



European  
University  
Institute

ROBERT  
SCHUMAN  
CENTRE FOR  
ADVANCED  
STUDIES



COUNTRY  
REPORT  
2019/01

JANUARY  
2019

# REPORT ON CITIZENSHIP LAW: ZIMBABWE

AUTHORED BY  
BRONWEN MANBY

© Bronwen Manby, 2019

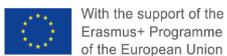
This text may be downloaded only for personal research purposes. Additional reproduction for other purposes, whether in hard copies or electronically, requires the consent of the authors. If cited or quoted, reference should be made to the full name of the author(s), editor(s), the title, the year and the publisher.

Requests should be addressed to [GlobalCit@eui.eu](mailto:GlobalCit@eui.eu).

Views expressed in this publication reflect the opinion of individual authors and not those of the European University Institute.

Global Citizenship Observatory (GLOBALCIT)  
Robert Schuman Centre for Advanced Studies  
in collaboration with  
Edinburgh University Law School

**Report on Citizenship Law: Zimbabwe**  
RSCAS/GLOBALCIT-CR 2019/1  
January 2019



Bronwen Manby , 2019  
Printed in Italy  
European University Institute  
Badia Fiesolana  
I – 50014 San Domenico di Fiesole (FI)

[www.eui.eu/RSCAS/Publications/](http://www.eui.eu/RSCAS/Publications/)  
[cadmus.eui.eu](http://cadmus.eui.eu)

## **Robert Schuman Centre for Advanced Studies**

The Robert Schuman Centre for Advanced Studies, created in 1992 and currently directed by Professor Brigid Laffan, aims to develop inter-disciplinary and comparative research on the major issues facing the process of European integration, European societies and Europe's place in 21<sup>st</sup> century global politics.

The Centre is home to a large post-doctoral programme and hosts major research programmes, projects and data sets, in addition to a range of working groups and *ad hoc* initiatives. The research agenda is organised around a set of core themes and is continuously evolving, reflecting the changing agenda of European integration, the expanding membership of the European Union, developments in Europe's neighbourhood and the wider world.

For more information: <http://eui.eu/rscas>

The EUI and the RSCAS are not responsible for the opinions expressed by the author(s).

## **GLOBALCIT**

GLOBALCIT is the successor of EUDO CITIZENSHIP, which has been the key reference for the study of citizenship and the franchise between 2009 and 2017. With the geographic expansion of the Observatory's scope the new name reflects our worldwide coverage.

GLOBALCIT provides the most comprehensive source of information on the acquisition and loss of citizenship in Europe for policy makers, NGOs and academic researchers. Its website hosts a number of databases on domestic and international legal norms, naturalisation statistics, citizenship and electoral rights indicators, a comprehensive bibliography and glossary, a forum with scholarly debates on current citizenship trends, media news on matters of citizenship policy and various other resources for research and policy-making.

Research for the 2019 GLOBALCIT Reports has been supported by the European University Institute's [Global Governance Programme](#), and the British Academy Research Project CITMODES (co-directed by the EUI and the University of Edinburgh).

The financial support from these projects is gratefully acknowledged.

For more information see: [www.globalcit.eu](http://www.globalcit.eu)

# Report on Citizenship Law

## Zimbabwe

*Bronwen Manby*

### 1. Introduction

Zimbabwe shares the basic organisation of its citizenship law<sup>1</sup> with other former territories of the British Empire. Although, like the other states of what is now the Commonwealth, Zimbabwe has significantly modified its law since it gained majority rule in 1980, the conceptual framework and its administrative application retains the outlines set during the period of British rule. This colonial history also established the principal controversies surrounding citizenship today. In particular, contestation of citizenship has centred on the status and right to vote of those with (actual or potential) dual citizenship, including the descendants of both the white settlers responsible for the expropriation of most of the best land, and of the black workers imported to enable that land to be exploited.

In 2013, a new constitution was adopted after more than a decade of political conflict, at times violent, between the former liberation movement and ruling party, the Zimbabwe African National Union – Patriotic Front (ZANU-PF), and an opposition party formed in 1999, the Movement for Democratic Change (MDC). The 2013 constitution establishes a mainly descent-based framework for citizenship, without discrimination on the basis of sex. The new constitution corrects the absence of a foundling provision that derived from Britain’s 1948 nationality law, and creates the presumption that a child found in Zimbabwe who appears to be less than 15 years old is Zimbabwean. The origin of the law in the British *jus soli* framework as of 1948 is now reflected only in a distinction between the rights of

---

<sup>1</sup> The usage of the terms “nationality” and “citizenship” is complex. They are now synonyms in international law. During the colonial period in Africa, however, “nationality” was a status that recognised the connection to one or other European power, while “citizenship” was applied to those of European descent (and a few others) with higher levels of rights. In British law, the term “British nationality” is still used as an overarching term applied to a person with one of a range of different legal connections to the United Kingdom, including some residual categories dating from the imperial past that do not imply full rights in the UK. Until 1948, those with the highest level of rights in the UK (based on birth in the UK or in one of the “colonies”) were, however, known as “British subjects”; from 1948 they became “citizens of the UK and colonies”; and from 1981 “British citizens”. In this report, the terms are used according to the terminology applicable at the time and place. For further discussion, see Paul Weis, *Nationality and Statelessness in International Law*, 2nd ed. (Leiden: Brill, 1979), chap. 1; Laurie Fransman, Adrian Berry, and Alison Harvey, *Fransman’s British Nationality Law*, 3rd ed. (London: Bloomsbury Professional, 2011).

citizens by birth and citizens by descent (those born outside the country) in relation to dual citizenship—permitted by the constitution for citizens by birth, and left to parliament to decide for citizens by descent or naturalised citizens.

The Citizenship of Zimbabwe Act first adopted in 1984 and last modified in 2003 remained unreplaced by the end of 2018, despite being out of line with the constitution in several respects. However, ZANU-PF’s decision to replace Robert Mugabe as president in late 2017, followed ten months later by the replacement of the registrar-general (both in place since 1980), opened up the possibility for progress in reforming the law and its administration.

This report first sets out the historical background of Zimbabwean citizenship law. The following section outlines the current citizenship regime and the rules by which Zimbabwean citizenship is attributed at birth or acquired after birth, or by which it may be lost or withdrawn; as well as gaps in the laws and procedures which may lead to statelessness. The report then discusses current debates about citizenship in Zimbabwe, including a draft bill to repeal and replace the Citizenship Act, and ends with some concluding remarks summarising the main characteristics of Zimbabwean citizenship law and its contemporary challenges.

## 2. Historical background

Citizenship law in Zimbabwe was highly politicised from the moment the country first gained majority rule in 1980—as perhaps inevitably it would be, given the colonial history of the state, the expropriation of land in favour of the white minority, the exploitation and dehumanisation of the territory’s original inhabitants, and the coerced import of labour from neighbouring countries.<sup>2</sup> The newly democratic state inherited a system of population control and registration with roots in the late 19<sup>th</sup> century, although the first dedicated law regulating citizenship was adopted in 1949.

