature on citizenship, the knowledge of how to be a citizen after the conferral of documentation is taken for granted. The Somali Zigula struggled with what it meant to be a citizen and what to do after receiving citizenship. In

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Somalia, the Zigula faced discrimination, persecution, and violence before the war. Anthropological research conducted before the war in Somalia emphasizes the Zigula often struggled to access government institutions and to be treated equally before the law; discrimination against the Zigula was often on the basis of race, language, ethnicity, and religious practices, but it manifested as both structural and physical violence.¹² When the war started, the Zigula were amongst the first to be targeted.¹³ Consequently, as a group, the Somali Zigula had no collective experience of full social membership and thus no baseline expectations for citizenship in which to situate their understanding of justice; this issue went unaddressed within the naturalization process, facilitating the vicious cycle of mistrust.

Despite the Somali Zigula history of experiencing discrimination and lacking engagement with the justice sector, there were no civic or justice education components in the settlement and naturalization plan in Tanzania.¹⁴ This lack of planning on the part of the Government of Tanzania and its implementing partner NGO, REDESO, ultimately created long-term confusion about citizens' rights, Tanzanian law, and how citizens should engage the state. The result is that rights discourse, which was prevalent in refugee camps and in Tanzanian development discourse, often shaped expectations. But without the skills or knowledge of how to invoke, find, identify, or demand rights—and fulfill obligations—Somali Zigula citizens became frustrated and confused by the definitions of rights and laws.

In interviews with Somali Zigula citizens, the struggle to differentiate rights and laws emerged as a major theme. New citizens often used a sports metaphor to describe the social vertigo they experienced as they tried to make sense of their new community. As one woman described,

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I'm running around and trying to avoid the eyes of the referee, but I don't even know what to do or what is forbidden or what the goal is. I'm afraid that if I step when I'm supposed to jump, I might get in big trouble - arrested. I just want to know the rules and what to do. I will follow them if I know them.

Citizenship was frequently described as a game where the players did not know what to do or what might be considered a violation of the law, even years after naturalization. In interviews, it became clear that Somali Zigula understandings of laws and rights were often in tension, and those interviewed frequently felt as though government officials were making up the rules as they played the game. As the Somali Zigula sought more information, the rules of the game became less clear, and what to expect, what to demand, and where to learn more about rights and laws became increasingly confusing. Coupled with their pre-war history of persecution and violence by the state, Somali Zigula were often deeply afraid of making mistakes and unclear as to how to resolve their confusion.

This confusion between rights and laws often emerged when the two were in direct contradiction. For instance, Tanzania has compulsory primary education—and education is described as a human right by NGOs and the government—yet, education is not free. While the Tanzanian constitution provides for free primary education,¹⁵ and this was extended through secondary school by the 1995 Education and Training Policy,¹⁶ and the Ministry of Education, Science, and Technology Circular 5 of 2014 aligns the national policy with the Sustainable Development Goals,¹⁷ these changes only address official school costs. While international human rights law may require universal access to education,¹⁸ and Tanzania may describe its model as free and universal, in reality the Tanzanian system allows for required payments such as uniforms, enrollment fees, book fees, testing fees, and building fees, which hinder universal access.¹⁹ Consequently, the former refugees reported confusion about the legal consequences of failing to send their children to school and uncertainty about the validity of school fees. This led some parents to speculate that perhaps education was a right being

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undermined by corrupt teachers. Others thought that there was a law requiring children to attend school, but it only existed for cases in which the police wanted to arrest and remove the poor. The confusion Somali Zigula parents experienced indicates both a lack of clarity about the law and a point of tension within the Tanzanian system.

Somali Zigula families did not lament official charges, but rather the unofficial charges of uniforms and textbooks required for children to even enroll in school. Additional unofficial charges, such as examination fees and building charges, also exist after enrollment. These costs remain the obligation of parents, and there is no mechanism of government support.²⁰ While the costs of uniforms and textbooks were prohibitive for most Somali Zigula families, there are significant legal ramifications for parents whose children are not enrolled: up to six months in prison.²¹ This frustration and confusion is not unique to the Somali Zigula; indeed, many Tanzanian citizens struggle to access education because of the same barriers. However, due to previous experiences with persecution and discrimination by a state, the Somali Zigula were, by comparison, much more fearful of the potential consequences. Analysis of Somali Zigula parents' experiences indicates that arrests for lack of enrollment only occasionally occurred, despite widespread poverty and inability to enroll children in school. Findings suggest, however, that the threat of such arrest—or actual arrest—was often used against parents when they encountered other legal issues. When coupled with a history of violence and persecution by their former state, as well as a general lack of clarity about one's rights and obligations, otherwise banal arrests for failure to enroll children in school were understood by the Somali Zigula as potentially significant threats to community, family, and personal security. Worse, because families could rarely afford legal representation or comprehend the legal process, individuals often found it difficult to differentiate between legitimate arrests and arbitrary or persecutory detention. As has been documented elsewhere, uncertainty about rights and arrests can become an

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expensive burden for the citizens and the state.²² For the Somali Zigula, it was not only expensive and confusing, but often re-traumatizing as arrest, detention, and uncertainty often mirrored experiences of disappearances and torture in Somalia. Consequently, the Somali Zigula faced education access issues that mirrored poor Tanzanians' challenges; however, the fear and uncertainty that it caused within the Somali Zigula community was fundamentally different than what Tanzanian-born citizens experienced. This fear, in turn, made the Somali Zigula more fearful of the state and legal institutions.

