



Citizenship as a Legal Concept in Zimbabwe

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2018

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1. Introduction

The concept of citizenship is highly topical in modern political and legal debates world over. The following are common and instructive working definitions on this concept. It is the legal and political identity of a person as a subject of a particular country.¹ It is also regarded as the status of being a citizen, that is being a subject of a sovereign state at international law.² This research offers an insight on the legal framework regulating citizenship in Zimbabwe. Although, there are major highlights of, global perspectives, with regards to the concept of citizenship, the bottom line is that this research mainly addresses the pertinent form and substance inherent in the terminology of citizenship from a Zimbabwean viewpoint. The post-independence era in Zimbabwe has largely been shaped by the desire to reconstruct the term ‘citizen’, since the greater part of the country’s historical background is tainted by a dark period where, the majority, black people, were divested of this right, which existed as a privilege for a minority white population, under the Smith administered regime.³

In this light, this research interrogates how the new dispensation under the 2013 Constitution has shaped the term ‘citizenship’ together with the corollary rights and duties appended to this concept.⁴ This task involves an in-depth assessment of the form and substance

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¹See generally the definition of the term ‘citizen’ offered in the case of *Mike Campbell (pvt) Ltd & Another v Republic of Zimbabwe (2/07)* [2007] SADCT 1 (S. Afr. Dev. Cmty.Trib., Dec. 13, 2007), available at <http://www.saflii.org/sa/cases/SADCT/2007/1.html>

²Richards T, (2002), *Citizenship and Human Rights in the Modern World*, available at <http://www.saflii.org/sa/cases/SADCT/2008/2.html> accessed 21 April 2021.

³For a detailed discussion about the abuses of citizenship under the Smith administered regime see J Alexander, *Things fall apart, the center can hold: processes of post war political change in Zimbabwe’s rural areas* in T Ranger and N Bhebe (eds) *Society in Zimbabwe’s Liberation War*, vol 2 (1995) Harare, University of Zimbabwe Publication.

⁴See Chapter 3 of the Constitution of Zimbabwe Act No 20 of 2013.



that informs the acquisition of citizenship; the nature and extent of citizenship together with the accepted grounds of dual citizenship. The main rationale of this study being to identify gaps in the legal framework regulating citizenship so as to proffer recommendations aligned to international best practice as remedial to the would be identified shortcomings.

2. The Global Framework on Citizenship.

There is a plethora of international conventions, treaties and other soft law sources which have influenced the meaning and scope of citizenship at global, continental, sub regional and national levels. Notably; the United Nations Declaration on Human Rights (1948), the European Convention on Nationality (ETS no. 166) and the United Nations Convention on Statelessness (1961) among others. The right to citizenship is embraced through several political, socio-economic and cultural instruments of the United Nations Treaty System (UNTS) and the African Human Rights System (AHRS) which customises citizenship to African context. Of paramount importance is the draft Protocol to the African Charter on Human and Peoples' Rights on the Specific Aspects of the Right to a Nationality and the Eradication of Statelessness in Africa which guards against statelessness.⁵ At sub-regional level, well at least, within the SADC jurisdiction, there has been a growing communitarian view towards a collective legal obligation to protect and respect the human rights of SADC citizens.⁶ However, there remain serious technicalities towards the attainment of this noble communitarian discourse about SADC citizenship due to over-riding principles such as enforceability, sovereignty and territorialism. Perhaps this justifies the reason why there has been a somewhat slow and inadequate response from the SADC regional bloc to the recent siege in the northern parts of Mozambique.⁷

3. The Zimbabwean Legal Framework on Citizenship

⁵See Article 1 of this protocol which clearly set out that the prime objective and purpose of the protocol is to establish the obligations and responsibilities of States relative to the specific aspects of the right to a nationality in Africa and ensuring that statelessness is eradicated.

⁶Article 4 of the SADC treaty reads 'SADC and Member States are required to act in accordance with the following principles – (c) human rights, democracy and the rule of law' a generous interpretation of this clause imply that there is both a singular and pluralistic duty for SADC member states in their individual capacities or as a collective and joint union to act towards upholding human rights of SADC citizens. This reasoning is in tandem with the obiter dictum held in the case of *Mike Campbell & Another v. Republic of Zimbabwe* supra note 1 above.

⁷JStepanasky, 'Mozambique's conflict and the question of foreign intervention' 9 April 2021 Aljazeera.