Administration of what is now Zimbabwe was chartered by the British crown to Cecil Rhodes’ British South Africa Company in 1889. First known as Rhodesia, it became Southern Rhodesia when Northern Rhodesia (now Zambia) was also annexed. In 1923, Southern Rhodesia became a British “colony”, and was granted a large measure of self-government. As a colony, Southern Rhodesia was “within the crown’s dominions”; whereas Northern Rhodesia and most British territories in Africa were “protectorates”, nominally

---

<sup>2</sup> This section draws heavily on Bronwen Manby, *Citizenship in Africa: The Law of Belonging* (Oxford: Hart Publishing, 2018). Among other useful sources on the historical background are: Brian Raftopoulos, ‘The State in Crisis: Authoritarian Nationalism, Selective Citizenship and Distortions of Democracy in Zimbabwe’, in *Zimbabwe’s Unfinished Business: Rethinking Land, State and Nation in Zimbabwe in the Context of Crisis*, ed. Amanda Hammar, Brian Raftopoulos, and Stig Jensen (Harare, Zimbabwe: Weaver, 2003), 217–41; Brian Raftopoulos, ‘Nation, Race and History in Zimbabwe’, in *Making Nations, Creating Strangers: States and Citizenship in Africa*, ed. Sara Dorman, Daniel Hammett, and Paul Nugent (Leiden: Brill, 2007); James Muzondidya, ‘Zimbabwe for Zimbabweans: Invisible Subject Minorities and the Quest for Justice and Reconciliation in Post-Colonial Zimbabwe’, in *Zimbabwe: Injustice and Political Reconciliation*, ed. Brian Raftopoulos and Tyrone Savage (Cape Town, South Africa: Harare: Institute for Justice and Reconciliation; Weaver Press, 2005); Anusa Daimon, ‘Politics of “Othering” and the Struggle for Citizenship in Independent Zimbabwe: Voices from Malawian Descendants’, *Africa Insight* 44, no. 1 (June 2014): 137–50.

foreign territory managed by local government structures established under British protection. Until 1948, the single status of “British subject” was applied to all those born within the crown’s dominions (including the United Kingdom); the term “British protected person” covered the people indigenous to a protectorate. A person born in Southern Rhodesia or any other colony had the same status as one born in Britain in relation to their rights in Britain or to British diplomatic or consular protection. However, “the simple nomenclature ‘British subject’ affords, within the Empire, no clue as to his rights”.<sup>3</sup> The British Nationality and Status of Aliens Act 1914 expressly allowed the colonies to treat “different classes of British subjects” differently—allowing for racial discrimination and land expropriation across the British empire, but in Africa above all.<sup>4</sup> In Southern Rhodesia, the same distinctions between the legal status of citizenship and the rights of different categories of citizens within the territory—between “Europeans” and “natives”—applied as within other settler colonies, as well as distinctions between “natives” and “native foreigner” migrant workers. The Natives Registration Act required men of African descent to carry identity documents (“passes”) indicating their status.

In 1948, Southern Rhodesia became an “independent Commonwealth country”, a new status established by the British Nationality Act of 1948, the first comprehensive statutory regulation of British nationality. The new framework envisaged a set of interlocking citizenships for British territories that had gained self-rule (at that date, mainly the “dominions” created in 1931, including neighbouring South Africa, as well as Canada, Australia, New Zealand, India, Pakistan, and Ceylon). According to this scheme, British subjects in the UK and remaining colonies were renamed “citizens of the UK and colonies”, while the newly independent states enacted their own laws on citizenship; in intention, and initially at least partially in reality, each territory would give greater rights to citizens of other Commonwealth states, on a reciprocal basis, than to other foreigners.

The Southern Rhodesian Citizenship and British Nationality Act of 1949 was adopted in line with the planned scheme for all the independent Commonwealth countries, based on a standard model. It conferred citizenship on a *jus soli* basis to those born in Southern Rhodesia, before or after the act came into force, with the usual exceptions relating to those whose fathers had diplomatic status or were enemy aliens.<sup>5</sup> Those born outside the country of a father who was a citizen “otherwise than by descent” became citizens by descent; that is, citizenship could only transmit for one generation born outside the country. For those born after the act came into force, consular registration of a birth outside Southern Rhodesia was also a requirement.<sup>6</sup>

The white minority government in Southern Rhodesia successfully argued for Britain to create a formal link to the protectorates of Nyasaland (now Malawi) and Northern Rhodesia, overcoming the protests of the African leaders in those territories, to ease the import of labour for white-owned farms and mines. The “Central African Federation” was established in 1953, by which time there were already a quarter of a million migrant workers

---

<sup>3</sup> E. F. W. Gey van Pittius, *Nationality within the British Commonwealth of Nations* (London: PS King & Son, 1930), 163; see also Rieko Karatani, *Defining British Citizenship: Empire, Commonwealth, and Modern Britain* (London; Portland, OR: Frank Cass, 2003); Daniel Gorman, *Imperial Citizenship: Empire and the Question of Belonging*, Studies in Imperialism (Manchester: Manchester University Press, 2006).

<sup>4</sup> British Nationality and Status of Aliens Act 1914, section 26: “Nothing in this Act shall take away or abridge any power vested in, or exercisable by, the Legislature or Government of any British Possession, or affect the operation of any law at present in force which has been passed in exercise of such a power, or prevent any such Legislature or Government from treating differently different classes of British subjects.”

<sup>5</sup> Southern Rhodesia Citizenship and British Nationality Act 1949 (No.13 of 1949), section 6.

<sup>6</sup> *Ibid.*, section 7.

in Southern Rhodesia.<sup>7</sup> The Citizenship of Rhodesia and Nyasaland and British Nationality Act of 1957 governed the citizenship of the new federation; but the migrants from Northern Rhodesia and Nyasaland in Southern Rhodesia did not acquire the merged citizenship, remaining British protected persons, and carrying passes that indicated this status.<sup>8</sup> On the dissolution of the federation in 1963, a new law was adopted, the Citizenship of Southern Rhodesia and British Nationality Act, which provided for continuity of citizenship, and citizenship on a *jus soli* basis going forward, with the standard exceptions.<sup>9</sup>

White Rhodesian resistance to African enfranchisement proved irresolvable within the Commonwealth framework. Southern Rhodesia made its “unilateral declaration of independence” from Britain in November 1965, known as UDI, announcing that it was now the sovereign state of Rhodesia. The citizenship law became significantly more restrictive under the new regime. In 1967, the 1963 act was amended to create a new exception to exclude from citizenship those born in Rhodesia whose fathers were “prohibited immigrants” (in line with the South African law in force at the time).<sup>10</sup> A new Citizenship of Rhodesia Act adopted in 1970 continued this framework, and a 1972 amendment expanded the exceptions to further restrict transmission of citizenship on the basis of birth in the country for those born after the amendment came into force, requiring the father either to be a citizen or “ordinarily resident” in Zimbabwe (or the mother if born out of wedlock).<sup>11</sup>

An end to white minority rule came in 1980 only after a protracted war of liberation, though ultimately negotiated through talks brokered by the British government. A new government was elected on the basis of universal suffrage, headed by Robert Mugabe (first as prime minister and from 1987 as president) as the leader of the dominant liberation movement, ZANU-PF.

The 1979 Constitution of Zimbabwe, negotiated at Lancaster House in London, provided for continuity of citizenship from previous laws. For those born after it entered into force, it kept the restrictions on *jus soli* rights to nationality first enacted in 1967 and 1972. Thus, it limited the transmission of citizenship by birth to children born in the country of a father (or, if out of wedlock, of a mother) who was a citizen or ordinarily resident and legally present in Zimbabwe. Transmission of citizenship to a child born outside the country was limited to one generation, through provisions that stated that only a father (or mother if out of wedlock) who was a citizen “otherwise than by descent” could pass on citizenship to a child also born outside the country.<sup>12</sup> The new bill of rights prohibited discrimination on the basis of “race, tribe, place of origin, political opinions, colour, creed or sex”.<sup>13</sup> Nonetheless, gender discrimination impacted both the attribution of citizenship based on descent and its acquisition through marriage.<sup>14</sup>

<sup>7</sup> Anusa Daimon, ‘ZANU (PF)’s Manipulation of the “Alien” Vote in Zimbabwean Elections: 1980–2013’, *South African Historical Journal* 68, no. 1 (2016): 112–31, <https://doi.org/10.1080/02582473.2015.1118879>.

