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REPORT ON CITIZENSHIP LAW: ZAMBIA

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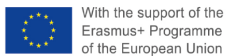
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Report on Citizenship Law Zambia

Kelly Kapianga (LCK Chambers)

1. Introduction

Defining what ‘citizenship is’ is a difficult task. This is because although there tends to be continuities, the markers of citizenship are often geographically bounded and vary from country to country. Often, it is easier to say how citizenship can be identified. In this regard, citizenship can be defined as the status under a legal system which grants an individual the greatest set of rights to political, civic, social and cultural participation in that country.¹ In Zambia, some of the unique entitlements it grants an individual include the right to vote, be elected President, appointed Speaker of the National Assembly, to institute a court action to protect the constitution. The concept of citizenship and its trappings in Zambia are, however, a borrowed concept and not a purely Zambian creation. Therefore, to understand citizenship, a consideration of Zambia’s history and the various iterations of the concept of citizenship over time is in order.

Therefore, this report is divided into two parts. The first discusses the historical development of citizenship in Zambia. It will examine the ways in which various constitutions particularly between 1964 and 1996, and related laws have conceived of citizenship, how it can be acquired and lost. The second will discuss the current citizenship regime in Zambia, which was introduced by a constitutional amendment in 2016.² The final will discuss some of the current political discussions around citizenship and the conclusion will provide a summary of the report.

2. Historical Background

2.1 Pre-independence legal regime

The concept of citizenship or nationality as understood under international law is a fairly new concept from the perspective of Zambian law. The territory that became Northern Rhodesia and now forms present day Zambia was occupied by more than 72 ethnic groups. Membership of these groups and the right to occupy and/or use land they occupied was

¹ Anderson, B ‘*Policy Primer - Citizenship: What is it and why does it matter?*’ 2011 (COMPAS, Oxford University) p. 2, Available from <https://migrationobservatory.ox.ac.uk/wp-content/uploads/2016/04/PolicyPrimer-Citizenship.pdf> (Accessed 23 September 2020)

² Effected by The Constitution of Zambia (amendment) Act, Number 2 of 2016

determined by the tribe's local customs and rites. Tribal boundaries and the rights that they confer were often shifted as a consequence of factors such as warfare and forces of nature. The arrival of European settlers to the territory in the late 19th century ushered in a period of significant transformation. The Barotseland-North Western Rhodesia Order in Council of 28 November 1899 made Barotseland and North Western Rhodesia British Protectorates³ allowing the European settler community, through the British South Africa Company, to establish a foothold in present-day Zambia.

The earliest attempt to recognise a set geographical land mass as the territory of present-day Zambia occurred when two British administrative territories were merged in 1911. The Northern Rhodesia Order in Council, 1911 set out the geographical reaches of the territory of present-day Zambia and called it "Northern Rhodesia."⁴ At this time, Northern Rhodesia comprised the native population and the settler community. This created a situation whereby the settlers retained the citizenship granted to them by the laws of their countries of origin while the indigenous populations retained their status under their laws. Therefore, although the Northern Rhodesia Order in Council, 1911 did not 'create' any citizenship, it marked out the distinction between the natives whose status and rights were to be determined regulated by their customary laws and the settlers, who at that time were largely British, whose status as citizens and rights would be determined by British law.⁵ This drew from the British policy relating to the annexation of foreign territories. The policy provided that unless the instrument of annexation provided otherwise, the nationals of any territory the British annexed, acquired, by virtue of the annexation, British nationality.⁶ However, this rule did not apply to nationals of third party states (with sovereignty recognised by Britain) residing in the annexed territory at the time of annexation.⁷ Since present-day Zambia did not have its own laws on nationality, citizenship at the time of the British arrival into present day Zambia was viewed from a British perspective, in the sense that an occupant of present-day Zambia was either a British subject or not. This theme is also evident in the British Nationality Acts enacted by British Parliament.

British legislation created status tied to the classification of the territory to which a person was connected. For this, British law distinguished among colonies, dominions and protectorates.⁸ Colonies and dominions fell within the Crown's dominion and the occupants of these territories were considered British Subjects.⁹ The residents of British protectorates were, by contrast, merely British Protected Persons.¹⁰

³ Laurie Fransman, Adrian Berry and Alison Harvey (2011), *Fransman's British Nationality Law*, Bloomsbury Professional, 1379

⁴ Per section of the The Northern Rhodesia Order in Council, 1911

⁵ Kalombo T. Mwansa, 'The status of African customary criminal law and justice under the received English criminal law in Zambia: A case for the integration of the two systems' *Zimbabwe Law Review*, 1986 Vol. 4 P. 28 available from

<https://opendocs.ids.ac.uk/opendocs/bitstream/handle/20.500.12413/6377/Mwansa%2C%20Kalombo%20%20T.%20%20ZLRev.%20%20vol.%204%2C%20no.%201-2..pdf?sequence=1&isAllowed=y> (Accessed 23 September 2020)

⁶ Bronwen Manby, (2018) *Citizenship in Africa: The Law of Belonging*, Hart Publishing: Oxford, 42

⁷ *Ibid*, p43

⁸ Bronwen Manby, *Citizenship in Africa*, 43

⁹ Section 1(1) of the British Nationality Act, 1948; Bronwen Manby, *Citizenship in Africa*, 44

¹⁰ *Ibid*

Zambia was a British protectorate and the people native to it were British Protected Persons whose lives and status continued being governed by their customary laws. People born to British Protected Persons did not become British subjects unless their father was a British subject.¹¹ In 1948, the British Nationality Act converted all British subjects into ‘Citizens of the United Kingdom and Colonies’.

In 1954, the Federation of Rhodesia and Nyasaland Order-in-Council created a federation of Nyasaland (today’s Malawi), Northern Rhodesia (Zambia), which were protectorates, and Southern Rhodesia (Zimbabwe), an independent Commonwealth country.¹² In 1957, the Federation enacted legislation providing *ius soli* citizenship of the federation for those born before or after the date of creation of the Federation, and for other transitional provisions.¹³ Following this, the British Nationality Act, 1958 was enacted, amending the British Nationality Act, 1948. According to this statute, inhabitants of present-day Zambia who were citizens under the laws of the Federation were eligible to apply for UK citizenship by virtue of their occupation of the Federation.¹⁴ However, most residents of Northern Rhodesia remained British Protected Persons.¹⁵

Zambia’s independence from Britain brought with it significant changes to the way in which citizenship is conceived. First, it resulted in the dissolution of the Federation. Second, citizenship from then onwards was viewed from a Zambian perspective. Since independence, citizenship in Zambia spans four constitutional regimes: the independence constitution of 1964 and Citizenship Act adopted the same year; the 1973 Constitution, and new Citizenship Act that entered into force in 1977; the 1991 Constitution, and amendments to the Citizenship Act enacted in 1994; and finally, the 2016 Constitution and a new Citizenship Act adopted the same year. These constitutional regimes have had varying purposes relative to the issue of citizenship. Although the categories of citizenship, and the manner of acquisition and loss of citizenship, have remained fairly stable, the constitutional changes have made some changes to the concept. These are discussed below. The most important changes have been in relation to the role of birth in the territory in providing rights to Zambian citizenship, and the removal gender discrimination.

Zambia’s laws comprise the Constitution, Zambian statutes, English Statutes whose application is extended to Zambia, common law and the principles of equity.¹⁶ The issue of citizenship in Zambia is regulated by the Constitution and relevant statutory provisions. Principles of equity and common law can be referred to when dealing with aspects of citizenship not adequately dealt with by either the Constitution or statutes.

2.2 Post-Independence: The 1964 Constitution

Because of Zambia’s history as a British protectorate, its legal system is modelled after the English system. The independence constitution was negotiated with the British according to

¹¹ Bronwen Manby, *Citizenship in Africa* 45

¹² Bronwen Manby, *Citizenship in Africa*, 47

¹³ Bronwen Manby, *Citizenship in Africa*, 47

¹⁴ Section 1(1) of the British Nationality Act, 1958 as read with section 1(3) of the British Nationality Act, 1948

¹⁵ Fransman’s *British Nationality Law*, 1068

¹⁶ Article 7 of the Constitution of Zambia as amended in 2016

the standard template of the ‘Lancaster House’ constitutions established in the former British territories – although with important variations in Zambia.