In Zimbabwe, the Constitution of Zimbabwe (2013)⁸, the Citizenship of Zimbabwe Act(1984) [Chapter4:01]⁹ as amended by Act No 12 of 2003, and the Immigration Act No 22 of 2001[Chapter 4:02] are key statutes providing the legal framework for citizenship. For example, the citizenship act makes it clear that it is an Act designed to make provision for citizenship of Zimbabwe and to provide for matters connected therewith or incidental thereto. There is an array of secondary legislation passed to give effect to the national statutes. There is large complementarity and intersectionality between these pieces of law and the international body of law earlier indicated. However, there is also a considerable degree of inconsistencies in these two bodies of law. It is worth to note that international law becomes enforceable in Zimbabwe only when domesticated into municipal law or when invoked by the courts to the extent that it is not inconsistent with constitutional provisions.¹⁰The court's reasoning in *Whitehead v the Registrar General & Others*¹¹ is apposite. The court, remarked that there is big legal discord in that the coming in of the 2013 Constitution rendered unlawful several provisions of the citizenship regime thus there is need to align all the applicable legislation to the spirit, object and purport of the 2013 Constitution.¹² Thus, a clear line of departure should be drawn in Zimbabwe's citizenship jurisprudence in the period before 2013 and in the period after the 2013 Constitution. Given this framework, it is imperative to dissect further issues incidental to citizenship in the following paragraphs.

3.1 Acquisition of Citizenship

There are, generally, three ways of acquiring or gaining citizenship in Zimbabwe outlined in Chapter 3 of the Constitution. The first one is citizenship by birth.¹³ This is provided for in terms of section 36 of the Constitution, to all persons who have at least one parent as a Zimbabwean citizen or a grandparent who was/is a Zimbabwean citizen by birth or descent.

⁸ In General, chapter 3 of the Constitution of Zimbabwe Amendment (No. 20) Act 2013 deliberates about the nature, scope and extent of citizenship.

⁹The current Act is currently being amended through a draft bill which is still undergoing necessary parliamentary processes, see The Economist 'Old laws and red tape leave thousands stateless in Zimbabwe' 24April 2021 available at

<https://www.economist.com/middle-east-and-africa/2021/04/24/old-laws-and-red-tape-leave-thousands-stateless-in-zimbabwe>

¹⁰ Sections 12,46,326 and 327 of the Constitution.

¹¹*Whitehead v the Registrar General & Others*SC-21-15, See also *Mawere v Registrar-General & Ors*CCZ-4-15.

¹² *Whitehead v Registrar General*, Ibid, para 13

¹³See Section 35 (1) of the constitution read together with section 36 (1) and (2) of the constitution.



Children born out of Zimbabwe are also Zimbabwean citizens by birth, if, either of their parents was ordinarily resident in Zimbabwe or was working outside Zimbabwe for the state or international organisations at the time of birth. This type of citizenship is also extended to any child who is or about fifteen years of age whose nationality and parents is not known, but is found in Zimbabwe.¹⁴ This presumption of Zimbabwean citizenship by birth is one such a measure to avoid rendering children stateless, a condition which further exposes children to more hazards.

The second method of acquiring citizenship is by descent. The Constitution provides for this avenue in section 37. This is afforded to persons who are born outside Zimbabwe but either of their parents or grandparents were Zimbabwean citizens or either of their parents was a Zimbabwean citizen by registration. There is a precondition that the birth be registered in Zimbabwe in terms of the law relating to the registration of births, which is mainly done in accordance to the Registration of Births and Deaths Act [Chapter 5:02]. It should be noted that the Citizenship Act and the Old Zimbabwean Constitution (the Lancaster House Constitution as amended) did not unequivocally provide for this method of acquiring citizenship but only spelt out registration as the juristic act of conferring citizenship. In this light, the 2013 Constitution offers a more nuanced and pronounced right than its predecessor.

The third method of acquiring citizenship is by registration. This is dealt with under section 38 of the Constitution and sections 7 and 8 of the Citizenship Act [Chapter 4:01]. Citizenship by registration can be acquired under three grounds: by way of marriage; by way of residence; or by capacity. The first ground upon which a person can acquire citizenship by registration in Zimbabwe is through ‘marriage’. The implication of this avenue is that ‘Any person who has been married to a Zimbabwean citizen for at least five years, whether before or after the effective date, and who satisfies the conditions prescribed by an Act of Parliament, is entitled, on application, to be registered as a Zimbabwean citizen’. This entitles every person married to a Zimbabwean for a period of at least five years to apply and be granted citizenship. In addition, any person lawfully resident in Zimbabwe for 10 years satisfying prescribed conditions is entitled to apply and be registered as a citizen. Section 43 of the constitution also spells out a way of acquiring citizenship for people originating within the SADC region if they

¹⁴ Section 36(3) of the Constitution.



were born in Zimbabwe before the effective date¹⁵ and if they were ordinarily resident in Zimbabwe on the effective date, provided that one or both of his or her parents was a citizen of a country which became a member of the Southern African Development Community established by the treaty signed at Windhoek in the Republic of Namibia on the 17th August, 1992. The last group regards children who are not Zimbabweans but adopted before or after the coming into force of the Constitution to apply and be registered as Zimbabwean citizens. The office of the Registrar of Citizenship established in terms of section 3 of the Citizenship Act [Chapter 4:01] is charged with maintaining registers for such registered citizens.