<sup>8</sup> Citizenship of Rhodesia and Nyasaland and British Nationality Act No.12 of 1957. For discussion see Fransman, Berry, and Harvey, *Fransman’s British Nationality Law*, catalogue entries on Malawi, Zambia, and Zimbabwe.

<sup>9</sup> Citizenship of Southern Rhodesia and British Nationality Act 1963 (No.63 of 1963), sections 4-8.

<sup>10</sup> Citizenship of Rhodesia and British Nationality Amendment Act No.25 of 1967.

<sup>11</sup> Citizenship of Rhodesia Act, No.11 of 1970, as amended by Act No.49 of 1972, section 5(1)(c) and (d) (incorporated into the revised edition of the Statutes of Rhodesia 1974, Cap 23). See generally, *Fransman’s British Nationality Law*, catalogue entry on Zimbabwe, and the history of citizenship law set out in *Piroro v. Registrar General of Citizenship and Others*, Case No.HC 7248/10 [2011] ZWHHC 128.

<sup>12</sup> Citizenship of Rhodesia Act, Cap 23, section 5; Constitution of Zimbabwe 1979, article 5.

<sup>13</sup> Constitution of Zimbabwe, 1979, article 11.

<sup>14</sup> Constitution of Zimbabwe, 1979, article 7(2).

By contrast to the standard model for the independence constitutions in other British territories in Africa, and as a protection for white interests, the constitution initially allowed dual citizenship.<sup>15</sup> Unlike the restrictions on redistribution of land for the first decade of majority rule, this provision had no special constitutional protection. In 1983, the constitution was amended to prohibit dual citizenship.<sup>16</sup>

A new citizenship law was passed in 1984, as required by the constitution, to replace previous legislation and provide for acquisition of citizenship after birth. It established detailed rules for citizenship by registration for women marrying Zimbabwean citizens and for long-term residents (registration was the only term used in the independence constitution and the citizenship act, although naturalisation had been used in previous legislation for the more discretionary procedure applied to long-term residents). It also required that Zimbabwean citizens with entitlement to another citizenship declare by the end of 1985 that they had renounced any other citizenship, or automatically lose their Zimbabwean citizenship.<sup>17</sup> However, there was no requirement to show proof from the other country.

In 1996, the Supreme Court of Zimbabwe ruled in the *Rattigan* case that discrimination in immigration and citizenship rules for spouses violated the constitutional right of Zimbabwean women to freedom of movement.<sup>18</sup> Following a hard-fought campaign by women's rights groups, the government finally introduced a constitutional amendment that removed gender discrimination—but subjected a spouse (wife or husband) to the same requirements to obtain citizenship by registration as any other foreigner.<sup>19</sup> Gender discrimination in the transmission of citizenship to children was removed for those born after the amendment came into effect. However, the previous right to citizenship for the child of a non-citizen father ordinarily resident and legally present in Zimbabwe was not extended to a child of a mother with that status; instead, citizenship based on birth in Zimbabwe was restricted to children of citizens, removing any rights that came from birth in the territory (and with no protection against statelessness even for foundlings). Citizenship by descent was still limited to one generation born outside the country, as it had been since 1979 (and before). From 2001, the Citizenship of Zimbabwe Act was also amended to remove gender discrimination for adopted children.<sup>20</sup>

In September 1999, a new opposition party was formed, the Movement for Democratic Change (MDC). A series of controversial and violence-marred elections during the following decade made disenfranchisement on the grounds of potential dual citizenship a central focus of contention. The Registrar-General's Department—responsible for civil registration, identity documents, citizenship and the voters' roll—began to refuse Zimbabwean citizenship papers to people who had a potential right to another citizenship,

<sup>15</sup> Constitution of Zimbabwe, 1979, article 8.

<sup>16</sup> Constitution of Zimbabwe Amendment Act, No.3 of 1983.

<sup>17</sup> Citizenship of Zimbabwe Act, No.23 of 1984, section 9. Section 4 also required those applying to register as a citizen to renounce another nationality.

<sup>18</sup> *Rattigan and others v. Chief Immigration Officer, Zimbabwe, and others*, 1995 (2) SA 182 (ZS). See also Simon Coldham, 'Case Note: Devagi Rattigan and Others v. Chief Immigration Officer and Others', *Journal of African Law* 38 (1994): 189–90.

<sup>19</sup> Constitution of Zimbabwe Amendment (No.14) Act of 1996; see Welshman Ncube, 'Defending and Protecting Gender Equality and the Family Under a Decidedly Undecided Constitution in Zimbabwe', in *The Changing Family: International Perspectives on the Family and Family Law*, ed. John Eckelaar and Ronald Thandabantu Nhlapo (Oxford: Hart Publishing, 1998); Tandeka C. Nkiwane, 'Gender, Citizenship, and Constitutionalism in Zimbabwe: The Fight Against Amendment 14', *Citizenship Studies* 4, no. 3 (2000): 325–38, <https://doi.org/10.1080/713658795>.

<sup>20</sup> Citizenship of Zimbabwe Act, No.23 of 1984, section 7(5), as amended, inserted by the Children's Protection and Adoption Amendment Act, No. 23 of 2001.

even if they had never sought to claim that right. A number of court cases successfully challenged these provisions; without effect, however, on the general practice.<sup>21</sup> In 2001, the law was amended to require a person with a foreign citizenship to prove renunciation of that citizenship under the relevant foreign law, and not only (as had previously been the case) to complete a simple declaration.<sup>22</sup> A six-month deadline was set, expiring on 6 January 2002. In February 2003, the Supreme Court—which by 2002 had been augmented by judges known to support the government—confirmed the registrar-general’s interpretation that this amendment required a potential claim to a foreign citizenship to be renounced, not only where citizenship documents had in fact been obtained.<sup>23</sup> The High Court, however, continued to issue judgments against the registrar-general on the grounds that individuals had in fact no foreign citizenship to renounce.<sup>24</sup>

The vast majority of persons affected by these developments were farm workers and others with a parent or grandparent born in a neighbouring country. Protests from the region about the impact on the descendants of migrant workers who had never claimed the citizenship of their parents led to some concessions. In 2003 the Citizenship of Zimbabwe Act was amended again to allow people who were born in Zimbabwe, but whose parents came from another country in the Southern Africa Development Community (SADC) as farm labourers, mine workers, domestic employees, or “in any other unskilled occupation”, to apply for “confirmation” of their citizenship of Zimbabwe (which for those born before 1996 had in theory been acquired automatically at birth) and at the same time sign a form renouncing their foreign citizenship (without the need to obtain any documentation from the other SADC country).<sup>25</sup>

Nonetheless, administrative requirements continued to block those with connections to neighbouring countries from gaining recognition of Zimbabwean citizenship; while birth registration remained difficult to access for children born out of wedlock or to parents whose own citizenship was not documented.<sup>26</sup>

Another controversial round of parliamentary and presidential elections were held in March 2008. The MDC’s presidential candidate, Morgan Tsvangirai, was (after weeks of delay) officially reported to have received the largest share of the vote in the first round of the presidential ballot; in the face of widespread violence against MDC supporters, he boycotted

<sup>21</sup> *Carr v. Registrar-General*, 2000 (2) ZLR 433 (S); *Petho v. Minister of Home Affairs, Zimbabwe and Another* [2002] ZWSC 80; *Tsvangirai v. Registrar General and Others* (HC 12092/01) [2002] ZWHHC 29; *Todd v. Registrar General of Citizenship and Another* (HC 55/2002) [2002] ZWHHC 76; *Ricarudo Manyere v. Registrar General* (HH 87/02), 27 February 2002; *Job Sibanda v. Registrar-General of Citizenship and Others* (HH 3626/02); See also Zimbabwe Lawyers for Human Rights, “The Path to Disenfranchisement: 2002 General Elections”, *Pambazuka News*, Issue 58, 21 March 2002.