While the Tanzanian government and its implementing partners failed to conduct legal rights education programming for new citizens, Somali Zigula citizens who spoke KiSwahili would often seek information by following NGOs that produced rights programming. For instance, one woman who expressed knowledge about education rights in an interview described the process by which she learned this information:

There is an NGO called [redacted] so I went to their offices and I asked, 'Is education a right?' and they told me that it was. I asked how I can send my children to school. And they told me, 'You are required by law to send your children to school!' I was afraid and confused—my children went to school once but the teacher told me I had to pay and I couldn't afford the amount she said, so since then they have been at home with me. I told the NGO this. They said, 'yes, you have to pay for a uniform and books, and things like this.' I told them I couldn't afford that. The woman at the NGO said they think this is wrong but they don't provide money to people to help. Instead they are trying to change policy. I think I am now breaking the law because I cannot afford to send my kids to school.

Many of the Somali Zigula cited NGOs as a reliable source of information about education laws, but many were frustrated by having information without a solution: "I don't understand how rights can be removed by laws."

The confusion or tension between rights and laws also emerged from other NGO education campaigns. A legal NGO, for instance, regularly held public informational sessions and used local

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media to disseminate information about current issues and the rights of vulnerable groups. These information campaigns often had far reach. In interviews and informal discussions, Somali Zigula would cite these campaigns and list groups whose rights were publicly enumerated and advocated for in radio advertisements. Often discussions would circle back around to their own desire to be considered among the groups explicitly listed. “Other people should know that we were refugees and that many of us were tortured or have lived in refugee camps. Yes, we are Somali, but we shouldn’t be discriminated against as terrorists. We need protection, too.” These messages were all clustered by the NGO under the idea of a “right to life [or livelihood]”—or the social requirement for protection—and the former refugees often expressed a doubt about their own ability to survive: “Discrimination for Somalis is bad. I fear that if people find out that I was born in Somalia, I might die. I think there is a law about that, isn’t there? Do I have a right to live, too?”

While these NGOs provided information, they rarely solved the day-to-day issues of access or discrimination that the new citizens faced (described in more detail in Access to Informal and Formal Institutions of Justice), and often created more confusion about the nature of rights. The next section describes the role language played in shaping what information the Somali Zigula had access to and how this impacted their understanding of rights and laws, as well as their interaction with Tanzanian government officials.

Language

NGO and UNHCR research on the Somali Zigula prior to resettlement estimated that only seven percent (7%) of Somali Zigula were literate in *any* language at the time of displacement.²³ Indeed, in interviews, Somali Zigula citizens described language as a major barrier to understanding laws,

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accessing legal (and other social) institutions, and engaging in citizenship. In addition to a lack of literacy (in any language), learning KiSwahili posed significant challenges for the new citizens.

KiZigula is not a written language in Somalia. Consequently, Somali Zigula who only spoke KiZigula are categorized by linguists as “preliterate,” indicating that written language skill development is exceptionally difficult for adults.²⁴ Most preliterate adults will never learn to read and write at a functional level, even after the best literacy interventions.²⁵ This, in turn, impacted Somali Zigula citizens’ ability to learn to read and write in any language and consequently impacted access to legal information and strategies to navigate government institutions. While Somali Zigula citizens were already confused about rights and laws, the community’s widespread inability to read even basic forms, signs, and other communications created particular legal challenges that were often compounded by poverty. While there were some individuals who were literate in KiZigula, Somali, or Arabic before receiving citizenship, very few of them were literate in KiSwahili, and it took time to learn to develop written language skills without instruction or direction. The overwhelming majority who were literate (in any language) were older men who had the opportunity to study in Italian mission or factory schools as youth in Somalia. While these individuals had an easier time learning KiSwahili, their immediate ability to understand KiSwahili or English was limited. The lack of language skills and literacy created significant legal challenges for the Somali Zigula as citizens.

As Somali Zigula citizens struggled to differentiate between rights and laws, they could not turn to books, libraries, or the newspaper. While the section on Rights & Responsibility under the Law, above, describes how some NGOs had rights-education radio programming for those who were fluent in speaking and understanding KiSwahili, the vast majority of rights education materials existed in print format. For instance, many NGOs had regular columns in Tanzania’s numerous newspapers,

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magazines, and blogs. Unfortunately for the Somali Zigula, these formats were often inaccessible because of cost and a lack of literacy, further frustrating individuals who were constantly referred to the newspaper to learn more.