3.2 Rights and Duties Attached to Citizenship in Zimbabwe

Regardless of whether one has gained citizenship by birth, descent or registration, there are specific rights to which the person is entitled to, by virtue of being a citizen.¹⁶ Section 35 (2) of the Constitution provides for these rights, benefits and privileges by stating that ‘All Zimbabwean citizens are equally entitled to the rights, privileges and benefits of citizenship and are equally subject to the duties and obligations of citizenship’. These include the right, privilege and benefit to be protected by the state wherever they are, be it in or out of Zimbabwe. However, the context of Section 35 (2) is flaunted with superlatives that require interpretation to give meaning and effect to the wording of this section. This is the case when one considers what is it that constitutes ‘rights’, ‘privileges’ and ‘benefits’ of citizenship? Are these superlatives inter-related or there is a dynamic indifference in terms of their context and applicability? The basis of this research is to offer an insight as to what could possibly be the contemplation of the constitutional drafters when they emboldened these superlatives that form the basis of section 35 (2) of the constitution.

3.3 Generational Rights in the Zimbabwean Context

The pedagogy of section 35 (2) can only be captured correctly if we start by proffering the classification of rights in general. Modern legal jurisprudence appreciates that rights are classified into three categories, that is first generation human rights, second generation human rights and third generation human rights.¹⁷ This research will offer an insight on the substance

¹⁵The term ‘effective date’ refers to the official date upon which the constitution was promulgated into law, and this date is 16 March 2013.

¹⁶*S v Makwanyane* ZACC 3-1995 (SA), also *Mabuto v Women’s University in Africa* HH 698-15.

¹⁷ Initially the division of human rights into categories was first propounded by Karel Vasak in Strasbourg at the International Institute of Human Rights. For a detailed discussion of his three classification of human rights see



that inform each class of generational human rights before determining the scope and extent of application of section 35 (2). The first classification of human rights, commonly known as blue rights is confined to civil and political liberty.¹⁸ In this light, first generation human rights are civil and political in nature and serve to guard against the autocratic power of the state.¹⁹ Some of the basic rights that form part of this class include the right to life; right to equality; freedom, including freedom of speech and religion; voting rights amongst a myriad of other rights.²⁰ Within the Zimbabwean context, these rights form the basic and fundamental rights enshrined in chapter 4 of the Constitution of Zimbabwe commonly known as the Bill of Rights or the Declaration of Rights. Without a doubt, first generation human rights form the basis or ideal envisioning of section 35 (2) of the Constitution due to various factors. Firstly, the essential component of first-generation human rights cannot be undone from the context of section 35 (2) because these are rights enshrined at the heart of the Zimbabwean Constitution.²¹ Secondly, the nature of the duty imposed on the state and every other subject is clear emphasis on the importance of these rights.²² Thirdly, any change, alteration or interference with the guarantees of this class of rights is encumbered with overwhelming thresholds and equally burdened with time-consuming formal and procedural requirements.²³

Karel Vasak, 'Human Rights: A Thirty-Year Struggle: The Sustained Efforts to Give Force of Law to the Universal Declaration of Human Rights' UNESCO Courier 30:11, Paris 1977.

¹⁸ Ibid.

¹⁹ Ibid.

²⁰ These are viewed to be at the epicenter of first-generation rights and they date back to the Magna Carta of 1215, the 1789 Declaration of the Rights of Man and of the Citizen in France, Articles 3 to 21 of the 1948 Universal Declaration of Human Rights and the 1966 International Covenant on Civil and Political Rights among many other International Instruments giving force and effect to human rights in general.

²¹ See chapter 4 of the Constitution of Zimbabwe which is basically a Declaration of Rights. In terms of this chapter, the State and every person, including juristic persons, and every institution and agency of the government at every level must respect, protect, promote and fulfil these rights and freedoms as per section 44 of the Constitution.

²² Ibid.

²³ First of all, a Constitutional Bill intending to alter or interfere with the guarantees of chapter 4 can only be presented in the Senate or the National Assembly if the Speaker of Parliament has given a notice of at least ninety days in the Government Gazette concerning the prime content and terms of the Bill in line with section 328 (3) of the constitution. Secondly, Parliament has a corresponding duty to invite the opinion of the public at large for their input and views on the proposed Bill through public meetings and/or written submissions as per the terms of section 328 (4) of the constitution. Thirdly, parliament should affirmatively vote for the Bill, the required voting threshold being two-thirds in both the senate and the National Assembly as per section 328 (5). Fourthly, within



Having taken an inter-disciplinary approach in the classification of rights, the tide now shifts towards the discussion of second-generation human rights and third-generation human rights in that respective order. The discussion of rights in their classified generations is attached to an attempt to ventilate on the contextual meaning of ‘rights’ ‘benefits’ and ‘privileges’ afforded to Zimbabwean citizens in terms of the wording of section 35 (2) of the constitution. Second generation human rights, also commonly referred to as ‘red’ rights basically refer to socio-economic rights.²⁴ Prime examples of socio-economic rights include the right to education, health and shelter just to mention a few.²⁵ These rights impose a conditional duty on the state to respect, promote and fulfil them. The condition appended to this class of rights is depended on the availability of resources. In most instances, the state is tasked with a duty to take reasonable legislative and other measures contingent to the availability of resources.²⁶ Third generation human rights, also commonly referred to as ‘green rights’ encompasses group or collective rights such as the right to self-determination, right to a healthy environment, right to sustainable development and rights to natural resources just to mention a few. Within the continental framework, these rights form the basis of the African Charter on Human and Peoples’ Rights to which Zimbabwe is a signatory. However, International conventions and treaties do not necessarily bind Zimbabwe unless if it has been reduced into law through an Act of parliament concomitant with section 327 (2) of the constitution.²⁷