<sup>22</sup> Citizenship of Zimbabwe Amendment Act No 12 of 2001, section 3(c), amending section 9(7) of the Citizenship of Zimbabwe Act, chapter 4:01; see also General Notice 584 of 2002: Citizenship of Zimbabwe Act [Chapter 4:01]: Renunciation and Proof of Foreign Citizenship: Governing Rules, 22 November 2002. Act No.12 of 2001 also amended Section 13 of the Citizenship of Zimbabwe Act to reduce from seven to five years the period after which citizenship by registration would lapse if a person was absent from the country.

<sup>23</sup> *Registrar General of Citizenship v. Todd* (58/02/01) [2003] ZWSC 4, 27 February 2003.

<sup>24</sup> *Lewis Uriri v. Registrar General of Citizenship and another* (Harare High Court, Case No. 7128/03); *Trevor Ncube v. Registrar-General* (Harare High Court, Case No. 7316/06).

<sup>25</sup> Citizenship of Zimbabwe Amendment Act No. 12 of 2003, introducing section 9A to the Citizenship of Zimbabwe Act.

<sup>26</sup> Zimamoza Institute, ‘Ethnic Cleansing In Zimbabwe: The Origins and Objectives of the Zimamoza Institute’ (Harare, Zimbabwe, 2007); Justice for Children Trust, ‘Birth Registration of Children in Zimbabwe’ (Harare, Zimbabwe, October 2007); Rumbidzai Dube, ‘A Right or a Privilege’ (Harare, Zimbabwe: Research and Advocacy Unit, 2008); Rumbidzai Dube, ‘Identity, Citizenship, and the Registrar General: The Politicking of Identity in Zimbabwe’ (Harare, Zimbabwe: Research and Advocacy Unit, 2012).

the second round in June. Talks mediated by SADC led to the formation of a unity government between ZANU-PF and the MDC on 30 January 2009.<sup>27</sup>

The constitutional amendment allowing for the installation of a government of national unity also revised the citizenship provisions.<sup>28</sup> The amendments extended a right to citizenship to children born in Zimbabwe with one parent or grandparent who is or was a citizen (by birth or descent only), and removed the restriction on transmission of citizenship to children born outside the country.<sup>29</sup> After much argument, the final version of the 2009 constitutional amendments did not generally prohibit dual citizenship, though they permitted parliament to adopt legislation to do so, and in particular to provide for loss of citizenship by descent or registration (only). The Registrar-General's Department continued to apply the former interpretation that dual citizenship was prohibited for all, despite a High Court judgement that the Citizenship Act's provisions requiring a citizen from birth with dual citizenship to renounce the other citizenship were in breach of the amended constitution.<sup>30</sup>

The coalition finally succeeded in agreeing a new constitution, approved by referendum in March 2013.

### 3. The current citizenship regime

The 2013 constitution retained many of the changes on citizenship that had already been made in 2009: in particular, the provisions on citizenship by birth and descent were the same.<sup>31</sup> Children born in the country acquire citizenship if one parent or grandparent is or was a citizen by birth or descent, and transmission of citizenship to children born outside Zimbabwe is not limited to one generation. The constitution did not restore the right to citizenship removed in 1996 for children born in Zimbabwe of a parents who is ordinarily and legally resident; nor was this possibility under debate. All citizens are stated to be "equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and obligations of citizenship".<sup>32</sup>

As of the end of 2018, the government had not introduced legislation to amend the Citizenship of Zimbabwe Act 1984 to reflect the changes made by the 2013 Constitution, though a new law had finally been promised and a draft published (though not introduced to

<sup>27</sup> The MDC had split into two factions by this time; both factions joined the unity government.

<sup>28</sup> Constitution of Zimbabwe Amendment (No.19) Act, 2009. The Citizenship Act (last amended in 2003), however, continued to quote the pre-1996 version of the constitution.

<sup>29</sup> A child born in Zimbabwe was a citizen by birth if either parent was a citizen (of any type), or if any grandparent was a citizen by birth or descent (that is, not if the grandparent was only registered as a citizen). A child born outside Zimbabwe was also a citizen by birth if one of the parents was a citizen (of any type) and "ordinarily resident" in Zimbabwe or working for the state or an international organisation. A child born outside Zimbabwe was a citizen by descent if either parent or any grandparent was at the time of the birth a citizen "by birth or descent" or if either parent was a citizen by registration.

<sup>30</sup> *Piroro v Registrar General* 2011(2) ZLR 26 (H).

<sup>31</sup> Bronwen Manby, 'Draft Zim Constitution Fails Citizenship Test', *OSISA* (blog), 11 October 2012, <http://www.osisa.org/law/blog/draft-zim-constitution-fails-citizenship-test.html>.

<sup>32</sup> Constitution of Zimbabwe Amendment (No.20) Act, No. 1 of 2013, Article 35(2).

parliament).<sup>33</sup> The substantive provisions of the 1984 legislation relate to acquisition of citizenship by registration, dual citizenship, and renunciation, loss and deprivation of citizenship. These remained in conflict with the constitution in several respects. In relation to citizenship by birth and descent, the preamble to the act continued to quote constitutional provisions on citizenship by birth and descent that entered into force in 1980, not even reflecting changes made up to 2003 (the date of the act's last amendment).<sup>34</sup> Although this out-of-date preamble creates confusion and has allowed for controversy over the rules in force, it is of no legal effect; a court would have regard to the new constitution.

Zimbabwe is a party to the Convention on the Rights of the Child and the International Covenant on Civil and Political Rights, as well as to the African Charter on the Rights and Welfare of the Child, all of which contain obligations protecting every child's right to acquire a nationality.<sup>35</sup> Zimbabwe is not, however, a party to the UN Convention on the Reduction of Statelessness nor the Convention relating to the Status of Stateless Persons.

In what follows, the current citizenship regime of Zimbabwe will be outlined with regard to the following central issues: attribution of citizenship at birth; acquisition of citizenship by naturalisation ("by registration"); loss and deprivation of citizenship; and restoration of citizenship. The section ends by highlighting two problematic elements of the current regime: lack of protection against statelessness, and lack of effective birth registration and provision of identity documents.

### 3.1. Attribution of citizenship at birth

The 2013 Constitution confirms the three existing categories of citizenship: by birth, by descent and by registration. It thus appears at first sight to preserve the distinction between citizenship by birth and by descent derived from British law that was established in most Commonwealth countries at the date of independence. In practice, however, the distinction has lost much of its meaning.