The 1964 legal regime relative to citizenship in 1964 was set out in the 1964 Constitution and the Citizenship of Zambia Act, No.61 of 1964. The defining feature of citizenship policy under the 1964 Constitution is the desire to create Zambian citizenship distinct from British Citizenship following Northern Rhodesia’s independence from Britain, under the new name of Zambia, on 24th October 1964. At this stage, Zambia is populated by citizens of numerous European countries among the settler community. This Constitution was intended to create a distinct Zambian citizenship, and to provide transitional provisions that determined who did or did not become a citizen at independence. To achieve this, the Constitution employed two strategies, that is, first creating set categories of citizenship; and, secondly prohibiting those possessing Zambian citizenship from acquiring alternative citizenship.

2.2.1 Categories of citizenship

The unique feature of the 1964 constitution is that it had to deal with people occupying Zambia who did not have citizenship (in the conventional sense) and those who were resident in present day Zambia but were not citizens. To deal with this population, the 1964 Constitution (i) provided transitional provisions for those who acquired citizenship at independence, and created four categories of citizenship thereafter, that is citizenship by: (ii) birth; (iii) adoption; (iv) registration; and (v) naturalisation.

2.2.2 Transitional provisions

The Independence Constitution conferred citizenship automatically at independence on every person who was a British Protected Person born in (present day) Zambia before 23rd October 1964¹⁷; and to people born outside (present day) Zambia whose father became (or could have, but for his death, become) citizens of (present day) Zambia on 24th October 1964.¹⁸

This provision was notably more generous in relation to British Protected Persons from outside Zambia than that in most other former British territories. Elsewhere the usual requirement was for one parent (in East Africa) or grandparent (in West Africa) also to have been born in the territory. Because of this provision, the constitution did not include the usual provision in other former British territories for those who did not qualify for automatic attribution but who had a connection to the territory to be able to register as citizens during a transitional period.

At the same time, the transitional provisions excluded those who were citizens of the UK and colonies from automatic acquisition. However, the constitution did provide for those who had naturalised or registered locally (in Northern Rhodesia) as citizens of the UK and colonies before 24th October 1964 to be able to apply for citizenship.¹⁹

¹⁷ Independence Constitution, Art 3(1)

¹⁸ Independence Constitution, Art 3(2)

¹⁹ Independence Constitution, Art 4(2)

2.2.3 *Citizenship at birth*

The Constitution attributed citizenship at birth to everyone born in the territory after 23rd October 1964, with only the common exceptions for those born to foreign envoys or to parents whose citizenship is with a country with which Zambia is at war.²⁰

The Citizenship Act provided that, in determining where a person born, the general rule was that the person would be taken to have been born in the country within whose borders they were born. The exception to the rule was that where a person was born on a ship or aircraft, if such vessel was registered or, though unregistered owned by the government of a country, then the person would be deemed to be born in the country where such vessel was registered and if unregistered, the country whose government owned it.²¹

What is important to note about this provision is that an entitlement to citizenship was based solely on birth in the territory and did not require proof of descent from a person who had acquired citizenship at independence; nor was it tied to any ethnicity or tribal affiliation.

A person born outside Zambia became a citizen at the date of birth only if the father was a citizen, and only if the father had not also been born outside the territory.²²

Finally, where having a parent as a resident or citizen of Zambia was a requirement for eligibility to citizenship, such as under the citizenship at birth category, where the relevant parent had died before 23rd October 1964, their citizenship or residence would be determined as at the date of their death.²³

2.2.4 *Citizenship by adoption*

Although the 1964 Constitution did not expressly mention the fact that children adopted by Zambian citizens became Zambian citizens, the Citizenship Act, 1964 made such a provision.²⁴ Under the Citizenship of Zambia Act, 1964, a non-citizen child who was adopted would become a citizen by adoption on the date of the adoption if, in the case where there was a single adopter, the adopter was a Zambian citizen, and in the case of joint adopters, if the male among the adopters, was a Zambian citizen.²⁵

2.2.5 *Citizenship by registration*

The 1964 Constitution also created a category of citizenship by registration, which was an entitlement for people meeting set criteria upon application. The categories of people allowed to register were women married to Zambian citizens and those who were Commonwealth citizens or citizens of African countries:

A woman married to either (i) a person recognised as a citizen by birth on 24th October 1964; or (ii) a person who died before 24th October 1964 but would have, but for

²⁰ Independence Constitution, Art. 5

²¹ Citizenship of Zambia Act 1964, section 12(2).

²² Independence Constitution, Art.6.

²³ Independence Constitution, Art 12(3)

²⁴ Section 3 of the Citizenship of Zambia Act, 1964

²⁵ Ibid

their death, become a citizen by birth.²⁶ A woman marrying a Zambian citizen after 23rd October 1964;²⁷ An adult (or married woman) Commonwealth or Irish citizen, or citizen of an African country included in a list to be published by the minister, who was ordinarily resident in (present day) Zambia for the prescribed amount of time before the application.²⁸ It is unclear if any list of African countries or the time a person had to be resident in Zambia to be eligible to apply as contemplated by this provision were ever created. This provision for facilitated access was in line with a scheme implemented across Commonwealth countries to provide reciprocal access to citizenship, with the addition of rights for those from named African states.

The Citizenship Act gave the Minister of Home Affairs the power to exercise discretion to register individual applicants who were not otherwise eligible to apply.²⁹ This rule appeared to serve a political purpose, that is, to allow the Minister to disallow the registration of people from countries whose interests diverged from Zambia's -- such as Rhodesia (as Southern Rhodesia had been renamed).

The Citizenship Act also empowered the President to direct that a person who was not otherwise eligible for citizenship should be registered as a citizen as a token of honour in cases where that person had, in the President's opinion, had acted honourably or special circumstances existed to warrant their registration.³⁰

2.2.6 *Citizenship by naturalisation*

The 1964 Constitution empowered Parliament to enact legislation allowing people not otherwise eligible for citizenship to apply for citizenship.³¹ The Citizenship Act, 1964 accordingly provided that a person above the age of 21 years could apply for citizenship by naturalisation, which would be granted in a discretionary basis (by contrast to the entitlement for registration) if they satisfied the Minister of Home Affairs that they:

- a) were ordinarily resident in Zambia and had been resident in Zambia for at least 5 years immediately before making the application. It is unclear whether the eligible time had to be before or after independence;
- b) Were of good character;
- c) Had adequate knowledge of English or other Zambian languages.
- d) Intended, after being naturalised, to continue residing in Zambia, or continue in the service of the Government abroad;
- e) Were willing to renounce any alternative citizenship they may have had at the time of the application; and
- f) Had not previously been denied registration as a citizen by naturalisation within the preceding 2 years.³²

²⁶ Independence Constitution, Art 4(1) and 4(4)

²⁷ Independence Constitution, Art 7

²⁸ Independence Constitution, Art 8(1)

²⁹ Citizenship Act, 1964, section 12(4)

³⁰ Section 4A of the Citizenship of Zambia Act, 1964

³¹ Independence Constitution, Art 11(1)

³² Section 6(1) of the Citizenship Act, 1964

The Constitution specifically empowered Parliament to enact legislation excluding from the required period of residence in Zambia any period during which the person was sentenced to imprisonment, detained in a mental asylum, or resident under a temporary permit.³³ This rule was necessary particularly considering Zambia's transition from its status as a British protectorate during which time the indigenous population had no control over who could reside in Zambia. This rule was intended to weed out people whose connection with Zambia was tenuous such as those in Zambia for purely commercial reasons such as mineral prospecting.