Fortunately, the Somali Zigula citizenship process aligned with a social movement to re-write the Tanzanian constitution. Civil society groups in Dar es Salaam frequently hosted constitution education and reform listening sessions in which citizens could ask questions about the Tanzanian constitution(s) and their rights as citizens. Although the constitution sessions have ended and such civic engagement sessions have slowed, many Somali Zigula recalled these listening sessions as their best source of information about citizen rights, and they were uniformly disappointed when these sessions ended:

Going [to the constitution sessions] and being able to ask questions and hear discussion about rights from people who are experts was very helpful. I learned more attending the constitution events than I have from anywhere else. But I still have more questions and I think of new questions every day. I only wish there was a place where I could go and ask for help like that. Instead, when I go to the NGOs, they tell me to read the newspaper. I am too embarrassed to say that I can't read. I am a grown man. Even [Tanzanian] children can read the newspaper.

In addition to being an issue when learning about rights, literacy became a serious problem when people were arrested or detained and failed to understand the charges against them, either because of language or a lack of disclosure.²⁶ Trying to understand court documents, which were almost always in English, posed a significant challenge, as did the search for a lawyer. One young man tried to hire a lawyer for his brother who was arrested by the police. He did not know what his brother was being arrested for. He started searching for legal representation but struggled to determine what kind of lawyer he needed, as he did not understand the charges. He started visiting offices in town, trying to find someone who would take his brother's case out of pity, as pro bono services in Tanzania

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are exceptionally limited.²⁷ Finally, he found a young lawyer who was willing to help him. The young lawyer sat down with him and read through materials the man had been given. The lawyer asked him if his brother was a citizen. He was. The lawyer wanted to know if he had access to his brother's naturalization documents. He did. The brother was being held for illegal immigration. With the lawyer's help—which largely consisted of reading the documents—the brother was released that afternoon.

Preliteracy and illiteracy also made the Somali Zigula vulnerable to scams. In the citizenship process, the Somali Zigula received land through the naturalization process in a village called Chogo. In Chogo, an elderly couple unknowingly signed away the deed for the land they received as part of the naturalization process. While the couple thought they were confirming that the land was theirs, they were shocked when the resettlement director made a claim on their land and provided the documents that they signed to prove it. They ended up moving in with their children as the director built a house on their former land. Others were conned into extremely low paying jobs when they thought they were signing contracts for a living wage. This became a serious community-wide problem as the former refugees became clear targets of con artists. In nearly all cases, preliteracy interacted with poverty to create instances where the former refugees were taken advantage of and did not know how to seek legal remedies.

In addition to those who were unable to read and write in KiSwahili (or KiZigula) there is also a subset of Somali Zigula citizens who are unable to speak KiSwahili and only speak KiZigula or Somali. This group largely remains in Chogo, where KiZigula is the dominant language, yet everyday interactions—like selling produce at the market, interacting with non-Somali Zigula, and interacting with Somali Zigula children who were born in Tanzania and speak KiSwahili—were fraught with

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misunderstandings and shame. Worse, these individuals were more likely to be arrested for being undocumented than their KiSwahili-speaking peers who could linguistically “hide” through their use of local slang.²⁸ In these instances, Somali Zigula who cannot read or speak KiSwahili began carrying a packet of information, including naturalization documents, identification cards, newspaper clippings about the naturalization process, and notes written by friends in KiSwahili explaining their lack of language skills, to prove their citizenship. While these interventions made little difference—packet carriers reported the same number of police interactions on average as non-packet carriers, although the sample size is extremely small (n=10)—the packet seemed to provide its carrier with a greater sense of security against deportation and refoulement. As one woman described, “The police are still bothersome and maybe I will be arrested and held for a bribe. This way they know they can keep me for the bribe. Just so long as they don’t send me back to Somalia. That would be death.” While the packets did not deter arrest, they did provide a modicum of security.

Scholars refer to the linguistic barriers to immigrant social integration as “linguistic isolation.”²⁹ Linguistic isolation not only hindered Somali Zigula access to justice and made them vulnerable to scams, but it also decreased access to legal information.³⁰ Linguistic isolation is a documented immigrant phenomenon around the world, but the Somali Zigula case in Tanzania illustrates additional challenges for preliterate populations. The Somali Zigula case demonstrates the challenges of accessing legal services and understanding laws and rights while preliterate, as well as the burden it places on adult preliterate communities who are unlikely to learn a written language. Preliteracy amplifies other forms of vulnerability, like perception as an immigrant or vulnerability to police corruption, to further disadvantage those who already face economic or immigration-related challenges.

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However, it should be noted that language, legal service access, and comprehension of laws have long been issues in Tanzania, as there are more than 127 languages spoken within the country.³¹ NGOs have called for the judiciary to make the law accessible, but this request has largely been to interpret the law in KiSwahili first and then translate it into English (instead of the reverse, which is what currently occurs), while others have called for the law to be distributed in all of Tanzania's languages to create more equitable access.³² Yet, while these interventions may help create better access, they will do little to support preliterate and illiterate communities' access to legal information.³³

Marriage

After receiving citizenship through the Chogo naturalization process, Somali Zigula refugees assumed that their new citizenship status was permanent. In the year that followed naturalization, a number of young Zigula couples wed, but the couples in which the bride was a naturalized citizen and the groom was a refugee faced very different outcomes than the couples in which the groom was a naturalized citizen and the bride a refugee. Under Tanzanian law, women cannot confer citizenship to their spouses, while men can and do by default.³⁴ Consequently, many of the Somali Zigula women lost their citizenship status and were returned to refugee status through marriage within Tanzania to refugees registered in Tanzania. While Tanzanian-born women may also face citizenship dilemmas, former refugee women, including Somali Zigula women, were disproportionately affected, because they socialized with greater numbers of refugee men and were more likely to marry refugee men than were Tanzanian-born women.