According to the constitutional provisions, a child born in Zimbabwe is a "citizen by birth" if either parent is a citizen (of any type), or if any grandparent is a citizen by birth or descent (that is, not if the grandparent was only registered as a citizen).<sup>36</sup> A child born outside Zimbabwe is also a citizen by birth if one of the parents is a citizen (of any type) and "ordinarily resident" in Zimbabwe or working for the Zimbabwean state or for an international organisation.<sup>37</sup>

A child born outside Zimbabwe who does not qualify to be a citizen by birth is a "citizen by descent" if either parent or any grandparent was at the time of the birth a citizen "by birth or descent", or if either parent was a citizen by registration. That is, transmission outside the country is now indefinite, not requiring the parent to be a citizen by birth (the distinction remains relevant, however, for the right to dual citizenship). Nonetheless, for

<sup>33</sup> Draft dated April 2018, posted to Ministry of Justice website 12 June 2018, available at: <http://www.justice.gov.zw/imt/wp-content/uploads/2018/06/Zimbabwean-Citizenship-Bill.pdf>, last accessed 18 December 2018.

<sup>34</sup> Citizenship of Zimbabwe Act, No.23 of 1984, amended by Acts No.7 of 1990, No.12 of 2001, No. 22 of 2001, No. 23 of 2001, No. 1 of 2002, and No. 12 of 2003.

<sup>35</sup> Ratification or accession on the following dates: CRC 11 September 1990; ICCPR 13 May 1991; ACRWC 19 January 1995.

<sup>36</sup> Constitution 2013, article 36(1).

<sup>37</sup> *Ibid.*, article 36(2).

citizenship to be acquired by the child, a birth outside the country must be “registered in Zimbabwe in accordance with the law relating to the registration of births” (a requirement not applied to those born in the country).<sup>38</sup>

### 3.2. Acquisition of citizenship by naturalisation (“by registration”)

In Zimbabwe, the terminology used for the process known as naturalisation in most countries is citizenship by registration. According to the 2013 Constitution, a person “is entitled, on application, to be registered as a Zimbabwean citizen” on the basis of (1) marriage to a Zimbabwean citizen for at least five years; (2) lawful and continuous residence for at least ten years; (3) adoption by a citizen. In each case, parliament is given the authority to provide further conditions.<sup>39</sup>

The Citizenship of Zimbabwe Act does not provide further detail on marriage, continuing to reflect in its substantive provisions the changes made in 1996 that removed any additional rights deriving from marriage (while still quoting now out-of-date discriminatory provisions of the 1979 constitution in the preamble). Although the constitution implies a less discretionary process, the general conditions for registration on the basis of long residence include that the person be “of full age and sound mind” and “of good character and a fit and proper person to be registered as a citizen of Zimbabwe”, as well as renunciation of any other citizenship.<sup>40</sup>

The substantive provisions of the Act also provide that an adopted child shall be considered a citizen by registration once the formal adoption is complete, referring to the (non-discriminatory) provisions on adoption established by the Children’s Act since 2001.<sup>41</sup>

The fees are very high for registration as a citizen for those who are not of Zimbabwean descent: initial registration as a citizen of a foreign person who is applying on the basis of permanent residence is US \$5,000, whether for an adult or a child.<sup>42</sup> There are no published statistics on the number of people who acquire citizenship by registration each year.

### 3.3. Dual citizenship

The 2013 Constitution is silent on the question of dual citizenship for citizens by birth, providing only that parliament may make legislation regarding “the prohibition of dual citizenship in respect of citizens by descent or registration”.<sup>43</sup> Thus, the distinction between citizens by birth and by descent remains meaningful in the context of the provisions on dual citizenship only.

---

<sup>38</sup> Ibid., article 37.

<sup>39</sup> Ibid., article 38.

<sup>40</sup> Citizenship of Zimbabwe Act, Section 4.

<sup>41</sup> Citizenship of Zimbabwe Act, section 7(5), referring to the Children’s Act (No. 22 of 1971 as amended: Part VIIA on foreign adoptions inserted by Act No. 23 of 2001).

<sup>42</sup> Website of the Registrar-General’s office, <http://www.rg.gov.zw/services/citizens>, last accessed 18 December 2018. This is similar to the fees in Tanzania, see Bronwen Manby, ‘Citizenship and Statelessness in the East African Community’ (Geneva: UNHCR, November 2018).

<sup>43</sup> Constitution 2013, Article 42(e).

As of late 2018, the Citizenship of Zimbabwe Act, however, continued to provide for a comprehensive prohibition on dual citizenship for all adults, stating that:

- (1) Subject to this section, no citizen of Zimbabwe who is of full age and sound mind shall be entitled to be a citizen of a foreign country.*
- (2) A citizen of Zimbabwe of full age who, by voluntary act other than marriage, acquires the citizenship of a foreign country shall immediately cease to be a citizen of Zimbabwe.*

Further sub-articles (11 in all) specify greater detail, including the provision introduced in 2001 that:

- (5) A citizen of Zimbabwe who, when he becomes of full age, is also a citizen of a foreign country shall cease to be a citizen of Zimbabwe one year after he attains his majority unless, before the expiry of that period, he has effectively renounced his foreign citizenship in accordance with the law of that foreign country and has made a declaration confirming such renunciation in the form and manner prescribed.<sup>44</sup>*

This section is clearly unconstitutional insofar as it applies to citizens by birth, since the constitution only provides for parliament to legislate in relation to citizens by descent or registration. However, as of late 2018, the government website continued to state that dual citizenship was not permitted for adults.<sup>45</sup>

### 3.4. Loss and deprivation of citizenship

The 2013 Constitution delegates rules on voluntary renunciation of citizenship to parliament. The Citizenship of Zimbabwe Act permits renunciation of citizenship by any adult, although the permission of the minister is required “if the person concerned is a citizen or national of foreign country with which Zimbabwe is engaged in war”.<sup>46</sup> There is a fee of US\$200 for a certificate of renunciation.<sup>47</sup> There is no requirement in the act that the person demonstrate that he or she would not become stateless on renunciation.

The constitution provides for revocation of recognition as a citizen by birth or of citizenship acquired by registration in case of “fraud, false representation or concealment of a material fact”.<sup>48</sup> In addition, citizenship by registration may be revoked if, in a war in which Zimbabwe is engaged, the person has supported the enemy in various ways.<sup>49</sup>

Citizenship by birth may also be revoked in case of a child of unknown parents presumed to be a citizen, if “the person's nationality or parentage becomes known, and reveals that the person was a citizen of another country.”<sup>50</sup>

---

<sup>44</sup> Citizenship of Zimbabwe Act, section 9, as amended Act No. 12 of 2001.

<sup>45</sup> “No adult citizen of Zimbabwe shall be entitled to be a citizen of foreign country. However, minors are allowed to enjoy dual citizenship until they turn 18 but before the 19th birthday they have to make a choice as to their preference of citizenship.” Explanation at: <http://www.zim.gov.zw/Immigration-visas/zimbabwean-citizenship>, last accessed 18 December 2018.

<sup>46</sup> Citizenship of Zimbabwe Act, section 10.

<sup>47</sup> Website of the Registrar-General’s office, <http://www.rg.gov.zw/services/citizens>, last accessed 18 December 2018.

<sup>48</sup> Constitution 2013, article 39(1)(a) and (2)(a).

<sup>49</sup> Ibid., article 39(1)(b).

<sup>50</sup> Ibid., article 39(2)(b).