The 1964 Constitution's provisions on acquisition of citizenship reflected its origins as a text negotiated with the British government. This is evident from the emphasis on *ius soli* attribution of citizenship based on birth in the territory, as well as the gender discrimination in provisions that did not permit transmission of citizenship by a woman to her children born outside the country, and recognising that only women acquired a right to be registered as citizens upon marriage or were capable of conferring citizenship to an adopted child. Another aspect of the legal regime which reflected British influence is limiting the age at which a person could apply for citizenship in their own right at 21 years, which was also the age prescribed under British law at the time.

2.2.7 Cessation of citizenship

Under the Independence Constitution, citizenship could be lost in three instances, that is, renunciation, automatic loss and revocation. First, the citizen could expressly or impliedly renounce their Zambian citizenship. A renunciation could be express where the citizen, having alternative citizenship or satisfying the Minister of Home Affairs that they would, after the renunciation, acquire alternative citizenship could lodge a declaration renouncing their Zambian citizenship.³⁴ A renunciation would be implied in cases where a Zambian citizen (other than those acquiring citizenship by marriage) took any voluntary step to acquire the citizenship of another country.³⁵

Second, there were specific instances in which a citizen could lose their citizenship even without taking a positive action. Zambian citizenship could be lost if a citizen who was neither a naturalised nor a registered citizen, upon either becoming a Zambian citizen or attaining full age, whichever occurred later, retained the citizenship of another country lost their Zambian citizenship.³⁶ Similarly, a person born in Zambia after 24th October 1964 who after becoming a Zambian citizen or attaining full age (whichever occurred later) remained a citizen by descent under the laws of a foreign country lost Zambian citizenship.³⁷ In addition, registered or naturalised citizens who acquired alternative citizenship after attaining the age of 21 or attaining Zambian citizenship would lose Zambian citizenship.³⁸ Finally, a person born in Zambia after 24th October 1964 who was a citizen by descent of another country and whose father was also a citizen of that other country automatically lost Zambian citizenship the day after their birth.³⁹

³³ Independence Constitution, Article 11(4)

³⁴ Section 8(1) of the Citizenship Act, 1964

³⁵ Section 10(3) of the Citizenship Act, 1964

³⁶ Section 10(1) of the Citizenship Act, 1964

³⁷ Section 11(1) of the Citizenship Act, 1964

³⁸ Section 10(2) of the Citizenship Act, 1964

³⁹ Section 11(1) of the Citizenship Act, 1964

The Constitution conferred Parliament with power to enact legislation providing that people could be deprived of citizenship at birth or descent if they acquired another citizenship.⁴⁰ This was achieved in the Citizenship Act, which empowered the Minister of Home Affairs to revoke a person's citizenship in specific cases. The overriding criterion guiding the Minister's discretion in this regard was a determination of whether a person's continued citizenship was conducive to the public good.⁴¹ This determination could be founded on the fact that the person had:

- a) Shown disloyalty towards Zambia;
- b) During a time Zambia was at war, engaged in, unlawfully traded or communicated with the enemy or was associated with any business that was, to their knowledge, carried on a way which assisted the enemy;
- c) Not being an employee of the government or an international organisation in service outside Zambia,⁴² had been absent from Zambia for a continuous period of seven years without registering with the Zambian consulate or declaring with the Minister of Home Affairs their intention to retain their Zambian citizenship; or
- d) Acquired Zambian citizenship by means of fraud, misrepresentation, concealment of any material fact or corrupt practice.⁴³

Before the revocation, the Minister had to notify the person in writing of the intended revocation, the grounds on which it was being considered and the person's right to have an inquiry be made by a commissioner,⁴⁴ who was a person qualified to be appointed as a judge of either the High Court or Supreme Court, appointed by the Minister.⁴⁵

2.3 The 1973 Constitution

Zambia adopted a new constitution in 1973, which abolished multi-party democracy and reinforced presidential rule. The 1973 constitution⁴⁶ contained a new citizenship chapter making significant changes to the 1964 regime. In 1975, it was supplemented by a new Citizenship Act,⁴⁷ and regulations were issued two years later in 1977.⁴⁸ The Citizenship Act was amended in 1986⁴⁹ and in 1990.⁵⁰

The 1973 Constitution maintained citizenship granted under the 1964 Constitution.⁵¹ However, it significantly amended the basis for attributing citizenship at birth, marking a shift to rights based on descent from a citizen. The 1973 Constitution provided that any

⁴⁰ Independence Constitution, 1964, Art.11(2)

⁴¹ Section 9(3) of the Citizenship Act, 1964

⁴² Section 9(2) of the Citizenship Act, 1964

⁴³ Section 9(1) (a-d) of the Citizenship Act, 1964

⁴⁴ Section 9(4) of the Citizenship Act, 1964

⁴⁵ Section 9(6) of the Citizenship Act, 1964

⁴⁶ Adopted by Act No.27 of 1973.

⁴⁷ Act Number 26 of 1975

⁴⁸ The Citizenship Regulations 1977, Statutory Instrument Number 156 of 1977

⁴⁹ 17 of 1986

⁵⁰ The Citizenship (Amendment) Act, Number 10 of 1990

⁵¹ Article 5 of the 1973 Constitution

person born in or outside Zambia was a citizen if at least one parent (father or mother) was a citizen at the time of birth – removing the previous gender discrimination applied those born outside the country, and the limitation in case the father was not himself born in the country.⁵² The Constitution removed the right to citizenship based only on birth in Zambia, and instead created an entitlement for those people born in Zambia after 1973 if the father was an ‘established resident’, provided also that such people applied to the Citizenship Board confirming their Zambian citizenship upon attaining the age of 21 years and renounced any alternative citizenship they held.⁵³ An established resident was defined as a person who had lawfully resided in Zambia for a period of at least four years but was not a Zambian citizen.⁵⁴

Secondly, the 1973 Constitution retained citizenship by naturalisation but extended it only to people who were either 21 years old or married women and had been resident in Zambia for at least ten years (increased from five) immediately preceding the application.⁵⁵

Third, the 1973 Constitution added a requirement for three years’ residence in Zambia for women married to a Zambian citizen to be eligible to apply for registration as a citizen.⁵⁶

Fourth, the Citizenship Act, 1975 empowered the President, in his discretion, to direct that non-citizens who act honourably, be registered as citizens as a token of honour⁵⁷ and where special circumstances exist to warrant a person’s registration as a citizen.⁵⁸

Fifth, this regime introduced an entitlement for a person born to a non-citizen father at the time of the person’s birth and who ceased to be a citizen as a consequence of failing to renounce their alternative citizenship by decent to apply for registration as a citizen.⁵⁹ Registration as a citizens under this category could be granted on condition that the applicant renounce the alternative citizenship within 3 months of being informed that their application had been granted.⁶⁰

Furthermore, the 1973 Constitution empowered Parliament to enact a law discounting the time of residence in Zambia under a permit from being considered when determining eligibility to register as a citizen.⁶¹ This provision was ultimately set out in the Zambia Citizenship Act, 1975,⁶² which retained the other conditions for registration of citizenship but, in line with the new constitution, increased the time of ordinary residence in Zambia from 5 years to 10 years.⁶³

As was the case under the Independence Constitution, this qualifying residence period would not include time of residence under a permit.⁶⁴ This confusing provision appears to be derived from the terms of Independence Constitution allowing for periods of residence under

⁵² Article 6 of the 1973 Constitution

⁵³ Section 7(2) of the 1973 Constitution

⁵⁴ Article 12(2) of the 1973 Constitution

⁵⁵ Article 7(3) (c) of the 1973 Constitution

⁵⁶ Article 8(1) (b) of the 1973 Constitution

⁵⁷ Per section 13(1) of the Citizenship Act 1975

⁵⁸ Per section 13(2) of the Citizenship Act 1975

⁵⁹ Section 19(3) of the Citizenship Act 1975

⁶⁰ Section 19(3) of the Citizenship Act 1975

⁶¹ Article 8(3) of the 1973 Constitution

⁶² Section 18 of the Citizenship Act No 26 of 1975

⁶³ Article 8(1) (c) (ii) of the 1973 Constitution

⁶⁴ Article 8(3) of the Constitution as read with section 18 of the Citizenship Act, 1975

a temporary permit to be excluded, but without specifying which type of permit would be required. The implication as drafted was that only residence without a permit would be considered, which seems unlikely to be the intention. The Citizenship Act 1975 was amended in 1986 to state that the relevant period for considering eligibility to apply for citizenship by registration was that spent when a person has a right to reside in Zambia under an entry permit.⁶⁵ This provision is curious because it directly contradicted the provision in the 1973 Constitution providing that such time could not be considered when computing time for eligibility for registration as a citizen under the ground of having resided in Zambia for at least 10 years. It is possible that this was an attempt by Parliament to correct the problematic provision under the Independence Constitution regarding time spent in Zambia under an entry permit *vis a vis* eligibility for naturalisation.