3.4 The nature and extent of duty imposed on the state to its Citizens

three months after the it has been passed by the National Assembly and the Senate in accordance with section 328 (5), it must be submitted to a national referendum upon which the president can the assent to it if voted for by the general population. If anything, the guarantees placed on chapter 4 of the constitution are a tale-tale sign about the sanctity of these rights.

²⁴Socio-economic rights were recognized as forming the basis of second-generation rights in the case of *Campaign for Fiscal Equity v State of New York* 86 N.Y 2d 307 (1995); *Campaign for Fiscal Equity v State of New York* 100 NY 2d 893 (2003). *Campaign for Fiscal Equity, Inc v State of New York* 8 NY 3d 14 (2006).

²⁵For a detailed read on socio-economic right see the International Covenant on Economic, Social and Cultural Rights (ICESCR).

²⁶A classic example of such a socio-economic right is section 28 of the constitution which read ‘The State and all institutions and agencies of government at every level must take reasonable legislative and other measures, within the limits of the resources available to them, to enable every person to have access to adequate shelter’.

²⁷This section read as follows, ‘An international treaty which has been concluded or executed by the President or under the President's authority, a) does not bind Zimbabwe until it has been approved by Parliament; and b) does not form part of the law of Zimbabwe unless it has been incorporated into the law through an Act of Parliament’.



The term ‘right’ within the context of section 35 (2) is holistic in nature, implying that citizens are entitled to rights in whatever form or class they may exist. However, the point of departure is exposed when questioning the burden of duty demanded from the state towards the citizens. Although the state has a general duty to promote, protect, respect and fulfil these rights, the nature and degree of this duty is variable depending on the class of rights involved. This argument justifies the reason why the drafters of the constitution included the words ‘benefit’ and ‘privilege’ in the discourse of rights that inform this pertinent section which is the subject matter of this discussion. The duty to protect, promote, respect and fulfil rights demand a high response from the state, but this can only be the case for first generation class of rights. For second generation class of rights, the duty can be discussed within the context of ‘benefit’ and ‘privilege’ since in any case it is dependent on the availability of resources. The state’s duty for socio-economic rights is confined to the availability of resources, implying that the issuing of such a right can be correctly defined as the conferment benefit or a privilege. If this is the case, then it can be correctly argued that with regards to first generation rights, the state has an unconditional responsibility towards the fulfilment, protection, respect and protection of these rights.

However, with regards to second generational rights the state is only burdened with a conditional duty to progressively realise these rights. Simply put, second generation rights can be described as interest based, with the interest’s accrual conditional on the availability of adequate resources from the state. If it happens that any right that forms the basis of second-generation rights has been provided to a citizen or a class of citizens, if we are to invoke the clear wording of section 35 (2) of the constitution then the provision of such a right is tantamount to the conferment of a benefit or a privilege. This assertion, although speculative in nature, seems to be the correct position that the drafters of this section envisaged when they were incorporating the terms ‘right’, ‘benefit’ and ‘privilege’ within the discourse of section 35 (2) of the constitution. The conclusion that can be drawn from socio-economic rights is that citizens, who fall within the category or class intended to benefit from the progressive realisation of any of these rights, are therefore entitled to a legitimate expectation that the state will fulfil the letter of law in the promotion and protection of these rights.

The state’s duty and responsibility towards the promotion, protection, respect and fulfilment of socio-economic right is binary in nature; first it involves legislative interventions and secondly involves any other conceivable intervention likely to achieve the realisation of such rights. Due to the doctrine of separation of powers which reigns supreme in the



constitution of Zimbabwe, policy interventions towards the realisation of socio-economic rights are prerogative to the executive and cannot be reviewed.²⁸ However, the contemptuous implementation of this policy is subject to administrative action and can be reviewed by any competent court in Zimbabwe.