In cases where children were born before the marriage, the children received citizenship through their mothers and were able to maintain it after the marriage, creating complex mixed-status households of refugee-citizen-refugees and refugee with a citizen child, even though the law requires

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the status of the father be conferred to the child.³⁵ In contrast, Somali Zigula citizen men who married refugee women were able to confer their citizenship status to their new spouses.

Consequently, couples in which the woman was a citizen eschewed formal marriage for traditional Somali Zigula ceremonies. This structural form of inequality was a constant form of frustration within the Somali Zigula community. It created vulnerabilities within mixed-status households. Tanzanian law requires refugees to remain in camps, yet Tanzanian citizens are not allowed to live in camps, forcing couples to choose between living together when the man does not have documentation within a community that is frequently harassed by the police and immigration, or living apart with one spouse in a refugee camp. The result was a constant household fear of separation.

Somali Zigula women, too, expressed disdain for the idea that their citizenship could be undermined by marriage. “In Somalia we were never considered equal citizens and we were excluded from almost everything. Apparently in Tanzania women are not equal citizens. We are excluded from recognition the way men are recognized.” For former refugees, legal status is the most salient evidence of their new belonging, particularly for those who are phenotypically and linguistically assumed to be foreigners. Unlike their Tanzanian compatriots who may experience similar forms of citizenship conundrums because of gender, Somali Zigula refugees had predicated their futures on the idea of Tanzanian citizenship as a solution to refugee status. Somali Zigula women who were re-categorized as refugees because of marriage had already experienced the reality of living as a refugee: failed states, torture, persecution, war, and violence were realities they were fleeing and citizenship was supposed to be the solution. Like citizenship, marriage was supposed to introduce a stable future; instead, the combination of Tanzanian citizenship and marriage resulted in a future reminiscent of the uncertainty and instability of the past.

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III. POLICING

This section details police-Somali Zigula interactions and the dynamics that cause the Somali Zigula population to increasingly fear and mistrust the police. The role that police play in shaping Somali Zigula perceptions of the justice sector is particularly important, as police are typically the first line of engagement that the Somali Zigula population has with the justice sector. As such, many Somali Zigula took signals from the behavior of police to be representative of the justice sector, and even the state writ large. Indeed, in interviews about policing and the justice system, Somali Zigula citizens often conceptually merged the entire justice sector and the police into one entity. Without being able to access courts and instead relying heavily on the mercy of (sometimes corrupt or abusive) police when engaging the justice sector, it is little wonder that conversations about justice often evolved into conversations about relationships with the police or a lack of access to, or knowledge about, legal assistance. As explained in the Introduction, for clarity, this section only considers those Somali Zigula who have citizenship with full paper documentation.

While there are substantial Somali Zigula communities in Dar es Salaam and the original resettlement site of Chogo, both locations have historically emerged as frequent sites of arrest. In Dar es Salaam, the peri-urban neighborhood in which the Somali Zigula live is known as an emergent immigrant area. Immigration officials and police frequently raid the neighborhood looking for undocumented immigrants. The Somali Zigula, however, believe that they have emerged as targets for four reasons. First, in a context of regional concerns linking Somalis to terrorism—and increased anti-terrorism efforts in Tanzania post-Westgate—Somalis have become increasingly sought after. Second, Somali Zigula families with citizenship became known to the government via the citizenship process, allowing the police to find them easily. Third, Somali Zigula refugees often report being targeted by the police because of language, particularly when they speak Somali in public spaces. Language thus

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becomes an easy identifier of their outside status, particularly the Somali language, which is a Cushitic language and sounds unlike any of Tanzania's Bantu and Nilotic languages. Finally, as the Somali Zigula population has historically relied on bribing the police instead of engaging in the justice sector, the police have come to identify them as a reliable source of bribe extraction. Although the Somali Zigula have few financial resources, they often call upon extended family networks abroad in emergencies, such as when detained by police, for financial assistance. Thus, the Somali Zigula have established a feedback loop in which they pay bribes out of a lack of understanding and trust in the legal sector and thus are further sought out for bribes. The Somali Zigula believe that the police justify this ongoing arrest-bribe-release cycle by referencing their Somali origins, and thus their status as a terrorism risk. This, in turn, further alienates the Somali Zigula trust in the police and justice sector.

Many of the Somali Zigula who were arrested reported that they were arrested on immigration charges (or suspected they were arrested on immigration charges when they did not receive official notice), despite being citizens. Asylum Access Project data from 2017 further substantiates these dynamics, emphasizing that the vast majority of immigrants imprisoned in Tanzania were originally detained on immigration violations, and none were provided the opportunity to make asylum claims or provide proof of Tanzanian citizenship or naturalization.³⁶ Of all immigrants detained, only 15% were given written documentation or oral explanation of the charges. No immigrants in the Asylum Access Project data set had access to a lawyer at the time of data collection. Asylum Access Project data triangulates the Zigula claim that they were not given the opportunity to provide documentation of citizenship when arrested on immigration-related offenses (such as working without the proper immigration permit or illegal national entry). However, the data are not disaggregated by nationality, making it difficult to assert claims of discrimination against Somalis, instead of broader procedural issues or discrimination on the perceived status as an immigrant.