The 1973 constitutional regime retained the requirement introduced by the Independence Constitution that an applicant for registration as a citizen citizenship have adequate knowledge of the English language or any language commonly used by the indigenous inhabitants of Zambia.⁶⁶ This regime went on to prescribe that the languages commonly used by the inhabitants of Zambia were Bemba, Kaonde, Lozi, Luvale and Tonga.⁶⁷ The regime also set out how certain matters relative to eligibility either to citizenship or to an application for registration were to be proved. Where birth had to be proved, the applicant needed to produce a birth certificate or affidavit of the place and date of birth.⁶⁸ Where marriage and the particulars thereof had to be proved, the applicant had to produce a marriage certificate.⁶⁹ Finally, where citizenship had to be proved, then the applicant had to produce a passport, certificate of registration, a National Registration Card, a birth certificate or an affidavit of the date and place of birth.⁷⁰

The 1975 Citizenship Act established a Citizenship Board for the first time.⁷¹ The functions of the Board were to determine any application for registration as a citizen and to deal with matters relating to citizenship in Zambia.⁷² The Board assumed many of the powers previously conferred on the Minister of Home Affairs under the Independence Constitutional regime as regards dealing with applications and revocation of citizenship.

2.3.1 *Cessation of citizenship*

In terms of cessation of citizenship, the 1973 Constitution largely retained the same grounds as the Independence Constitution.

First, like its predecessor, citizenship under the 1973 could be expressly⁷³ or impliedly⁷⁴ renounced. Second, as regards automatic cessation, it repeated provisions under

⁶⁵ Section 3 of the Citizenship of Zambia (Amendment) Act No. 17 of 1986 which deleted and substituted section 18 of the 1975 Act

⁶⁶ Section 16(2) (d) of the Citizenship Act, 1975

⁶⁷ Regulation 17 of the Citizenship of Zambia Regulations, Statutory Instrument Number 56 of 1977

⁶⁸ Regulation 18(2) (a) of the Citizenship of Zambia Regulations, 1977

⁶⁹ Regulation 18(2) (b) of the Citizenship of Zambia Regulations, 1977

⁷⁰ Regulation 18(2) (c) of the Citizenship of Zambia Regulations, 1977

⁷¹ Per section 3 of the Citizenship Act 1975

⁷² Section 8 of the Citizenship Act, 1975

⁷³ Section 19(1) of the Citizenship Act, 1975

⁷⁴ Section 19(2) of the Citizenship Act, 1975

the Independence Constitution that a citizen would lose Zambian citizenship upon acquiring citizenship of another country by any voluntary act except marriage.⁷⁵

In addition, the 1975 Act provided that a person who was born to a Zambian citizen but who was simultaneously a citizen of another country or had a claim to citizenship of another country ceased to be a Zambian citizen on attaining the age of 22 unless such person renounced the alternative citizenship or their claim thereto on attaining the age of 21.⁷⁶

Third, as was the case under its predecessor, citizenship could be revoked for the same reason as under the Independence Constitution, that is, satisfaction by the Board that the person's continued citizenship was not conducive to the public good.⁷⁷ The grounds on which this consideration would be based are the same as those under the Independence Constitution discussed above.⁷⁸ However, the Citizenship Act, 1975 added the ground of a finding by the Board that the person is guilty of currency smuggling or of harbouring criminals or prohibited immigrants as an additional ground.⁷⁹

People who were citizens before the commencement of the 1973 Constitution (i.e. those who were granted citizenship under the Independence Constitution), and citizens by birth or descent whether born to a Zambian citizen or an established resident, were protected from the Board's revocation powers.⁸⁰ It is also important to note that although the 1973 Constitution seemed to contemplate that Parliament could directly revoke a person's citizenship⁸¹ this was not reflected in the Citizenship Act 1975 or the amendments thereto.

The person's due process rights under the Independence Constitutional regime were retained. Before the revocation, the Board had to notify the person in writing of the intended revocation, the grounds on which it was being considered and the person's right to have an inquiry be made by a commissioner, who was a person qualified to be appointed as a judge of either the High Court or Supreme Court,⁸² appointed by the Board.⁸³

The language under the 1973 Constitutional order largely retained the gendered orientation in its language. The Constitution did for the first time permit transmission of citizenship by descent to children born outside Zambia even where only the mother was a Zambian citizen.⁸⁴ However, the provision that children born to established residents could apply for citizenship continued to require the father to be an established resident (and not the mother). Moreover female citizens could not transmit their citizenship to their spouses upon marriage.

⁷⁵ Art 11(1) of the 1973 Constitution

⁷⁶ Section 19(1) of the Citizenship Act, 1975

⁷⁷ Section 22(5) of the Citizenship Act, 1975

⁷⁸ Section 22(3) (a-d) of the Citizenship Act, 1975

⁷⁹ Section 22(3) (e) of the Citizenship Act, 1975

⁸⁰ Section 22(3) of the Citizenship Act, 1975

⁸¹ Article 9 of the 1973 Constitution as read with section 22(3) (d) of the Citizenship Act, 1975

⁸² Section 22(9) of the Citizenship Act, 1975

⁸³ Section 22(6) of the Citizenship Act, 1975

⁸⁴ Article 6 of the 1973 Constitution

2.4 The 1986 Amendment to the Citizenship Act

On 19 September 1986, Parliament enacted the Citizenship of Zambia (Amendment) Act, 1986 (the “**1986 Amendment**”). The main changes this law introduced were first, to delete the provisions of the Citizenship Act 1975 entitling people born to established residents from becoming Zambian citizens.⁸⁵

The second change it introduced was in relation to the time to be considered when a person applied for registration and to whom the requirement for residence in Zambia for 10 years applied. The 1986 Amendment changed the rule under the 1973 constitutional regime and provided that the time to be considered in computing the 10 years was the time during which a person resided in Zambia under a right conferred by an entry permit.⁸⁶ What is curious is that this provision was contrary to the provisions of the 1973 Constitution which applied at the time since this Constitution empowered Parliament to provide that time spent under a permit not be considered when computing the 10 years.