There is an explicit prohibition on revocation of citizenship if the person would be rendered stateless,<sup>51</sup> and it is stated that citizenship is not lost through marriage or the dissolution of marriage.<sup>52</sup>

Once again, however, the Citizenship of Zimbabwe Act does not conform with these requirements. While it contains no provisions on revocation of citizenship by birth, it states that the Minister may revoke citizenship by registration if he “is satisfied” not only that it had been acquired by fraud or that the person had assisted an enemy during war; but also, among other things, that “the person has shown himself to be disloyal or disaffected towards Zimbabwe or has acted in a manner prejudicial or likely to be prejudicial to public safety or public order”, or had been convicted of an offence and sentenced to imprisonment for one year or more.<sup>53</sup> Protection against statelessness does not apply “if it is not conducive to the public good that the person should continue to be a citizen of Zimbabwe”.<sup>54</sup> Children may be included within the deprivation order.<sup>55</sup>

The Citizenship Act also provides for automatic loss of citizenship if a citizen by registration is resident outside Zimbabwe for more than five years.<sup>56</sup>

### 3.5. Restoration of citizenship

The 2013 Constitution included a provision aimed at the possible restoration of citizenship to those with a parent who was a citizen of a neighbouring country. A person born in Zimbabwe before the constitution came into force of one parent who was a SADC citizen is recognised as a citizen by birth; though only if that person was “ordinarily resident in Zimbabwe” when the constitution came into effect (thus excluding many of those who had left the country as a result of being denied citizenship, or in order to seek work elsewhere).<sup>57</sup>

The Citizenship of Zimbabwe Act continued to provide for restoration only in case of a person who has lost citizenship on acquisition of another or (in case of a registered citizen) through five years’ absence from Zimbabwe.<sup>58</sup> The amendments to the Citizenship of Zimbabwe Act adopted in 2003 remain in force, permitting “confirmation” of Zimbabwean citizenship in some circumstances for descendants of migrants from SADC countries.<sup>59</sup>

Restoration of citizenship costs only US\$10 for citizens by descent (that is, for those who were not born citizens because they were the second generation born abroad) and for descendants of SADC citizens, but US\$5,000 for others (including those who voluntarily acquired another citizenship).<sup>60</sup>

There are no published statistics on how many people have been able to recover their Zimbabwean citizenship since the 2013 Constitution entered into force and permitted dual citizenship for citizens by birth.

---

<sup>51</sup> Ibid., article 39(3).

<sup>52</sup> Ibid., article 40.

<sup>53</sup> Citizenship of Zimbabwe Act, section 11(2).

<sup>54</sup> Ibid., section 11(3).

<sup>55</sup> Ibid., section 12.

<sup>56</sup> Ibid., section 13.

<sup>57</sup> Constitution 2013, article 43(2).

<sup>58</sup> Citizenship of Zimbabwe Act, section 14.

<sup>59</sup> Citizenship of Zimbabwe Act, section 9A. See discussion in section on historical background.

<sup>60</sup> Website of the Registrar-General’s office, <http://www.rg.gov.zw/services/citizens>, last accessed 18 December 2018.

### 3.6. Lack of protection against statelessness

For the first time, the 2013 Constitution introduced a protection against statelessness for children of unknown parents, with a generous upper age limit: a child found abandoned in Zimbabwe who “is, or appears to be, less than fifteen years of age, and whose nationality and parents are not known”, is presumed to be a Zimbabwean citizen by birth.<sup>61</sup>

The constitution did not, however, introduce a protection in line with Zimbabwe’s obligations as a party to the African Charter on the Rights and Welfare of the Child to guarantee that “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 its laws”.<sup>62</sup>

### 3.7. The right to identity documents and birth registration

Reflecting long-term concern about the management of the Registrar-General’s Department, the constitution provides that “all Zimbabwean citizens” have the right to passports and other travel documents, birth certificates and other identity documents.<sup>63</sup> The right to a birth certificate is also extended to all children born in Zimbabwe, and to children born outside Zimbabwe who are citizens by descent.<sup>64</sup> However, while the Births and Deaths Registration Act of 1986 makes registration of the births of all children in the country compulsory, it provides no right to registration for the child, and continues to discriminate on the basis of the sex of the parent and birth in or out of wedlock.<sup>65</sup>

Birth registration and a birth certificate are free for those born in Zimbabwe to parents who are citizens. However, if neither parent is a citizen (or does not have documents to prove it) a birth certificate for a child born in Zimbabwe costs US\$25. Parents of children born outside the country who seek to register the birth with the Zimbabwean consular authorities must pay US\$50 for a birth certificate (issued by the Registrar-General’s Department in Harare). As of late 2018, the webpage of the Registrar-General’s Department still made no provision for consular registration of the children of citizens by descent—although the restriction on transmission of citizenship to those born outside Zimbabwe had been removed since 2009. Both parents were required to produce Zimbabwean passports and their Zimbabwean identity cards.<sup>66</sup>

These discriminatory provisions and high costs leave some at risk of failing to gain recognition not only of Zimbabwean citizenship to which they are entitled, but also of citizenship of a country of “origin”—since birth registration is also critical proof of the

<sup>61</sup> Constitution 2013, article 36(3).

<sup>62</sup> African Charter on the Rights and Welfare of the Child, article 6(4).

<sup>63</sup> Constitution 2013, article 35(3).

<sup>64</sup> *Ibid.*, article 81(1)(c)

<sup>65</sup> Births and Deaths Registration Act No.11 of 1986, as amended by Acts 7/1994, 6/2000, 22/2001, and 6/2005.

<sup>66</sup> Fees and requirements posted at <http://www.rg.gov.zw/services/birth>, last accessed 20 December 2018; see also Dube, ‘A Right or a Privilege’. On 19 December 2018, however, the (new) registrar general announced that the fees would be reduced. “RG relaxes birth certificates issuance to Diasporans”, *The Herald* (Harare), 20 December 2018.

identity of a child's parents from whom a different citizenship could be derived. Thus, failures in the civil registration system also create a risk of statelessness.

## 4. Current debates

The amendment of the constitution to form a government of national unity in 2009, and the adoption of a new constitution in 2013, should in principle have ended legal argument in Zimbabwe over the right of citizens by birth to dual citizenship. The question remained live, however, as those with potential or recognised citizenship elsewhere continued to face difficulties in obtaining Zimbabwean documents. These difficulties thus carried over to the rights of the same people to vote, as the composition of the voters' roll continued to be highly contested for elections held under the new constitution in 2013 and in 2018.

The political context in Zimbabwe changed dramatically in late 2017, with the defenestration of President Mugabe (aged 93) in a quasi-coup internal to ZANU-PF, and his replacement by Emerson Mnangagwa. President Mnangagwa, who went on to win the 2018 presidential elections, was a long time ZANU-PF stalwart and veteran of the liberation war: many doubted whether the removal of President Mugabe would make much difference to government habits in practice. In September 2018, Registrar-General Tobaiwa Mudede, a close ally of the former president and in office since 1980, was himself retired (at the age of 74), and replaced by Clement Masango, previously principal director of the Immigration Department. The parliamentary discussion over the much-delayed new citizenship law was likely to reopen controversies that were not settled by the new constitutional provisions.