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IV. ACCESS TO INFORMAL AND FORMAL INSTITUTIONS OF JUSTICE

Traditional Authority

Tanzania's justice sector recognizes the authority and role of customary and traditional justice systems that are officially embedded within the Tanzanian legal system,³⁷ although debates about their efficacy, accessibility, and definition of justice have long been a source of conflict.³⁸ Facing significant challenges to engaging formal justice sector institutions, many within the Somali Zigula community turned to internal or traditional Somali Zigula community mechanisms for justice when pursuing grievances within the community. Informal mechanisms of justice often failed to serve women and youth adequately. Despite those failings, however, barriers to accessing formal institutions of justice continued to push the Somali Zigula community to rely on informal mechanisms of justice disproportionately.

In interviews, individuals recalled mixed results when seeking justice through informal institutions. The most common form of grievance described within informal channels was conflict within a family or household. Some issues resolved through the traditional channels were minor—a mother-in-law who refused to return a dish to her daughter-in-law after a wedding celebration, for instance—but others dealt with serious matters of violence or disputes over orphaned children. In these cases, families reported turning to internal mechanisms rather than the state, out of fear that husbands might be arrested, children might be taken, or worse, nothing might happen and violence might continue unchecked. Yet, informants described uneven outcomes when working through traditional justice mechanisms like elder councils or advisement. In one case of domestic violence, a woman was beaten by her husband, and the elder overseeing her complaint sentenced her husband to make restitution to his father in law—the wife's father. She complained, "I am the one who was humiliated and bloody. He broke my arm. Why would he apologize to my father?"

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Young people were especially skeptical of traditional processes. For young people, internal and traditional mechanisms of justice were often perceived as injustices, with elders holding decision making power largely against the youth. “In Somalia there was no justice system available to us—these guys were all we had. ...[W]e had no choice but to create our own laws. But life is different now and Tanzania has courts and things and the way young people want to live is different from the way our grandparents lived in Somalia.” Young peoples’ complaints against elders included elders having outdated ideas of gender and family dynamics; elders not understanding the way that life in Tanzania worked for young people; and elders taking out old grudges against particular families through their positions of power.

Sometimes the elders with decision making power were far away. Tanzania was not the only place the Somali Zigula found refuge; large Zigula communities were also established throughout the United States, Canada, and Australia concurrently with the Tanzanian citizenship process. Consequently, community elders sometimes made decisions by phone, far removed from the original issue and ultimate outcome. Youth, however, largely embraced this turn of events and preferred the decisions made by elders far away over those of the elders who lived next door. The decisions of the elders abroad were inflected with legal terms or social concepts from their new locations. For example, one woman filed a grievance against her husband for being too physical in punishing their child. Her complaint was heard by an elder living in the United States who invoked concepts of attachment parenting and strategies for disciplining, rather than punishing, the child (in fact, teaching everyone the English words as he decided the case).

In his conclusion, the elder emphasized the rights of the child and the psychological consequences of child abuse. He worked with both parents to help them understand alternative parenting strategies and to explain to them the concepts he learned in American parenting classes he

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attended at his youngest child's school. Multiple interviewees who recounted this story—some directly involved in the case and others only peripherally—all emphasized the same thing: as long as justice was inaccessible from the state, the Somali Zigula community needed to draw upon all of the resources and knowledge it had collectively around the world in order to ensure the community itself was just, emphasizing that global networks provided opportunities to improve Somali Zigula knowledge and systems of justice.

The prevailing concept of traditional authority in African contexts tends to emphasize traditional authority as a hyper-local phenomenon.³⁹ Yet, former refugee communities often engage in transnational community life through the sending of remittances, including social remittances⁴⁰ like concepts of legal and social justice.⁴¹ Former refugee communities like the Somali Zigula demonstrate alternative approaches to traditional authority or informal justice mechanisms. As some parts of a community are resettled on one continent and others elsewhere, community tools for justice may expand as well. While scholars of migration have emphasized that family dynamics are some of the first aspects of social life to change after migration,⁴² there has been little attention to how traditional systems of justice—which are likely to resolve intra-family disputes—change after migration or how global power dynamics influence local outcomes. Although policy makers, donors, and other stakeholders have long emphasized the importance of transnational communities for economic remittances, there has been little attention paid to social remittances and transnational traditional justice.