Third, the 1986 Amendment removed the entitlement under the Citizenship Act 1975 for a person born to a non-citizen father at the time of the person’s birth and who ceased to be a citizen to apply for re-registration.⁸⁷

Another important change introduced by the 1986 Amendment was narrowing the categories of people exempted from the Board’s power to revoke citizenship under the 1973 constitutional regime. By this amendment, only people who were citizens before the commencement of the 1973 Constitution and citizens by birth or descent and born to Zambian citizens were exempt.⁸⁸

2.5 The 1990 Amendment to the Citizenship Act

In July 1990, Parliament enacted the Citizenship (Amendment) Act, 1990 (the “**1990 Amendment**”).⁸⁹ This Amendment removed as a ground for cessation of citizenship under the 1975 Act the fact that a person born to a Zambian citizen was simultaneously a citizen or entitled to claim alternative citizenship ceased to be a citizen on attaining the age of 21 unless they renounced their alternative citizenship or claim to alternative citizenship.⁹⁰ The 1990 Amendment provided the opposite. Such person retained Zambian citizenship unless they renounced on attaining the age of 21. Thus, a person born with two citizenships was entitled to retain both. This provision appears to have been one of the few instances (together with a citizen by marriage) in which a person could hold dual citizenship under Zambian law before 2016. It is neither clear why this amendment was introduced nor whether the possibility of dual citizenship was intended. Considering the citizenship legal regime at the time, it is more likely that the original intention was to ease the legal burden on people who bore a liability to have Zambian citizenship ceased unless they did something. Although there is no evidence to

⁸⁵ Section 2 of the 1986 Amendment

⁸⁶ Section 3 of the 1986 Amendment

⁸⁷ Section 4 of the 1986 Amendment deleting section 19(3) of the Citizenship Act, 1975

⁸⁸ Section 5 of the 1986 Amendment amending section 22(3) of the Citizenship Act, 1975

⁸⁹ The Citizenship (Amendment) Act, Number 10 of 1990

⁹⁰ Section 1 amending section 19(1) of the Citizenship Act, 1975

support this, it is likely that before this amendment many people lost their Zambian citizenship by mere inaction since they most would probably have been unaware that they would lose their citizenship unless they renounced the alternative citizenship. This amendment appears to have been intended to prevent this rather draconian result and the possibility of dual citizenship was likely an unintended outcome.

2.6 The 1991 Constitutional Regime

The 1991 Constitution retained the citizenship status granted under the preceding Constitutions⁹¹ as well as the categories of citizenship created thereunder. The primary basis of citizenship continued to be descent from one parent who was a citizen at the time of birth, whether that was inside or outside the country.⁹² However, in line with the amendments to the Citizenship Act in 1986, the new Constitution discontinued the entitlement to citizenship for people born to ‘established residents’; although it recognised that those born before 1st April 1986 would continue to be entitled to recognition as citizens on the same basis as before.⁹³

The 1991 Constitution continued to delegate to Parliament the power to enact legislation conferring eligibility to apply for citizenship in respect of people not otherwise entitled to citizenship.⁹⁴ Since no new statute relating to citizenship was enacted to repeal and replace the Citizenship Act, 1975, it remained the relevant law dealing with this issue. However, there was no provision under this Act or the regulations giving Parliament power to direct that people otherwise not eligible to apply for registration be registered as citizens.

The confusion over the requirements in relation to showing residence in Zambia remained. The new constitution retained the provision under the 1973 Constitution which empowered Parliament to enact that the time that a foreigner had spent under a permit in Zambia would not be considered when computing the time they had been ordinarily resident in Zambia for purposes of eligibility for citizenship by registration. The fact that this provision was retained while the 1986 Amendment to the Citizenship Act provided the opposite makes its retention curious. It is unclear what legislative mischief Parliament sought to address at this stage and why the position in the 1986 Amendment to the Act was apparently being abandoned. It appears more likely that when introducing the 1991 constitutional amendment, Parliament was not aware of the conflict between the 1973 Constitution and the 1986 Amendment and blindly repeated the provision in the 1973 Constitution.

The 1991 Constitution also continued the Citizenship Board.⁹⁵ It also retained the provisions regarding the cessation of citizenship set out under the 1973 constitutional regime.

⁹¹ Constitution of Zambia 1991, Art 4

⁹² Constitution of Zambia 1991, Art 5

⁹³ Constitution of Zambia 1991, Article 10(3)

⁹⁴ Constitution of Zambia 1991, Article 7

⁹⁵ Constitution of Zambia 1991, Article 8

2.7 The 1996 Amendment to the Constitution

The 1991 Constitution was amended by Act No. 18 of 1996. Since, as was the case relating to the 1991 constitutional amendment, the operative statute was still the Citizenship Act, 1975 as amended in 1986 and 1990, this constitutional amendment did not significantly change the legal landscape relative to citizenship in Zambia. This Amendment largely left the citizenship chapter under the 1991 Constitution unaltered.

The amended constitution, like the 1964, 1973 and 1991 iterations of the Constitution also empowered Parliament to enact legislation requiring that the time spent in Zambia under a permit be discounted when computing the requisite to year period for eligibility to apply for registration as a citizen in Zambia.⁹⁶ All the while, the amendment providing the contrary introduced by the 1986 amendment to the Citizenship Act remained on the statute books.

The significant change made by Act No.18 of 1996 in relation to citizenship was to amend Article 34 of the Constitution, on the qualifications to be a candidate for election as President, to require that “both his parents are Zambians by birth or descent”.

The intent in creating this requirement appears to have been political. In 1994, William Steven Banda and John Lyson Chinula, members of the United National Independence Party (UNIP) were deported to Malawi two years before the elections on the grounds that they were not citizens. Subsequently, the authenticity of the Zambian citizenship of Kenneth Kaunda -- the former President of Zambia, and renewed candidate for the presidency on behalf of UNIP -- was questioned and used as a political tool to discredit him. The 1996 amendment to the Constitution requiring that a presidential candidate be born to two citizens aimed to disentitle Kenneth Kaunda from contesting the 1996 elections.⁹⁷

In a similar case almost two decades later, the Patriotic Front brought an action against the then President of the opposing Movement for Multi-Party Democracy (MMD) Mr. Rupiah Banda in 2011, alleging that he was not a Zambian citizen. Later that year, another member of the MMD, Robert Chiseke, was arrested for allegedly faking his nationality.⁹⁸

Some of the other notable changes related to the introduction of a provision that all non-Zambian citizens employed in the public section retire.⁹⁹

Most notably, the 1996 Constitution did not completely resolve the gender discrimination in transmission of citizenship by marriage contained in the language of its predecessors. What it did do was to remove marriage to a Zambian as a ground for eligibility to apply to register as a Zambian Citizenship. Up to this point, a woman married to a Zambian was eligible to apply for citizenship while a man married to a Zambian woman remained ineligible.

⁹⁶ Article 6(3) of the 1996 Amendment

⁹⁷ Sebastian Kohn, 2011, *Abusing Citizenship in Zambia—Again*. available at <https://www.justiceinitiative.org/voices/abusing-citizenship-zambia-again> accessed on 22nd October 2020. This Banda and Chinula and Kaunda cases were the subject of a rulings by the African Commission on Human and Peoples’ Rights: Amnesty International v. Zambia, Communication No. 212/98 (2000), and Legal Resources Foundation v. Zambia, Communication No. 211/98 (2001).

⁹⁸ Ibid

⁹⁹ Section 17 of the Constitution of Zambia (Amendment) Act, 1996

The Citizenship of Zambia Act 1975 remained in force, as amended in 1986 and 1990, until it was repealed and replaced in 2016.

3. The Current Citizenship Regime

The next changes to the law on citizenship in Zambia were introduced by the 2016 Constitution and the Citizenship of Zambia Act No. 33 of 2016. These changes were preceded by heavy political discussion around the issue of dual citizenship.¹⁰⁰ The discussion was led and dominated by Zambians in the diaspora who sought to participate in Zambia's political discourse and enjoy its natural resources. The amendments to the concept of citizenship reflected this dialogue but still extended far beyond the issue of dual citizenship.

The 2016 Constitution maintains the citizenships of all who are citizens as of 5th January 2016 when it came into force.¹⁰¹ In addition, the three general categories of citizenship, that is by: (a) birth; (b) adoption; and (c) registration are also maintained.¹⁰² Overall, the changes introduced by the 2016 Constitution relate to (a) the role of the President and Parliament in granting citizenship; (b) changes to citizenship by birth; (c) introduction of citizenship by adoption in the constitution itself; (d) alterations to the eligibility criteria for citizenship by registration; (e) the toleration for dual citizenship; and (f) reducing the grounds on which citizenship can be lost.