This is usually the case when there is abuse of discretion which amounts to discrimination in implementing the policy. This is also the case when the conferment of benefit or privileges is being afforded to achieve an ulterior purpose. We have already witnessed significant case studies of such happenstances in the past, the prime example being the operation *garikai/hlalanikuhle/better life* whereby the government exercised a nationwide housing project intended to benefit victims of operation *murambatsvina/remove filthy* who had been left homeless following the mass forced evictions.²⁹ Although the policy was well-meaning, the implementation part was riddled with ulterior motives, this can be gleaned from the fact that a sizeable percentage of the program was reserved for the civil service- primarily the military, possibly to solicit political support at the expense of real victims in need of shelter.³⁰ This example serves to confirm that the provision of socio-economic rights should be closely guarded to avoid the discretion vested in the executive being exercised in a discriminatory way, especially the discrimination based on political affiliation. This is usually the case in polarised countries like Zimbabwe, where the provision of socio-economic rights is used as a tool for gaining political mileage and receipt of such rights is depended on affiliating to the ruling party. The resulting consequence is that citizens affiliated to the opposition end up being reduced into second class citizens, often side-lined in most government programs like the presidential input scheme,

²⁸Section 1 of Part 1 of the Administrative Justice Act Number 12 of 2004 [Chapter 10:28] provides that ‘any exercise or performance of the executive powers or functions of the president or cabinet’ is excluded from the ambit of administrative action. Although there is a thin line between policy formulation, which is often political in nature, and policy implementation which is an administrative action, it is widely accepted that only the former does not form part of administrative action but the latter is indeed an administrative action. See article by Lauren Kohn, *Using Administrative Law to Secure Informal Livelihoods: Lessons from South Africa* Women in Informal Employment Globalizing and Organising No 10 of May 2017, p9 available at www.wiego.org. see also Cora Hoexter *Administrative Law in South Africa* (2012) p10.

²⁹See a report by Amnesty International released on 8 September 2006 titled ‘Zimbabwe: Housing Policy Built on Foundations of Failures and Lies’ available at <https://reliefweb.int/report/zimbabwe/zimbabwe-housing-policy-built-foundation-failures-and-lies>

³⁰*Ibid.*



3.5 Duty to protect citizens beyond the Zimbabwean borders

Although the purported intention of the constitution is well-meaning, it is the conduct of the Zimbabwean government that remains questionable when it comes to the protection of Zimbabwean citizens outside the territory of Zimbabwe. Fair enough, the diplomatic institutions necessary towards the attainment of this equal treatment of Zimbabwean citizens are well spread across the globe in line with section 204 of the constitution.³¹ With these diplomatic institutions in place and sufficiently equipped to carry out the mandate under section 204, major questions can be raised as to why the government has shown no commitment towards according Zimbabweans in the diaspora an opportunity to exercise the right to vote. The mere fact that voting is a right protected in the Bill of Rights imply that the government of Zimbabwe is carrying out a massive violation of fundamental constitutional rights by denying Zimbabwean citizens in the diaspora a right to vote. This is the position advanced in this research despite DCJ Malaba's ruling in *Bukaibenyu*³² wherein the learned Deputy Chief Justice, as he then was, held that 'the constitution did not place any obligation upon the state to make arrangements for voters who for personal reasons were unable to physically attend the polling stations to vote'.³³ The interpretation of this violation means that by denying the

³¹Section 204 of the constitution imposes a diplomatic responsibility on the President who is head of the executive to nominate and appoint ambassadors who should represent the interests of Zimbabweans wherever they may be stationed. The gist of section 204 read as follows 'The President may appoint persons to be ambassadors or other principal representatives of Zimbabwe in other countries or to be accredited to international organisations and may, at any time, remove those persons from their posts'.

³²*Bukaibenyu v Chairman, Zimbabwe Electoral Commission and Others* CC-12-17. However, this decision was done in terms of the countervailing circumstances of the pre-2013 constitution. Although the 2013 constitution brings to live fresh and more accommodating political rights than the pre-2013 setting, it is highly doubtful that the diaspora vote can be included due to various factors in the voting system such as the use of the Bio-metric Voter Registration which requires registration in Zimbabwe, and the corollary financial hurdles for the Zimbabwe Electoral Commission to carry out the diaspora vote. See G Feltoe, 'Casenote on the case of *Bukaibenyu v Chairman, ZEC, the Registrar General of Voters, the Minister of Constitutional and Legal Affairs and the Minister of Justice and Legal Affairs & Others* CC-12-17', 1 *Zimbabwe Electronic Law Journal* (2018).

³³*Ibid.* See also the decision in *Registrar General of Elections & Ors v Morgan Tsvangirai* SC 2002 (1) ZLR (S) 204 para 211E Wherein CJ Chidyausiku held that if a voter is outside his/her constituency that cannot be construed as the State's failure to afford the right to vote, but rather as the voter's election to deprive himself/herself of such a right. This viewpoint is reinforced in the case of *Madzingo & Ors v Minister of Justice & Ors* 2005 (1) ZLR 171 (S) AT 177F-G wherein it was held that there is no duty whatsoever imposed on the state to provide voting machinery beyond a voter's registered constituency to facilitate voting.



diaspora vote, the government is violating section 35 of the constitution, but moreso, violating fundamental rights of equality guaranteed under section 56 of the constitution³⁴ and also violating section 155 (2)³⁵ of the constitution.