While the traditional mechanisms of justice were widely debated, they provided an accessible mechanism of justice that addressed linguistic, economic, and social need—and often after formal mechanisms of justice have failed. However, more research is needed on the role of transnational community use of traditional justice mechanisms, particularly for former refugee communities, as well

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as the generational justice dynamics that grow out of family dispersal. Archival documents suggest that Chogo was designed with traditional justice in mind; that is, traditional justice is the only form of justice that government of Tanzania and UNHCR planners afforded for in early plans.⁴³ However, the plan for traditional justice is far removed from the form that is enacted—not just by those who remain at Chogo, but even for Somali Zigula who reside in Dar es Salaam. By defaulting to the traditional system, planners sought to provide a culturally relevant form of justice. However, by failing to provide mechanisms to access the formal justice sector, planners created a path-dependent outcome whereby informal mechanisms became the only means of justice.⁴⁴

Formal Justice Institutions

Rarely did Somali Zigula citizens seek opportunities to engage formal institutions of justice, often because of an overwhelming lack of knowledge, fear of the justice sector, lack of financial resources, or assumptions formed about the state through abusive police interactions. Instead, the majority of Somali Zigula interaction with formal justice sector institutions occurred defensively, either in response to arrest or in response to legal claims to land or property made by others. In interviews, Somali Zigula respondents clearly asserted that they believed their response to the state and their skepticism of justice sector institutions were a result of widespread targeting and profiling of Somalis by the police, leading to a disproportionate number of Somalis in the court system. Indeed, the Government of Tanzania’s research backs up this claim. In 2008, the Tanzania Ministry of Justice found that, although Somalis are one of the smallest regional immigrant groups living in the country, Somalis represented 49% of all immigrants detained in Tanzania (on non-terrorism related charges) and, although the absolute numbers were not disclosed, a “substantial” number of all terrorism charges.⁴⁵

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In line with the Government of Tanzania and Asylum Access reports, Somali Zigula refugees who were arrested often felt targeted for being Somali and unable to claim their new citizenship status. In one case, a man was arrested while returning to Tanzania from Kenya, where he visited his mother in a refugee camp. The Somali Zigula man was traveling with his new Tanzanian passport, yet he was speaking Somali on the bus with another Somali man. They were both arrested. The Somali Zigula man recalled pleading with the police to look at his passport, when they accused him of making a forgery. He was detained for almost a year before his brother, who was visiting Tanzania from the United States, paid a bribe for his release. The American brother explained his decision-making process:

Oh, I thought about hiring a lawyer, but the cost was very expensive. I got several estimates from different lawyers in town. Then I got a quote from the police and at first it was higher from [sic.] the lawyers. So I told them I would just get a lawyer and they bartered with me until we agreed on a price for his release. He shouldn't have been locked up for this, because he is a citizen, but it is done.

Asylum Access hypothesizes that documented irregular handling of those who have been detained may be indicative of bribes or other widespread forms of corruption.⁴⁶ Among the documented forms of irregular handling is the daily movement of detainees between various forms of holding—local police department holding cells, police vehicles, and multiple prisons or jails on a daily or hourly rotation.⁴⁷ These forms of movement in the pre-trial detention phase were a hallmark of the Somali Zigula stories; individuals often described being moved or transferred multiple times a day before a bribe was paid. Moreover, the vast majority of Somali Zigula cases documented included questions as to whether or why someone with citizenship would be charged with immigration-related crimes. It is little wonder, then, that the Somali Zigula suspect justice institutions as having an anti-Somali bias; despite having citizenship, they continued to be treated as outsiders and were either not

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given an opportunity to demonstrate citizenship or their legitimate claims and citizenship documents were dismissed as forgeries.

Detained for extended periods of time without trial, many Somali Zigula chose to pay bribes for release instead of awaiting trial. Although all had the right to trial, most expressed concern as to whether they would have been able to afford a lawyer if their case had gone to trial. Moreover, many expressed the belief that waiting for a trial would have meant waiting years. The challenges of affording legal representation and waiting a prolonged period for trial are not situations unique to refugees. While the domestic, regional, and international human rights laws provide for the right to a fair hearing to determine charges⁴⁸ and a right to be informed about charges,⁴⁹ a right to be heard,⁵⁰ a right to legal representation, and a right to be tried without delay, Tanzania has struggled to ensure these protections for all of its citizens.⁵¹

For many in Tanzania—not just the Somali Zigula—access to legal representation is a significant challenge. Tanzania faces a significant shortage of lawyers,⁵² and legal aid is a particular challenge in Tanzania, even relative to neighboring countries.⁵³ Although there are a number of innovative programs that are attempting to address legal aid shortcomings in Tanzania, research and programming are ongoing and have yet to develop a scalable model to address national-level need.⁵⁴ However, archival data suggests that post-colonial refugee integration sites faced similar barriers. To address this issue, the government of Tanzania, UNHCR, and Tanganyika Christian Refugee Services partnered to provide monthly legal workshops in the local integration sites. Archival documents suggest that this helped address specific refugee legal needs and lawyers and paralegals regularly conducted refugee rights education programs after the workshops. UNHCR documents suggest that tensions within the local integration sites quickly dissipated once the refugees had a point of contact

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and established a sense of trust and the workshops were held less often—down to once a year—because they were no longer needed.⁵⁵

V. CONCLUSION

As former refugees, the Somali Zigula face unique forms of vulnerability on a community level, which often manifest as individual experiences. Examples include previous experiences living in a failed state; state sponsored discrimination and persecution; recent enslavement; targeted violence and torture; exclusion from all forms of state institutions, including the justice sector; long-term encampment; and the resulting individual outcomes of these macro-forms of exclusion such as poverty, pre-literacy and illiteracy, disability, and trauma, among others. These experiences interact with the socio-ecological context in Tanzania to create a unique form of vulnerability that shapes access to and engagement with the justice sector by creating a vicious feedback loop. In that loop, the relationship of trust with the state is undermined through the state's failure to provide a vulnerable group with education about, as well as access to, the justice sector. The erosion of trust, in turn, shapes that group's perception of the legitimacy of justice sector institutions, rendering the group fearful of engagement with the justice sector and ultimately increasing vulnerability and social marginalization. The feedback loop may begin with a mistrust of justice sector institutions that originates from previous experiences of persecution.