3.1 The role of the President/Parliament in granting citizenship

Under the previous constitutional regimes, the President of the Republic of Zambia had power to grant citizenship to people otherwise not eligible. This power no longer exists under the 2016 Constitution. However, people granted citizenship by the President before 5th January 2016 will still enjoy this citizenship.¹⁰³

3.2 A new distinction between citizenship by birth and by descent

The 2016 Constitution continues to provide that all children born in or outside Zambia become citizens at birth if one parent is a citizen.¹⁰⁴

However, the 2016 Constitution creates new categories of 'citizenship by birth' for those born in the country and 'citizenship by descent' for those born out of Zambian to Zambian citizens.¹⁰⁵ Such people were not given different labels in the preceding

¹⁰⁰ UPND-UK Chapter, (2015) PF Stop Hypocrisy-Dual Citizenship A Must In 2015/16. Available from https://web.facebook.com/UPNDUKTEAM/photos/pf-stop-hypocrisy-dual-citizenship-a-must-in-201516parliament-heard-yesterday-th/1556714047941888/?_rdc=1&_rdr Accessed 19 September 2020

¹⁰¹ Constitution of Zambia 2016, Article 33

¹⁰² Constitution of Zambia 2016, Article 34

¹⁰³ Article 33 of the Constitution of Zambia, 2016

¹⁰⁴ Constitution of Zambia 2016, Arts.35(1) and 36.

¹⁰⁵ Per Article 36

constitutions. It appears that the creation of these categories are largely semantic, because the remainder of the Constitution shows that the two categories enjoy similar rights in that nearly all rights enjoyed by a citizen by birth are also conferred on a citizen by descent.¹⁰⁶ Interestingly, however, this category of citizenship by descent is not dealt with under the Citizenship Act, 2016. Neither the committee report which led to the enactment of the Act¹⁰⁷ nor Act itself mention this category of citizenship.

In fact, a reading of the provisions relating to citizenship by birth under the 2016 Act show that some distinction will in practice be created between citizenship by birth and by descent. For instance, under the 2016 Act, a citizen by birth is required to be registered within a month of their birth with the registrar of the district in which the person is born.¹⁰⁸ There is no provision for registration of Zambian citizens born outside Zambia. Once the citizen attains the age of 16 years, they are entitled to obtain a National Registration Card¹⁰⁹ which is the principal evidence that one is a citizen by birth. The fact that these procedures are not available outside Zambia creates a barrier to citizens by descent getting recognition as equals to citizenship by birth and creates a de facto requirement for citizens by descent to apply to the Citizenship Board for recognition as citizens, which requirement does not apply to citizens by birth. To deal with situation, the Minister of Home Affairs is empowered to make regulations for, among other things, enabling the births of people entitled to Zambian citizenship in foreign countries.¹¹⁰

3.3 Introduction of presumed citizenship for foundlings

The 2016 Constitution created the category of presumed citizenship by birth, for the first time protecting children of unknown parents against statelessness. The procedures to implement this presumption are set out in the Citizenship Act, which provides for citizenship to be conferred under this provision pursuant to an order of the Children's Court Division of the High Court of Zambia¹¹¹ covering children under the age of eight who are found within Zambia and whose nationality and parentage cannot be ascertained.¹¹²

¹⁰⁶ See for instance entitlement for appointment as Speaker of the National Assembly (Article 82(2) (a), to be elected President of the Republic (Article 100(1) (a)) or to be appointed chief (Article 266).

¹⁰⁷ Report of the committee on National Security and Foreign Affairs on the Citizenship of Zambia Bill, N.A.B. No. 33 of 2016, for the fifth session of the eleventh national assembly, appointed On 24th September 2015 available from:

http://www.parliament.gov.zm/sites/default/files/documents/committee_reports/REPORT%20%20ON%20THE%20CITIZENSHIP%20OF%20ZAMBIA%20BILL%2C%20NO.%2033%20OF%202016_0.pdf

¹⁰⁸ Section 15(1) of the Citizenship Act, 2016 as read with section 14 of the Births and Deaths Registration Act, Chapter 51 of the Laws of Zambia

¹⁰⁹ Section 15(2) as read with section 3 of the National Registration Act, Chapter 126 of the Laws of Zambia

¹¹⁰ Section 45(2) (f) of the Citizenship Act, 2016

¹¹¹ Section 16(5) of the Citizenship Act, No. 33 of 2016

¹¹² Article 35(2)

3.4 Citizenship by adoption

Although a right to be registered as a citizen was extended to children adopted by Zambian parents in Zambia under the Citizenship of Zambia Acts, 1964 and 1975, this right did not exist in the text of the respective Constitutions. This now has been changed because the 2016 Constitution sets out a right to registration as a citizen by adoption.¹¹³ In addition, the 2016 Constitution does away with the gender discrimination of the 1964 Citizenship Act and the 1975 Citizenship Act by allowing citizenship to be passed on to an adopted child whenever a citizen adopts such a child, without the qualification that the man must be a citizen in cases of joint adoptions.

3.5 Changes to the eligibility criteria for citizenship by registration

As regards eligibility for registration as a citizen, the 2016 Constitution introduced some changes by, first, removing the gendered language in the previous constitutional regimes in relation to citizenship based on marriage; and secondly in creating new categories of people who can register as citizens which restore some limited rights based on birth in Zambia. The Constitution also lowered the age at which a person can independently apply for citizenship from 21 years under the previous constitutions to 18 years.

The 2016 Constitution extends an entitlement to apply for registration as a citizen for all people married to Zambian citizens for at least 5 years¹¹⁴, not only women as was the case in the preceding constitutions, and whether or not they are resident in Zambia. This makes this Constitution the first to include gender-neutral language in relation to eligibility to apply for registration as a citizen based on marriage.

However, although the 2016 Constitution creates a right to apply for registration, it is unclear whether the Citizenship Board has an obligation to register the person on proof that they fall within one of the eligible categories. The Citizenship Board can reject the application if it finds that the applicant: (a) submitted false information or made a false statement in the application; (b) concealed a material fact relevant for purposes of registration as a citizen; (c) committed an act of fraud for purposes of acquisition of citizenship; (d) altered or falsified a document required for registration of citizenship; (e) has been convicted of an offence and sentenced to imprisonment; (f) is an adjudged bankrupt; (g) has been declared a prohibited immigrant;¹¹⁵ or if it is not in the interests of the public to register the applicant as a citizen.¹¹⁶ The Citizenship of Zambia Regulations, 2017¹¹⁷ also adds that application can be rejected only if the conditions in the Constitution of Zambia, 2016 or the Citizenship of Zambia Act, 2016 are not met¹¹⁸ which may apply to instances where ineligible people file an application for registration as a citizen. The fact that the statute creates a closed list of grounds on which registration as a citizen can be denied can be viewed

¹¹³ Articles 34 and 38 of the Constitution of Zambia

¹¹⁴ Article 37(2) of the Constitution

¹¹⁵ Section 21(1) of the Citizenship Act, 2016

¹¹⁶ Section 21(2) of the Citizenship Act, 2016

¹¹⁷ Statutory Instrument Number 50 of 2016

¹¹⁸ Regulation 6(2) of the Citizenship of Zambia Regulations, 2017

as proof that the Board must register an eligible applicant not captured under any grounds on which an application can be denied.

The 2016 Constitution also creates the new entitlement to apply to register as a citizen for a person who has been ordinarily resident in Zambia for a period of at least five years and was born in Zambia, or was born outside Zambia of an ancestor who was a citizen.¹¹⁹ Exactly who an ancestor is has yet to be defined by statute or case law. As in the case of marriage, it is unclear whether the Citizenship Board has an obligation to register a person who applies and fulfils these conditions.

Finally, the 2016 Constitution provides for an application for registration based on ten years residence, subject to other conditions to be established by law or regulation. The conditions include residence by virtue of a permit as already stated and following the procedures laid out in the 2017 Regulations. These are, publishing of the application in the Gazette and in two consecutive issues of a daily newspaper circulating in the person's area of residence, a notice in the prescribed form of the person's intention to apply for registration as a citizen¹²⁰ and, thereafter, filing the application in the prescribed manner.