### 4.1. Dual citizenship

With the adoption of the 2013 Constitution, and its confirmation of the 2009 amendments that permitted dual citizenship for citizens by birth, more people began to apply for restoration of Zimbabwean citizenship. However, in many cases the Registrar-General's Department continued to deny passports to those who had acquired another citizenship.<sup>67</sup>

Court applications challenged this refusal: in June 2013, the Constitutional Court ruled that Mutumwa Mawere, one of Zimbabwe's richest businessmen, who had obtained South African citizenship, was entitled to be reinstated with Zimbabwean citizenship and a passport without renouncing his other nationality.<sup>68</sup> A few months later, the Supreme Court confirmed that Topper Whitehead, an election expert who had been born in Zimbabwe of parents with Zimbabwean citizenship, but who had later been declared a non-citizen and prohibited immigrant, was a citizen by birth.<sup>69</sup> In 2014, the Constitutional Court confirmed

<sup>67</sup> Alex Bell, "Zim Citizenship Rules in Chaos As Nationals Denied Documentation", SW Radio Africa (London), 22 October 2013; Daimon, 'ZANU (PF)'s Manipulation of the "Alien" Vote'.

<sup>68</sup> *Mawere v. Registrar General & Others*, Constitutional Court of Zimbabwe (CCZ 27/13) [2015] ZWCC 04 (judgment of 26 June 2013); see also Violet Gonda, "Mawere wins landmark dual citizenship case", SW Radio Africa (London), 27 June 2013.

<sup>69</sup> *Whitehead v Registrar General of Citizenship & Others*, Supreme Court of Zimbabwe (SC 308/12) [2015] ZWSC 21 (judgment of 13 September 2013).

the right of a Zimbabwean who had also held South African nationality since birth to be recognised as a citizen by birth and reside in Zimbabwe without a residence permit.<sup>70</sup> But, with the existing Citizenship Act still in force, the Registrar-General's Department was still left significant latitude to apply the old rules to those seeking identity documents, unless specifically ordered otherwise.<sup>71</sup> Many other cases made their way to court.<sup>72</sup>

Faced with the demand for Zimbabwean citizenship from those in the diaspora, Minister of Home Affairs Ignatius Chombo and Registrar-General Mudede were reported to support amendments to the 2013 Constitution to restrict the right to dual citizenship.<sup>73</sup> In September 2018, after Mudede was finally retired, President Mnangagwa committed to amending the act to bring it into line with the constitution.<sup>74</sup> Opinion polling by Afrobarometer just before the new constitution came into effect, however, indicated that 70 percent of Zimbabweans agreed with the former registrar-general's view that dual citizenship should not be permitted in any circumstances.<sup>75</sup>

## 4.2. Zimbabwe Citizenship Bill

In June 2018, a draft bill to replace the Citizenship of Zimbabwe Act was finally posted to the Ministry of Justice website.<sup>76</sup> It had not been introduced to parliament by the end of 2018. The draft Zimbabwe Citizenship Bill would establish a Citizenship and Immigration Board, taking the grant and revocation of citizenship by registration out of the sole control of the registrar-general—but still leaving decisions in the hands of a three-person committee appointed by the president (made up of persons qualified to be judges of the Supreme Court or High Court).<sup>77</sup>

Citizenship by registration would be generally brought into line with the constitutional provisions, but the draft bill continued to leave a very large amount of discretion in the hands of the executive. The proposed text maintained previous requirements that a person applying to register as a citizen on the basis of long residence or marriage

<sup>70</sup> *Madzimbamuto v Registrar General & Others*, Constitutional Court of Zimbabwe (CCZ 114/13) [2014] ZWCC 5 (judgment of 4 June 2014); “Constitutional Court endorses dual citizenship”, ZBC, 25 June 2014.

<sup>71</sup> Mthulisi Mathuthu, “Confusion on Zimbabwe dual citizenship continues”, Bulawayo24.com, 8 July 2014; “Citizenship Act Needs Realignment”, *The Herald*, 25 July 2014; Mthulisi Mathuthu, “Government Delays Realignment of Laws”, SW Radio Africa (London), 29 July 2014.

<sup>72</sup> “Mudede dragged to court over passport”, *The Herald* (Zimbabwe), 18 May 2015; Tendai Kamhungira, “Dual Citizenship: Mudede sued”, *Daily News* (Harare), 24 June 2017; Charles Laiton, “Mudede sued over citizenship”, *NewsDay* (Harare), 28 June 2017; Hazel Ndebele, “Mudede sued over dual citizenship”, *Zimbabwe Independent*, 16 February 2018; Mashudu Netsianda, “Woman sues Tobaiwa Mudede”, *The Chronicle* (Bulawayo), 3 May 2018.

<sup>73</sup> Zvamaida Murwira, “Scramble for Zim citizenship, Enquiries flood from all over the world, RG's office overwhelmed”, *The Herald*, 23 July 2014; Nqobile Tshili, “Minister Proposes Changes in Citizenship Clause”, *The Chronicle* (Bulawayo), 18 November 2016; “Zimbabwe government to amend constitution, abolish dual citizenship”, Xinhua, 12 May 2017.

<sup>74</sup> “FULL TEXT: Mnangagwa's state of Zimbabwe address”, *News Day* (Harare), 19 September 2018.

<sup>75</sup> Eldred V. Masunungure and Heather Koga, ‘Zimbabweans’ (Mostly) Tolerant Views on Citizenship’, Briefing Paper (Cape Town: Afrobarometer, March 2013); Afrobarometer, ‘Online Data Analysis Tool, Round 5’, 2013, <http://afrobarometer.org/online-data-analysis/analyse-online>.

<sup>76</sup> Zimbabwe Citizenship Bill 2018, labelled 3<sup>rd</sup> Draft, April 2018, available at: <http://www.justice.gov.zw/imt/wp-content/uploads/2018/06/Zimbabwean-Citizenship-Bill.pdf> (last accessed 18 December 2018).

<sup>77</sup> *Ibid.*, sections 3 – 4. A similar citizenship board is in place in some other southern African Commonwealth countries, such as Swaziland and Zambia.

demonstrate that he or she is “of good character and is a fit and proper person to be registered as a citizen of Zimbabwe”, and added conditions including the possibility of a citizenship test.<sup>78</sup> An adopted child would become a citizen automatically through the adoption order.<sup>79</sup> The draft bill provided for an inquiry in case of an abandoned child, and “in the event that the Board is unable to establish the nationality or parentage of the child, the Minister shall direct the Registrar-General to register the child as a Zimbabwean citizen by birth”.<sup>80</sup>

An applicant for citizenship by registration would be required to renounce any other citizenship, continuing the prohibition permitted by the 2013 Constitution; the draft did not, however, restrict dual citizenship for citizens by descent, despite the constitutional permission to do so.<sup>81</sup> Section 15 of the draft bill provided for a Zimbabwean citizen by birth who has renounced citizenship, as a precondition to acquiring or retaining the citizenship of another country, “to automatically resume Zimbabwean citizenship”. It was not clear what an entitlement “to automatically resume Zimbabwean citizenship” would mean in practice. The bill included no provision specifically applying to those who had held dual citizenship as a child and had not renounced the other citizenship as required in order to retain Zimbabwean citizenship.

While the draft bill provided that citizenship by birth or registration could be revoked on grounds of fraud, and citizenship by registration if the person has “unlawfully traded or communicated with an enemy”, citizenship “shall not be revoked if a person will be rendered stateless.”<sup>82</sup> However, it stated that citizenship of a foreign country could be presumed based on an interpretation of the law of that country, whether or not the person had documents to show it.<sup>83</sup>

### 4.3. Voter registration

The 2013 Constitution entered into force on 22 May 2013. Parliamentary and presidential elections were held on 31 July 2013, as well as for provincial and local councils. In its transitional articles the new constitution left the primary responsibility for the voters’ register to the Registrar-General’s Department for this first election, though under the supervision of the Zimbabwe Electoral Commission (ZEC), before transferring the electoral roll fully to the ZEC for subsequent votes.<sup>84</sup> The voter registration process was heavily criticised. A report from the Research and Advocacy Unit in Harare found that a million people were listed who were either dead or had left the country as well as 116,000 people over the age of 100, and 78 constituencies had more registered voters than adult residents. Meanwhile, less than 10 percent of the estimated number of eligible voters under 30 (more likely to support the opposition) appeared on the roll, leaving close to two million unregistered in that age bracket.<sup>85</sup>

---

<sup>78</sup> Ibid., section 6.