The state has a constitutional duty and obligation to ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to cast a vote, and must facilitate voting by persons with disabilities or special needs. Perhaps it can be argued that the diaspora vote should be accommodated under the special needs category of section 155 (2) (b) of the constitution hence the state should take reasonable steps towards the facilitation of the diaspora vote. Whether or not according Zimbabweans in the diaspora an opportunity to vote is not a right, the drafters of section 35 of the constitution had envisaged such a scenario one can say hence the justification why a duty is imposed on the state not only to extend rights but also benefits and privileges to its citizens wherever they may be. It follows that if the right to vote to Zimbabwean citizens in the diaspora does not amount to a ‘right’, the language of section 35 is generous enough to accommodate the right to vote indirectly as a benefit or privilege for Zimbabwean citizens in the diaspora. Viewed in this light, the stance adopted by the state in denying the diaspora vote is a clear indication and a prime example of how it is manipulating citizenship to bar or withdraw certain rights, benefits and privileges from a section of its population.³⁶

From a comparative analysis, the leading South African case of *Richter*³⁷ can offer a limelight as to how Zimbabwe can progressively accommodate the vote of a class of citizens who seemingly require special needs to vote as enshrined in section 155 (2) (b) of the

³⁴Section 56 (1) of the Constitution reads ‘All persons are equal before the law and have the right to equal protection and benefit of the law’.

³⁵ The State must take all appropriate measures, including legislative measures, to ensure that effect is given to the principles set out in subsection (1) and, in particular, must ensure that every citizen who is eligible to vote in an election or referendum has an opportunity to cast a vote, and must facilitate voting by persons with disabilities or special needs.

³⁶ See Bronwen Manby, *Citizenship Law in Africa: A Comparative Study* (Open Society Institute 2009); Bronwen Manby, *Struggles for Citizenship in Africa* (Zed Books 2009) wherein the author relies on a recent Open Society Institute report which exposed how African states ‘manipulate citizenship in order to bar certain individuals from standing for election; to bar certain groups from voting; to escape responsibility for providing social services; or to maintain some illusion of a national identity’.

³⁷*Richter v Minister for Home Affairs & Others (with the Democratic Alliance & Others Intervening, & with Afriforum & Another as Amici Curiae)* 2009 (3) SA 615 (CC)



constitution. In this case the South African Court considered and partially upheld an urgent challenge to the South African Electoral Act's denial of voting rights to certain group of citizens who were residing outside the borders of South Africa. The chief lessons that can be drawn from this case is that although the diaspora vote offer real logistical challenges, especially when the participation goes beyond national elections by involving provincial voting, voting is still a fundamental right that should not be taken away from a class of the population due to challenges related to logistics only, other compelling reasons should weigh in to justify a denial of this right.³⁸ It is not in doubt however that the extent to which Zimbabwean citizens are entitled to protection from the state quite differs based on the location of the citizen. Within the political borders of Zimbabwe, the protection is easier to exercise for the state, however, the major problem arises when the citizen is beyond the territorial integrity of Zimbabwe. Under such scenario the extent and nature of the protection is quite remote, and often exercised through soft power in the form of diplomatic engagements. The extent to which the protection can be exerted is determinant upon factors such as hostilities of the nations involved, the existence of regional or international treaty and basically the cause of action giving rise to the need for protection.

We can glean one or two lessons in this regard from the seminal case of *Kaunda*³⁹ wherein a considerable number of South African citizens were arrested in Zimbabwe on various charges varying from the illegal possessions of weapons and violation of immigration laws whilst planning to execute a botched assassination of the then Equatorial Guinea President. The detained South African citizens then sought an order from the South African courts compelling the South African state to make necessary, reasonable and urgent diplomatic representations to the Zimbabwean and Equatorial Guinean governments on their behalf. The majority ruling in this case confirmed the order sought by Kaunda and others through a decision which affirmed that the provision for diplomatic protection to citizens whose rights are violated in a foreign land is a prerogative function which falls within the ambit of the executive arm of government. Thus, the case of Kaunda reaffirms that the executive arm of government is therefore vested with the power to decide the nature and scope of the protection to be given to

³⁸ See *Richter v Minister for Home Affairs & Others* Case No 4044/09, North Gauteng High Court, Pretoria, Unreported 9 February 2009 para 36 of a judgment delivered by Assistant Judge Ebersohn.

³⁹ *Kaunda & Others v President of the Republic of South Africa & Others* 2005 (4) SA 235 (CC).



citizens whose rights have been or are being violated in foreign land.⁴⁰ A similar conclusion can be drawn from a Zimbabwean perspective due to the fact that the constitution of Zimbabwe contains similar enabling provisions for this diplomatic provision of protection to its citizens beyond its borders.⁴¹ This seems to be the spirit and objective of section 35 (3) (a) of the Constitution.