3.6 Toleration for dual citizenship

Finally, the 2016 Constitution introduced an entitlement to dual citizenship for those who voluntarily acquire another.¹²¹ As a consequence, the acquisition of alternative citizenship is no longer a ground for loss of citizenship.¹²² The principal motivation for permission of dual citizenship appears to be the desire to allow Zambians residing in other countries and who had lost their citizenship to participate in the political processes in Zambia.¹²³ However, between 2016 and 2019, only 156 applications for dual citizenship have reportedly been granted.¹²⁴

A closer look at the law suggests that dual citizenship, the requirements for a person who had previously lost Zambian citizenship on acquiring alternative citizenship and a Zambian acquiring a second citizenship are different. In respect of the former, the person is required to apply to the Citizenship for Bestowal of citizenship.¹²⁵ It is unclear whether the Board has discretion to deny the application and neither the Constitution of Zambia, 2016 nor the Citizenship of Zambia Act, 2016 are clear on this. The necessity for the application, can be seen as necessary to provide the Board an opportunity to scrutinise claims by people that they had at one time been Zambian citizens. The details required when completing the form filed in the application appear to bear this out. They require that the applicant provide

¹¹⁹ Constitution of Zambia 2016, Art. 37(1)(a) and (b).

¹²⁰ Regulation 3 of the Regulations, 2017.

¹²¹ Article 39 Constitution of Zambia 2016

¹²² Article 39(1)

¹²³ Lusaka Times Newspaper, "You can apply for Dual Citizenship now-Home Affairs", 7 January 2016.

Available from <https://www.lusakatimes.com/2016/01/07/110255/>

¹²⁴ Pezzy Kudakwashe, Lusaka Times Newspaper, 'Government approves 156 dual citizenship applications,' 17 September 2019 Available from: <https://www.lusakatimes.com/2019/09/17/government-approves-156-dual-citizenship-applications/>

¹²⁵ Regulations 10(1) and (2) of the Citizenship of Zambia Regulations, 2017

detailed information about their biographical information and circumstances surrounding the loss of Zambia citizenship.¹²⁶

By contrast, a Zambian acquiring a second citizenship only needs to notify the Citizenship Board of the acquisition of the new citizenship by filing a simple standard form.

To harmonise dual citizenship with the realities created by the previous constitutions which did not permit it except for those born with dual citizenship, the Constitution allows people who had lost their citizenship under previous constitutions as a consequence of acquiring alternative citizenship to apply for Zambian citizenship to be bestowed on them.¹²⁷ What is unclear is whether such citizens will be recognised as citizens by registration or can be registered as citizens by birth or descent. The toleration for dual citizenship also creates a complication as regards people entitled to citizenship by descent. Citizens by descent who hold alternative citizenship can get their citizenship formally recognised and documented once their application for dual citizenship under article 39(2) of the Constitution is granted. However, since neither the Constitution nor the Citizenship Act, 2016 provides for registration as a citizen by descent, people entitled to citizenship by descent who either do not hold alternative citizenship or are born after 5th January 2016 will not have a similar right to have their citizenship documented.

3.7 Cessation of citizenship

A significant change introduced by the 2016 constitutional amendment is a narrowing of the grounds on which citizenship can be lost. First, as a consequence of the toleration for dual citizenship, an implied renunciation by voluntary acquisition of another citizenship, or automatic cessation by a citizen retaining alternative citizenship under the previous constitutional regimes no longer apply. Therefore, cessation of citizenship is now only by an express renunciation¹²⁸ and by revocation of citizenship by registration if the registration¹²⁹ was procured through fraud, false representation or concealment of a material fact.¹³⁰

The Citizenship Act, 2016 introduces an automatic re-acquisition of Zambian citizenship by a person who lodges a declaration of renunciation but does not, within six months after the registration of the declaration, acquire alternative citizenship.¹³¹ In addition, the 2016 constitutional regime maintains the notice requirement and right to have an inquiry appointed in the revocation of citizenship procedures contained under the Citizenship Act, 1975.¹³² However, it additionally creates a right for the person whose citizenship is revoked to appeal to the High Court within thirty days of the Board's decision.¹³³

As a consequence of the toleration for dual citizenship, citizenship is no longer lost on voluntary acquisition of another citizenship, or retaining another citizenship if a person was born with two citizenships. The criteria for deprivation of citizenship have also been

¹²⁶ Form VII in the Schedule to the Citizenship of Zambia Regulations, 2017

¹²⁷ Article 39(2) of the 2016 Constitution

¹²⁸ Section 32 of the Citizenship Act, 2016

¹²⁹ As read with section 27 of the Citizenship Act, 2016

¹³⁰ Article 40 of the 2016 Constitution.

¹³¹ Section 32(6) of the Citizenship Act, 2016

¹³² See section 31 of the Citizenship Act, 2016

¹³³ Section 30 of the Citizenship Act, 2016

narrowed, and are now restricted to cases where citizenship was obtained through fraud, misrepresentation and concealment of a material fact.¹³⁴

3.8 Summary of current provisions for acquisition of citizenship

As a result of all that has been discussed above, the 2016 Constitution provides, first, that all citizens under the preceding constitutional regimes continue being citizens. Outside this class, citizenship can be acquired by:

- a) Birth: in cases where a person is born in Zambia, aboard a ship or an aircraft registered in or owned by the government of the Republic of Zambia and at least one of their parents is or was at their death a Zambian citizen.¹³⁵
- b) Descent: in cases where a person is born abroad to at least one Zambian parent.¹³⁶
- c) Adoption, in cases where a person under the age of 16 is legally adopted by a citizen.¹³⁷
- d) By presumption: where a person under the age of eight years is found within Zambia and both their nationality and parentage are unknown.¹³⁸
- e) By registration: that is, where a person is above the age of 18 and they:
- f) were born in Zambia and have been ordinarily resident in Zambia for at least five years;
- g) were born outside Zambia, have or had an ancestor who is, or was, a citizen and they have been ordinarily resident in Zambia for a period of at least five years;
- h) have been ordinarily resident in Zambia for a continuous period of at least ten years immediately preceding that person's application for registration;¹³⁹ or
- i) a person who is, or was married to a citizen, for a period of at least five years, is entitled to apply to the Citizenship Board of Zambia.¹⁴⁰

The 2016 Constitution, like all its predecessors except the 1964 Constitution, creates the Citizenship Board of Zambia¹⁴¹ (CBZ) which serves as the institution to regulate the constitutional and statutory provisions on citizenship. In addition, the principal functions of the CBZ are to deal with applications for registration as a citizen, matters relating to the loss of citizenship and to retain citizenship information.¹⁴²

¹³⁴ Article 40, Citizenship of Zambia Act 2016, sections 27, 28 and 29.

¹³⁵ Article 35(1) as read with Articles 35 (3) and 44 of the Constitution

¹³⁶ Article 36 of the 2016 Constitution

¹³⁷ Article 38 of the 2016 Constitution

¹³⁸ Article

¹³⁹ Article 37(1)

¹⁴⁰ Article 37(2) of the 2016 Constitution

¹⁴¹ Article 41 of the 2016 Constitution

¹⁴² Per section 4(1) of the Citizenship Act, 2016

4. Current political debates and reform plans

During consultations leading up to the enactment of the Citizenship of Zambia Act, 2016 some concerns were raised.