Questions of justice sector access must be understood beyond the justice sector. Many of the justice sector concerns described in this report are issues that emerge from overlapping institutions: justice sector access is deeply shaped by literacy and educational access; police-citizen interactions are connected to social experiences of discrimination; and when the durability of citizenship varies by gender, the promise of a solution to legal limitations of refugee status appear dubious to those who

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can be legally disenfranchised through marriage. Consequently, the non-refugee specific traits like gender, literacy, country of origin, language spoken, and socioeconomic status interact with refugee-specific traits to exponentially shape rights access and the experience of vulnerability. Many of the challenges that the Somali Zigula face in Tanzania are similar to those faced by Tanzanian-born citizens. However, the effects of these challenges are disproportional for Somali Zigula citizens.

VI. RECOMMENDATIONS

Recommendations are divided into two sets. The first is a set of general recommendations for UNHCR, UNHCR partner governments, and donors that support durable solutions and durable solution programming, and host governments. The second set of recommendations is unique to Tanzania and provides targeted changes that would improve the long-term outcomes of Somali Zigula citizens and other refugees-turned-citizens in Tanzania in light of rule of law concerns.

General Recommendations

Rights & Responsibility under the Law

Basic civic engagement requires a working knowledge of rights and laws and how to navigate the government bureaucracies that enact and enable their access.

- UNHCR durable solutions frameworks should include basic civic education for all durable solutions and particularly those that involve citizenship. While not all populations will have the same degree of need, the research required to identify rights within international, regional, and national law is extensive and the enforcement mechanisms (if any) are not always obvious to a lay audience.

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- Host governments should further enhance the civic education UNHCR provides by designating a point person—possibly a centralized ombudsman if community-based contacts are not feasible—preferably with a legal background and fluent in the refugees’ language(s), to help advise refugees of their rights and help them address issues when and if they arise.
- NGOs can further support this process by providing existing “know your rights”-type materials for translation and use in the civic education programs to refugees. When dealing with preliterate or illiterate populations, alternative means of dissemination, like radio programming or outreach support, should be provided. Moreover, citizens should be made aware of existing civic education and civic engagement programming within the host state in order to maximize use of existing programming, when linguistically appropriate.
- UNHCR and the host government should create civic engagement evaluation plans as part of the overall evaluation of the citizenship process. Use of SMART* objectives may facilitate a better understanding of the citizenship process, when applicable, by creating measurable goals within specific time frames. This allows for better tracking of individual and groups outcomes and creates opportunities to trouble-shoot as necessary.
- Host societies benefit from a vibrant civil society; new citizens benefit and are integrated into society through the availability of a vibrant civil society. Host governments should connect refugees with existing civil society organizations within their communities to facilitate civic participation.

*Specific, Measurable, Achievable, Realistic, and Timely

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Language

Engagement with justice sector institutions and civic participation requires basic language skills. While refugee populations may lack the local language skills necessary for full participation, or like the Zigula may be preliterate in any language, it is important that UNHCR and the host government create an educational plan to help new citizens navigate their new country and learn about its laws.

- UNHCR should provide basic education and literacy programs to refugees of all ages. When a country agrees to provide citizenship or durable solutions to a refugee population, UNHCR should recommend or request the country to continue basic education and literacy programs through the citizenship distribution and naturalization process.
- Research suggests that preliterate adults may never become literate. In these cases, the host government should provide case management, peer mentoring, or community supports to preliterate refugees to ensure that they are able to engage with society and have an advocate available to them. Likewise, interpretation—via telephone when appropriate—should be made available at vital social services and legal institutions.

Policing

- UNHCR should partner with the host government to provide training for local police and other civil servants on the durable solution being implemented and its importance.
- UNHCR should educate the police and immigration officials about rights within the context of the specific durable solution being implemented, including citizenship.

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Refugee leaders should attend these trainings and establish relationships with police and immigration officials in order to have known points of contact post-citizenship.

- Refugees should be educated by the local police on their rights and local laws in conjunction with liaisons from the host government and UNHCR, such as police liaisons with communities or community councils in partnership with police. Getting buy-in across stakeholder groups and affirming rights and policing processes will create transparency.