3.6 Duty to issue documentation

Citizens are also entitled to passports and other travel documents as well as birth certificates and other identity documents issued by the state. The importance of this is that proof of citizenship is *prima facie* evidence that one should be afforded protection by the state, and this protection covers protection of fundamental rights and any other rights to the extent applicable given circumstances of each case.⁴² The Constitution thus makes the state the duty bearer and the citizen the rights holders. It is the duty of the executive, legislature, judiciary and any other institutions and agents of the state to ensure the citizen is protected by the state. Generally, non-citizens are not entitled to most of these rights, benefits and privileges as per section 35 of the constitution. However, the 2013 Constitution has a generous and expansive declaration of rights in Chapter 4 which extends protection of fundamental rights to every person in Zimbabwe, inconsiderate to them being citizens or non-citizens. This trendsetting initiative is in tandem with global developments and Zimbabwe's commitments towards affording basic human rights to citizens of the global community regardless of their status, creed, race, belief or gender.

⁴⁰See also the case of *Von Abo v Government of the Republic of South Africa & Others* (CCT 67/08) [2009] ZACC 15 (CC). Wherein Van Abo's farms were expropriated under a new land policy in 1997. Von Abo resisted the expropriation and requested diplomatic protection from the South African government but remained unsatisfied until applying to the courts for an order to that effect in 2007. The case reaffirms the availability of diplomatic protections for South African citizens whose rights are being violated in a foreign jurisdiction.

⁴¹See section 35 (3) (a) of the Constitution provides that all Zimbabwean citizens are entitled to the protection of the State wherever they may be'. This protection can take the form of diplomatic interventions by the executive for Zimbabwean citizens whose rights have been violated or are being violated in a foreign land. Obviously, the extent, nature and scope of protection is determined by the executive. However, if the executive refuses to act or act irrationally in its diplomatic engagement of offering protection to an affected citizen in a foreign land, the court has a duty, upon application by an interested party to order the executive to deal with the matter appropriately through an order directing the relevant cabinet minister or the president to act in accordance with his or her constitutional responsibilities.

⁴²Section 56 (1) of the Constitution.



3.7 Reciprocity of the Duties

Citizenship rights and benefits demand a reciprocal duty from the citizen. These include being loyal to Zimbabwe, observing the Constitution and its ideals and institutions. In addition, citizens should respect the national flag and the national anthem and to defend national sovereignty as far as possible.⁴³ The sum total of these duties is to mould and create a patriotic law abiding citizen who has the state at heart, and determined to protect its interests and shun all conduct prejudicial or injurious to such national goals.⁴⁴ The duties of citizens to the state, and the rights of citizens from the state reflect a mutually symbiotic social contract between the two sides. When citizens abrogate their duties to the state, they are generally liable to criminal or civil sanction and at times revocation of citizenship and stripping of citizenship rights and benefits.

3.8 Dual Citizenship in Zimbabwe

The Old Constitution and the Citizenship Act[Chapter 4:01] were disinclined towards dual citizenship. Once a Zimbabwean citizen obtained another citizenship, then that person ceased to be a Zimbabwean citizen effectively.⁴⁵ This is still prevalent in most jurisdictions. However, the 2013 constitution presents a paradigm shift from this position. Dual citizenship is no longer a ground upon which Zimbabwean citizenship can be revoked as was the case prior to the constitution. The only recognisable grounds upon which citizenship can be lost are two-fold based on the root giving rise to the citizenship. Zimbabwean citizenship by registration can only be lost through a fraudulent acquisition of such status or colluding with the enemy in times of war.⁴⁶ Citizenship by birth can only be lost or revoked if it was secured through fraudulent

⁴³ Section 36(4) of the Constitution.

⁴⁴ *S v Mharapara* 1985 (2) ZLR 211 S; see also *S v Kapurira* 1992 (2) ZLR 17 (S); See also *S v Kuruneri* HH 46-05 [2005] all these cases relate to crimes committed outside of Zimbabwe by Zimbabwean citizens. The court in these cases ruled that they retain jurisdiction to try and convict the offenders. The basis of the court's reasoning is entrenched in section 5 of the Criminal Law Code which stipulates that a Zimbabwean court can have jurisdiction over a crime committed wholly outside of Zimbabwe if the crime creates harmful effects in Zimbabwe. The implication is therefore that crimes which are injurious to the national goals of Zimbabwe will always be punished in Zimbabwe if committed by Zimbabweans outside the borders of Zimbabwe.

⁴⁵ *Madzimbamuto v Registrar General & Others* CCZ 114-13.

⁴⁶ See Section 39 (1) of the constitution which reads 'Zimbabwean citizenship by registration may be revoked if (a) the person concerned acquired the citizenship by fraud, falserepresentation or concealment of a material fact; or (b) during a war in which Zimbabwe was engaged, the person concerned unlawfully traded or communicated with an



means or if a person presumed with Zimbabwean citizenship due to uncertainty of citizenship is later verified as a citizen of another country.⁴⁷ There is no peremptory authority on any organ of the state to deny dual citizenship to Zimbabwean citizens by birth.⁴⁸ To this end, the Zimbabwean legal framework is permissible to the concept of dual citizenship for Zimbabwean citizens by birth.

