

WHO CAN VOTE?

A REPORT BY THE ZIMBABWE ELECTION SUPPORT NETWORK

Aliens permitted to vote?

According to *The Herald* of 7 May 2007, the Minister of Local Government, Public Works and Urban Development announced that local government elections would be held in January next year. Addressing a rally in his constituency, he is alleged to have said that all aliens born in Zimbabwe should register to vote, adding that plans to issue them with identity documents were at an advanced stage. A meeting with the Registrar-General's office "to iron out grey areas" would be held shortly, he said, assuring the aliens among his audience that they would be allowed to vote.

According to a report in the same newspaper on 15 June 2007, the Registrar-General told a press conference that all persons aged 18 and above would be able to register as voters in the current voter registration exercise conducted by his officers. He said:

"The officers would be issuing birth certificates, identity documents as well as voter registration, inspection of the voters' roll, citizenship registration and restoration for those who lost it by default."

The report continued:

"Those who were made 'stateless' by the Citizenship Amendment Act Number 12 of 2003 after they failed to regularise their citizenship status and wishing to restore it, are required to bring their original birth certificates, original identity cards or a passport and, if married, their original marriage certificates."

If they produced these documents, the report implied, these "stateless" persons would be registered as citizens and voters.

Was the Minister correct? Can aliens be allowed to vote in national and local elections?

The law

According to the Constitution, only citizens of Zimbabwe are allowed to vote in parliamentary and presidential elections. Paragraph 3 of Schedule 3 to the Constitution states:

"... [A]ny person who has attained the age of eighteen years and who ... is a citizen of Zimbabwe ... shall be qualified for registration as a voter on the common roll."

And in similar vein, section 115 of the Electoral Act [*Chapter 2:13*], which sets out the qualifications for voters in urban and rural local authorities, provides:

"(1) Subject to this Part, every person who—

- (a) is qualified in terms of paragraph 3 of Schedule 3 to the Constitution for registration as a voter on the common roll; and
- (b) is resident within a council area;

shall be entitled to be enrolled on a voter's roll prepared for the council area."

It is not possible, therefore, for aliens — i.e. non-citizens — to vote in national or local elections in Zimbabwe unless the Constitution or the Electoral Act, or both, are amended. So if the Minister's remarks are taken at face value, he was wrong.

On the other hand, the Minister probably did not mean that all aliens, including Nigerians, Ethiopians, Chinese and others, would be allowed to vote. If the two press reports are read together, it seems that the “aliens” he had in mind were the people who had been deprived of their Zimbabwean citizenship by the Citizenship of Zimbabwe Amendment Act, 2001 (No. 12 of 2001). To determine whether he was correct in stating that these people could be re-registered as citizens and voters, it is necessary to look at the history of their citizenship.

The history: abolition of dual citizenship

At Independence in 1980 the Constitution provided for dual citizenship — that is to say, it permitted persons who at Independence were citizens of both Zimbabwe and another country to retain their dual citizenship.¹ In 1983 the government amended the Constitution so as to remove the guarantee of dual citizenship, and followed this up by amending the Citizenship of Zimbabwe Act (now Chapter 4:01) so as to require dual citizens to surrender their foreign passports and sign a form renouncing their foreign citizenship. The renunciation had no effect in foreign law, but it satisfied the government until 2001, when the Citizenship of Zimbabwe Act was amended again so as to require all dual citizens to renounce their foreign citizenship within six months, failing which they would cease to be Zimbabwean citizens.² This time the renunciation had to be valid in terms of the foreign law concerned.

The initial abolition of dual citizenship was almost certainly aimed at white Zimbabweans, but if so it had serious unintended consequences. Many thousands of Zimbabweans are descended from black workers who entered what is now Zimbabwe from neighbouring countries. These people, whether they knew it or not, were also dual citizens even if they had been born in Zimbabwe, and like whites they were obliged to renounce their foreign citizenship. Very few of them did so when dual citizenship was first abolished in 1983, so the government was faced with the embarrassment of having disenfranchised many of its supporters in rural areas. This led to a hasty constitutional amendment before the 1990 general election, which gave the vote to people who were not citizens but who had been permanent residents since the beginning of 1986.³ The government seems to have forgotten that lesson in 2001 when it amended the law to require renunciation in terms of foreign law, because once again very few descendants of foreign workers from neighbouring countries renounced their foreign citizenship — indeed, very few were in a position to do so. As a result, most of them automatically forfeited their Zimbabwean citizenship on 6 February 2002, when the deadline for renunciation expired. This led to a further amendment of the Citizenship of Zimbabwe Act in 2003, which stated that descendants of migrant workers (namely persons from SADC countries who entered Zimbabwe to work on farms or mines or in domestic service or as labourers) could renounce their foreign citizenship by filling in a prescribed form, thereby

¹ Section 8 of the Lancaster House Constitution.