4.1 Concerns regarding the abuse of the entitlement to citizenship by marriage

First, the provision that a person married to a Zambian for at least five years was met with some views suggesting that it could potentially be abused by people entering into arranged marriages and a suggestion that the period should instead be extended to ten years.¹⁴³ This concern was shared by the Parliamentary Committee on National Security and Foreign Affairs considering the bill which later became the Citizenship of Zambia Act, 2016. The committee shared this concern and recommended a revision of the Constitution to increase the minimum period to ten years.¹⁴⁴

4.2 Concerns regarding the abuse of the entitlement to citizenship by adoption

Second, some submissions were made to the effect that in an application for citizenship by adoption, the Citizenship Board of Zambia ought to consider the child's background in exercising discretion on whether or not to register the child as a citizen by adoption to prevent 'foul play.'¹⁴⁵ The concern of these submissions was that people obtaining citizenship by registration seeking to adopt their own children and relatives for purposes of granting them an entitlement for citizenship. The concern arises in the context of people who acquire citizenship by naturalisation who may have children or relatives ordinarily resident in other countries. Since such children or relatives do not automatically become Zambian citizens, the concern is that the naturalised Zambian citizen may use adoption as a means of transmitting Zambian citizenship to their children or relative. The Parliamentary Committee agreed with this concern and recommended that the Citizenship Board of Zambia consider the child's background and particularly their relationship with the adopting parent.¹⁴⁶ These concerns have not yet been reflected in legislation. They are likely, however, to shape future changes in Zambia's citizenship laws.

Computing time regarding the entitlement for eligibility to register as a citizen under the category of residence in Zambia for ten years.

¹⁴³ National Assembly of the Republic of Zambia, *Report of the Committee on National Security and Foreign Affairs on the Citizenship of Zambia Bill, N.A.B. no. 33 of 2016, for The Fifth Session of The Eleventh National Assembly, appointed on 24th September 2015*, p. 11. Available from http://www.parliament.gov.zm/sites/default/files/documents/committee_reports/REPORT%20%20ON%20THE%20CITIZENSHIP%20OF%20ZAMBIA%20BILL%2C%20NO.%2033%20OF%202016_0.pdf (Accessed 23 September 2020).

¹⁴⁴ Ibid p. 12

¹⁴⁵ Ibid p. 11

¹⁴⁶ Ibid, p. 12

Under all but the Independence Constitutional regime, residence in Zambia for ten years created an entitlement to apply for registration as a citizen. The problem is that the constitutions and the statutes enacted under them provided contradictory criteria for the time to be considered in computing the ten years. For instance, under the 1964 and 1991 Constitutions, the time of residence in Zambia under a permit was not to be considered when computing the 10 years. Under the 1973 and 2016 Constitutions this is precisely the time which was to be considered in computing the ten years. Therefore, under the 2016, Constitution, a foreigner resident in Zambia for ten year under a permit can apply for citizenship even if the entire period or a portion of it was under a permit. What is confusing is whether time spent in Zambia under a permit before 5th January 2016 would be discounted in computing time for purposes of eligibility to apply for registration as a citizen under the 2016 Constitution. Since the immediate predecessor to the 2016 Constitution, provided that time spent under a permit was not to be considered, a question that arises is whether the 10 years under a permit starts running only on 5th January 2016, when the 2016 Constitution came into force. For instance, if a person has been resident under a work permit from 2010 and wishes to apply for citizenship in 2020 for having been resident in Zambia for ten years, it is unclear whether the six years between 2010 and 2016 would count as part of the ten years.

On strict interpretation of the law, the pre-2016 time under a permit should not count when computing time under the 2016 Constitution. This is because the Interpretation and General Provisions Act¹⁴⁷ which regulates the interpretation of statutes in Zambia on matters left unclear by the statute provides that:

“(3) Where a written law repeals in whole or in part any other written law, the repeal shall not-

[...]

(b) affect the previous operation of any written law so repealed or anything duly done or suffered under any written law so repealed; or

(c) affect any right, privilege, obligation or liability acquired, accrued or incurred under any written law so repealed....”

What this entails, therefore, is that since time spent within Zambia under the permit did not count when computing time of residence in Zambia under the 1991 Constitution, the repeal of its provisions regarding computing time in 2016 does not retrospectively change the status quo. As a consequence, people resident within Zambia under a permit before 5th January 2016 can only rightfully consider the time they have been resident in Zambia under such permit starting on 5th January 2016 for entitlement for registration as a citizen for 10 years.

4.3 The situation of refugees

Zambia hosts a sizeable population of refugees. It is clear that under Zambia’s citizenship regime, a refugee who marries a Zambian or is adopted by a Zambian would be eligible to acquire citizenship. What is unclear whether residence in Zambia for ten years by virtue of one’s status as a refugee can make one eligible to apply for registration as a citizen. On the one hand, some provisions of Zambian law appear to allow refugees who have been resident

¹⁴⁷ Chapter 2 of the Laws of Zambia

in Zambia by virtue of being granted asylum as a refugee. The Refugees Act, 2017¹⁴⁸ provides for cessation of one's status as a refugee upon acquisition of Zambian citizenship.¹⁴⁹ It also provides that:

*“The Commissioner shall assist a person who has ceased to be recognised refugee who has met the conditions for the acquisition of Zambian citizenship to acquire citizenship.”*¹⁵⁰

On the other hand, the requirement that residence in Zambia be under a permit suggests that refugees may not be eligible since their residence in Zambia is not strictly by virtue of a permit. The Immigration and Deportation Act, 2010¹⁵¹ does allow the Department of Immigrations to issue a permit to an asylum seeker or a person seeking refuge.¹⁵² However, this permit is for a limited time and does not appear to extend to the time a refugee is granted asylum.¹⁵³ In fact, once asylum is granted, the refugee is granted an identity document¹⁵⁴ and a permit¹⁵⁵ by the Commissioner of Refugees by virtue of which the person's residence in Zambia is authorised. Since this law is fairly new, there is little literature or court decisions on the issue to shed some light on how this issue will be resolved in future. In practice, it appears that refugees do not become eligible to apply for citizenship as a consequence of residence in Zambia for 10 years unless they first transition to the status of permanent residence.

4.4 Expatriates

Under the 2016 Constitutional regime, the status and rights of expatriates depend on whether they hold Zambian citizenship. If they do, their status and rights are the same as Zambian citizens ordinarily resident in Zambia except where such status and rights are limited or otherwise affected by their geographical location.

5. Conclusions

In conclusion, Zambia's legal regime regulating citizenship has undergone significant transformation. This transformation coincided with Zambia's transition from a territory inhabited by several tribes, which are groups of people organised around a common ethnic origin, to a British protectorate and then an independent nation. At independence, the focus of the citizenship policy was to carve out a distinct Zambian citizenship distinct from the settler community. Subsequent constitutional regimes expanded on the concept of citizenship by entitling people resident in Zambia for at least 10 years to apply for citizenship and

¹⁴⁸ Act Number 1 of 2017

¹⁴⁹ Section 20(1) (c) of the Refugees Act, 2017

¹⁵⁰ Section 49(2) of the Refugee Act, Number 1 of 2017

¹⁵¹ Act Number 18 of 2010

¹⁵² Section 31(1) of the Immigration and Deportations Act, 2010

¹⁵³ See section 31(3) of the Immigration and Deportations Act, 2010

¹⁵⁴ Section 51 of Refugees Act, 2017

¹⁵⁵ Section 71 (3) of the Refugees Act, 2017

recognising additional categories of citizenship such as by adoption. The most recent changes in the citizenship regime entailed an introduction of the right to dual citizenship.

Unlike some African countries, Zambian citizenship has not been tied any ethnicity or tribal affiliations. An issue which permeated Zambia's citizenship laws was the gender discrimination which prevented females from transmitting an entitlement to citizenship to their spouses. This was rectified under the 2016 Constitution. Another recurring issue is the conditions under which a person must be resident in Zambia to be entitled to be registered for citizenship by virtue of residence for 10 years. Some laws have suggested that the residence must not be under the authority of a residence permit while others suggest the contrary. The current law provides the latter. Although this requirement is not the subject of any discussions in Zambia, its potential impact on preventing people resident in Zambia as refugees is likely to arise in future.

Future changes are likely to result in the increase in the minimum period for marriage to a Zambian from 5 years to 10 years to entitle a spouse to apply for Zambian citizenship and the addition of a requirement that in order for a child to be entitled to citizenship by adoption, they must not be related to the adopting parent.