<sup>79</sup> Ibid., section 9(5).

<sup>80</sup> Ibid., section 11.

<sup>81</sup> Ibid., section 26

<sup>82</sup> Ibid., section 13(2).

<sup>83</sup> Ibid., section 21(5).

<sup>84</sup> Constitution 2013, Sixth Schedule: Commencement of this Constitution, Transitional Provisions and Savings (Sections 329 and 332). Until 2005, elections were fully under the control of the Registrar-General. The ZEC was first created in 2004, under pressure from SADC, but remained dependent on the Registrar-General and had little impact on either the 2004 or 2008 elections.

<sup>85</sup> *Key Statistics from the June 2013 Voters’ Roll*, Research & Advocacy Unit (RAU), Harare, 5 July 2013

Among the key points of contention was the ability to vote of those people entitled to Zimbabwean citizenship in law but who had been issued national identity cards marked “alien”: largely those descended from migrant workers, who had theoretical entitlement to another citizenship through one of their parents. Many were turned away from registration and told that they had to formalise their citizenship, according to the constitutional procedures for those originating from SADC countries, before being allowed to register; the Registrar-General’s Department continued to charge a fee for this procedure, despite announcements to the contrary.<sup>86</sup>

The same issues arose during voter registration in advance of July 2018 elections, even though the ZEC was now fully responsible for the voters’ roll: confirmation of citizenship still had to be completed by the Registrar-General’s Department, since the ZEC itself had no authority to do so.<sup>87</sup> On 29 November 2017, just days after President Mugabe had been dramatically removed from office, the High Court in Harare issued an order that those carrying “alien” identity cards who had connections to another southern African country should be able to register to vote without further confirmation of citizenship and in line with the constitutional provisions, on production to the ZEC of a birth certificate showing birth in Zimbabwe.<sup>88</sup> The Zimbabwe Election Support Network, a coalition of civil society organisations, reported that despite the ruling of the High Court, some of those holding “alien” identity cards still faced difficulties in registering to vote.<sup>89</sup> While these potential voters were excluded, a team of volunteer researchers who combed the register found systematic manipulation of identity numbers to create ghost entries in the voters’ roll.<sup>90</sup>

President Mnangagwa, sworn in as president after the unseating of President Mugabe, was confirmed in office, with just over 50 percent of the vote on the first round, avoiding a run-off election.<sup>91</sup>

#### 4.4. Civil registration and gender equality

The Births and Deaths Registration Act of 1986 had not, by the end of 2018, been amended to reflect the commitment of the 2013 Constitution to gender equality and the right to birth registration for all children.<sup>92</sup> The formal provisions and their application by the Registrar-General’s Department continued to create obstacles to registration of births and recognition of citizenship.

<sup>86</sup> Zimbabwe Election Support Network, *Report on the 31 July 2013 Harmonised Elections*, 2013; see also Zimbabwe Peace Project, “BVR Diaries: Issue of regularising citizenship clarified”, *Bulawayo24*, 19 November 2017.

<sup>87</sup> “Election Watch 7-2017 — ZEC Press Statement on Voter Registration for Zimbabwean Citizens whose National IDs are Marked “ALIEN””, Veritas Zimbabwe, 4 August 2017; *The Legal Monitor* (special edition on citizenship), Zimbabwe Lawyers for Human Rights, 30 November 2017.

<sup>88</sup> *MDC-T, MDC-N and Kachingwe v ZEC, Registrar-General, Minister of Home Affairs & ZANU-PF*, (HH 5-18, HC 10623/17) [2018] ZWHHC 5 (29 November 2017).

<sup>89</sup> *Biometric Voter Registration Observation Report*, Zimbabwe Election Support Network, June 2018.

<sup>90</sup> *Zimbabwe 2018 Elections: Biometric Voters’ Roll Analysis*, Team Pachedu, 16 July 2018; *Resurrection, Transmigration, Reincarnation and the Afterlife: The case of the Zimbabwean Electoral System*, Team Pachedu, 19 July 2018.

<sup>91</sup> Compilation of results based on ZEC reports, at <http://kubatana.net/2018/08/03/zimbabwe-2018-harmonised-election-results-national-assembly/> (also available, but in less easily accessible form, at: [https://zec.org.zw/pages/election\\_results2018](https://zec.org.zw/pages/election_results2018)).

<sup>92</sup> Births and Deaths Registration Act, No.11 of 1986, as amended 2005.

A challenge to the Births and Deaths Registration Act by a mother unable to obtain a birth certificate and passport for her child failed in 2016, when the High Court found that these provisions were reasonable<sup>93</sup>; a further challenge was launched in 2018, on behalf of a father denied the right to register a birth.<sup>94</sup>

## 5. Conclusions

The trajectory of Zimbabwe’s citizenship law since 1980 exemplifies the long shadow that is cast across the African continent by colonial legal models and colonial practices of discrimination and expropriation. Fourteen years of highly contested—and flawed—elections following the creation of a new opposition party in 1999 led finally to the adoption of a new constitution in 2013 that reframed both the political system and the citizenship regime. The new citizenship framework partially addressed the controversies that had dogged citizenship law since majority rule was attained in 1980, but also reflected compromises inherent in the nature of the political settlement that enabled the 1979 constitution to be adopted.

The liberation movement and ruling party, ZANU-PF, continued to hold office through two elections held in 2013 and 2018 in which the right to citizenship and right to vote of those with a potential or perceived right to another citizenship remained among the main issues in contention. Although an internal power-shift within ZANU-PF in late 2017 and 2018—leading to the removal from office of both President Robert Mugabe and Registrar-General Tobaiwa Mudede—held out the possibility of further change in the citizenship regime, the basic dynamics of its implementation were not likely to alter significantly. Not only the final adoption of a new Citizenship of Zimbabwe Act and the replacement of the Births and Deaths Registration Act, but also a root-and-branch reform of procedures at the Registrar-General’s Department would be needed to make access to citizenship and identity documents a more accessible, predictable and rights-based process.

Important questions still remained about the modalities for implementation of the attribution of citizenship to children of unknown parents, as well as the possibility of acceptance of other forms of documentation as evidence of Zimbabwean citizenship for those whose births had not been registered. Even with a depoliticization of citizenship administration, there would remain a lack of legal protections for those born in Zimbabwe who had no right to Zimbabwean citizenship under the current law but no plausible connection to any other country. The removal of rights based on birth in Zimbabwe for those born after 1996 was likely to become more visible, as those born after this date reached adulthood and applied for national identity cards. The very high cost of registration as a citizen meant that this route to citizenship for those without parents who hold documented Zimbabwean citizenship would also be blocked for most.

---

<sup>93</sup> *Paunganwa v Registrar of Births & Deaths & Another* (HH 406-16 HC 9462/10) [2016] ZWHHC 406 (07 July 2016).

<sup>94</sup> Daniel Nemukuyu, “Mudede Birth Row Spills Into High Court”, *The Herald* (Harare), 5 April 2018.

COUNTRY  
REPORT  
2019/01