² See Act 12 of 2001, promulgated on 6 July 2001.

³ See para 3(1)(b) of Schedule 3 to the Constitution, as amended by Act 30 of 1990 (the provision has since been repealed).

“confirming” their Zimbabwean citizenship.⁴ The problem with this amendment is that it was too late: by the time it was promulgated (5 March 2004), all the people who might have benefited from it had already lost their Zimbabwean citizenship. They had nothing left to “confirm”. Their national status therefore remains obscure.

The question remains: can these former citizens, now reduced to the status of aliens, be re-registered as citizens and as voters?

The law on re-registration

The 2003 amendment of the Citizenship of Zimbabwe Act inserted a new section 9A in the Act which, as indicated above, allows descendants of migrant workers to renounce their foreign citizenship and “confirm” their citizenship of Zimbabwe. To do this they must apply to the Registrar⁵ and fill in a prescribed form; if the Registrar is satisfied that the applicant fulfils the conditions prescribed in the new section (i.e. that the applicant is indeed a descendant of a migrant worker) the registrar must issue him or her with “a certificate confirming his status as a citizen of Zimbabwe”.

As stated above, by the time the new section 9A was enacted almost all the people at whom it was aimed — the descendants of migrant workers who held dual citizenship — had already lost their Zimbabwean citizenship because they had failed to renounce their foreign citizenship. So if the word “confirm” is given its dictionary meaning, namely:⁶

1. *trans.* To make firm or more firm, to add strength to, to settle, establish firmly.
2. To make valid by formal authoritative assent (a thing already instituted or ordained); to ratify, sanction.

then those people cannot avail themselves of the procedure under section 9A because, having already lost their Zimbabwean citizenship, there is nothing for them to confirm.

There is a rule of interpretation to the effect that statutory provisions should be interpreted so as render them effective rather than inoperative⁷, and it might be argued that the above interpretation of section 9A renders the section ineffective and so offends against that rule. But the interpretation does not render the section completely ineffective. Although section 9A would not affect people who lost their citizenship in 2002, it would still apply to their children, since children are given a year after they attain the age of 18 within which to renounce their foreign citizenship, and within that year they would be able to take advantage of the section.

On the other hand, it is likely that any court that was called upon to interpret section 9A would do so in the light of its history,⁸ taking into account the consequences of the original abolition of dual citizenship, the re-enfranchisement of farm workers through a constitutional amendment in 1990, and their subsequent disenfranchisement in 2002. In the light of all that, a court would probably conclude that section 9A, however ineptly phrased, was intended to allow the disenfranchised descendants of migrants to regain their Zimbabwean citizenship. “Confirm”, in other words, would be inter

⁴ A new section 9A was inserted into the Citizenship of Zimbabwe Act by Act 12 of 2003.

⁵ *Sic.* Presumably the Registrar-General.

⁶ See the Oxford English Dictionary, 1st edition.

⁷ See Devenish *Interpretation of Statutes* p. 207 ff.

⁸ See Devenish, *op cit* p. 130 ff.

preted to mean “to establish firmly”. On this interpretation the descendants of migrant workers who lost their citizenship in 2002 would be entitled to apply to the Registrar-General under section 9A and have their citizenship of Zimbabwe “confirmed” or restored. They would then be entitled to be registered as voters.

Conclusion

So the answer to the original question is probably yes: the Minister was correct in asserting that persons who were deprived of their citizenship in 2002 could apply for the restoration of their citizenship and for their registration as voters. Their applications for registration as citizens will have to be made in the form prescribed in the Citizenship (Restoration of Zimbabwean Citizenship and Renunciation of Foreign Citizenship) (SADC Citizens) Regulations, 2004 (SI 101A/2004) and submitted to the Registrar-General, but otherwise there is no restriction as to how or when the applications are to be made. And once these people have been registered as citizens, they will be entitled to registration as voters by filling in claim forms and giving them to the Registrar-General’s officers within their constituencies.⁹

The fact that the question of registering aliens as voters should have arisen at all illustrates the chaos into which our electoral system has fallen, a chaos caused mostly by administrative incompetence, but at least insofar as it relates to dual citizenship — by ill-conceived changes to the law brought about by shifting short-sighted policies.

⁹ See section 24 of the Electoral Act [*Chapter 2:13*].