Access to Justice

- When there are known problems with accessing legal representation within a country that UNHCR has identified to host a durable solution, the UNHCR should create a plan with the host government to ensure access to legal representation for new citizens. This plan should be coordinated with linguistic and civic education programming.
- For host countries, regular assessment of immigrant detainment should occur to identify observable trends that indicate bias or mismanagement of new citizens and other immigrant groups.
- Host governments should train immigration officials and police on refugee integration (durable solution) programs for cross-sector buy-in and facilitate needed trainings.
 1. **Address bias** through implicit bias training in order to address society-level xenophobia and stigma regarding refugee status. User Experience Training, which encourages the trainee to learn to see the world through a particular view point via enacted simulation, may help immigration officials

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conceptualize refugee status and the experiences of former refugees in new ways.

2. **Dis-incentivize refugee detainment for payment and release** by incentivizing productive forms of police-refugee interaction. For instance, hire and pay police officers to teach “know your rights” classes to new refugee populations or hire former refugees as police officers to work within immigrant communities. Where police officers speak the language(s) of former refugee communities, those officers should be prioritized as points of contact for those communities.
3. **Refugees should be considered important stakeholders in these processes and should be represented within the committees that facilitate these trainings.** Allowing refugees to establish connections with the police and immigration officials in a safe environment and creating opportunities where refugees are in the position to teach, may help humanize refugees to government officials and may help parties engage on more equal footing.

Recommendations for Somali Zigula and Citizenship Programs in Tanzania

- The Government of Tanzania should establish a citizenship process taskforce to address issues that have arisen from the Somali Zigula and Burundian citizenship processes. Many of the rule of law issues that have arisen for the Somali Zigula have also been documented for Burundian refugees receiving citizenship in Tanzania. Instead of addressing these in siloed or population-

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specific processes, a task force should be developed in order to identify points of weakness across the two citizenship processes to create comprehensive change.

- The Tanzanian government should resolve outstanding documentation issues within the Somali Zigula community to ensure community stability and rights.
- The Tanzanian government should partner with NGOs to develop “know your rights” campaigns for all citizens. Too often these campaigns come from NGOs and are perceived to target government indiscretions, constructing the government as the enemy in the eyes of its citizens. While recent anti-corruption campaigns within the government have captured the media’s attention, they have done little to develop partnerships and mutual support.
 - The government should develop a Somali Zigula version of this campaign while considering linguistic and literacy needs.
- The government of Tanzania should work with the Somali Zigula citizens to identify a source of free legal representation.
- In the Tanzanian case, the government should address clear biases in the justice sector that have already been identified.

Recommendations for Refugee Citizenship Programs in Tanzania Drawing from Archival Evidence

Tanzania has a strong history of hosting refugees and creating innovative models for durable solutions. Tanzania has introduced six different citizenship programs for refugees since Tanganyikan independence in 1961. These citizenship programs have naturalized Rwandan, Ugandan, Congolese, Burundian, South African, Angolan, Somali, and Somali Zigula refugees. Across historical

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documents from all of these citizenship programs, there are common problems that could be easily addressed in future citizenship programs.

- Every program has had difficulty with the distribution of citizenship documents. Future citizenship programs should consider what led to previous challenges when designing future programs. All previous programs share a few challenges, including: the distribution of paper identity documents, long wait times, and a lack of follow-through. Future programs may consider how technological advancements and existing infrastructures (i.e., NIDA) can be used to create uniform and transparent systems while decreasing wait times. Alternately, the 2018 E Passport system may consolidate systems. Future citizenship programs should make use of current national identification card data, technologies, and processes to distribute and document the disbursement of citizenship documents. An organized and consolidated distribution process and site would both expedite the process and increase efficacy.
- Legal and rights-based education has been an issue in all processes as refugees are expected to understand systems without being taught. Early citizenship processes resolved these issues with regular legal clinics. This model may be useful for future citizenship processes.
- Across all previous citizenship processes, local communities have responded in fear of the refugee-citizenship process. *Ujamaa*-era program responses helped alleviate local xenophobia and security concerns by creating programs that were mutually beneficial to former refugees and local citizens. For example, one program used donor money for the citizenship process to build local schools. In return, local citizens volunteered to teach Swahili to adult refugees at night. Local and former refugee children attended the school during the day. The program created opportunities for refugees and locals to get to know each other on a personal level

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while providing a tangible benefit to both parties. Similar efforts may improve local integration efforts in future citizenship programs.

- Historically Tanzania has used refugee citizenship programs to also improve the living conditions of local host communities by investing in infrastructure that benefits both new and old citizens. In these cases, local communities also become invested in the outcomes of the resettlement process and benefit from refugee integration. In *Ujamaa*-era cases, host communities established KiSwahili literacy classes in exchange for new schools and roads paid for by donor countries for the benefit of refugees. Future citizenship programs might use this model to strengthen social integration processes while incentivizing local community involvement.
- Rarely do governments track long-term outcomes of refugee naturalization processes. Donors, governments, and UNHCR gain new insights when research is grounded in communities through tested and long-term relationships that facilitate the collection of highly sensitive information. This data is important for the planning and implementation of future plans and developing new measures for tracking long term integration outcomes.

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ENDNOTES

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¹¹ United Nations Security Council S/RES/897 (1994) “Addis Agreement”

¹² *Supra* note 9.

¹³ *Supra* note 8.

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