Section 40 of the Constitution provides that Zimbabwean citizenship is not lost through marriage or dissolution of marriage. What it means is that once a Zimbabwean is married elsewhere and acquires citizenship in that other country, they still remain Zimbabwean nationals. On the other hand, a foreigner who acquires Zimbabwean citizenship by virtue of marriage to a Zimbabwean citizen cannot be deprived of that citizenship because the marriage has been dissolved. Even for those Zimbabweans by birth, who attain another citizenship by registration or descent, they still remain citizens of Zimbabwe.⁴⁹ It is thus summed that the current legal framework recognises dual citizenship.

3.9 Revocation of citizenship

Section 39 of the Constitution provides for instances where citizenship can be revoked. Citizenship by registration can be revoked if acquired by fraud, false representation or concealment of a material fact. In addition, it is deprived when the person concerned acted unlawfully in trade or communication or assisted the enemy anyhow during the war.⁵⁰ This seems to be an international trend devised as a mechanism to punish citizens for colluding with the enemy in times of war or unrest. However, in most despotic and autocratic states, this has often been abused as a mechanism to punish opposition political party members who stand against human rights abuse against totalitarian regimes. Citizenship by birth can be lost also when acquired by fraudulent means, false representation or concealment of a material fact. In the case of an unknown child below the age of fifteen years found in Zimbabwe in terms of section 36(3) of the Constitution, citizenship is revoked when the child's nationality is

enemy or was engaged in or associated with any business that was knowingly carried on so as to assist an enemy in that war'.

⁴⁷Section 39 (2) of the Constitution.

⁴⁸*Maweresupra* note 11 above.

⁴⁹Section 40 of the Constitution.

⁵⁰ Section 39 (1) of the Constitution.



subsequently established. The cardinal rule is that citizenship must not be revoked if the person would be rendered stateless.

4. Institutional framework of Citizenship matters

There are key stakeholders in citizenship business. The parliament is there to ensure that Acts of Parliament are made to regulate several issues emanating from citizenship or incidental thereto.⁵¹ These are clearly spelt out in section 45 of the Constitution and includes procedures for registration, voluntary renunciation, restoration and prohibition of dual citizenship in respect of descent or registration. The Immigration Authorities are also charged with facilitation of citizenship through the office of the Registrar of Citizens. The Birth and Deaths Registry is tasked with necessary registration in facilitating the rights and entitlements of citizens. The state security apparatus are charged with ensuring that citizens comply with the law in their ordinary and routine lives. The courts are there to resolve any disputes as regard citizenship issues using the various jurisdictions conferred on them by Chapter 8 of the Constitution. The individual citizens have duties and responsibilities attaching to them by virtue of being citizens. It is summed herein that citizenship business is every person and every entity's effort is instrumental in moulding good citizenry.

5. Citizenship and contemporary issues.

The twenty first century has witnessed increase in issues like cross boarder migration, increased refugee flows from Africa to Europe, from Asia to America and influx of displaced people and war victims from the Horn of Africa to the Southern countries of Africa.⁵² The issue of migrant labour across countries and international marriages have affected the old trends regarding citizenship. More people have become stateless, losing the protection they are supposed to be afforded by their states.⁵³ To this end, it is recommended that new modalities are required at

⁵¹ Section 42 (a)-(f) dictates that ‘an Act of Parliament may make provision, consistent with the constitution for procedures by which Zimbabwean citizenship by registration may be acquired; the voluntary renunciation of Zimbabwean citizenship; procedures for the revocation of Zimbabwean citizenship by registration; the restoration of Zimbabwean citizenship; the prohibition of dual citizenship in respect of citizens by descent or registration; and any other action necessary to give effect to chapter 3 of the constitution.

⁵² T Bloom, ‘Problematising the Convention on Statelessness’ (2014), available at <https://www.harvardlawreview.edu> accessed 21 April 2021.

⁵³ M Foster, ‘Statelessness as a Human Rights Issue’ (2016), available at <https://www.academic.oup.com> accessed 22 April 2021.



regional, continental and global platforms to deal with the deepening citizenship crisis. There is need to consider reducing statelessness in considering the art of statecraft and statehood, especially since it poses large security loopholes to nation states. The United Nations Convention on Statelessness 1961 remains a key pillar in this regard. Further research and integration of various actors is critical in ameliorating the citizenship hazards in light of contemporary issues.

6. Conclusion.

In conclusion, citizenship is the political and legal identity of a person as a subject of a particular country. Citizenship is regulated through international treaty systems and domestic laws. In Zimbabwe chapter 3 of the Constitution and the Citizenship Act [Chapter 4:02] are key laws. Citizenship is acquired by birth, descent and registration. It comes with certain rights and benefits but with reciprocal duties and responsibilities by citizens. Zimbabwe accepts dual citizenship only for those who hold citizenship by birth. There are instances where citizenship is revoked and these include cases of fraud, false representation and concealment of material facts or aiding the enemy during wartimes. The research established that citizenship matters are an allstakeholder' issue requiring a coordinated multifaceted approach. Citizenship has been largely affected by global trends in human movement as a result of wars, disasters and labour migration among others. New modalities should be worked out to mitigate the deepening crises, at national, continental and international levels.