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PARLIAMENT OF ZIMBABWE

FOURTH REPORT OF THE PORTFOLIO COMMITTEE ON DEFENCE AND HOME AFFAIRS ON THE CITIZENSHIP OF ZIMBABWE ACT

SECOND SESSION, SIXTH PARLIAMENT

Presented to Parliament on the 13th June 2007

[S.C. 12, 2007]

Background

Between 1981 and 1983, the Government of Zimbabwe allowed dual citizenship. In 1983, the Constitution of Zimbabwe Amendment Act 3 of 1983 abolished dual citizenship. Between 1983-2001, a series of amendments to the Citizenship Act were made in an attempt to implement in practice the abolition of dual citizenship. These amendments were ineffectual because they required renunciation of foreign citizenship in terms of Zimbabwean law while what would have been effective is renunciation in terms of the relevant foreign law. Finally, the citizenship of Zimbabwe Amendment Act No. 12 of 2001 effectively implemented the abolition of dual citizenship by requiring that the renunciation of foreign citizenship be made in terms of the relevant foreign law.

Proceedings of the Committee

The Registrar General (RG) appeared before the Portfolio Committee on Defence and Home Affairs in the past and highlighted that those born from foreign parents had to renounce their foreign citizenship and most had not done so. The Zimbabwe Lawyers for Human Rights then based on this evidence sought the audience of the Committee to present cases that had been brought before the High Court against the Registrar General who according to the Lawyers has systematically misinterpreted the Citizenship laws to unlawfully withdraw citizenship from several individuals. Both the RG and the Lawyers appeared before the Committee and also submitted written evidence.

Evidence received

Zimbabwe Lawyers for Human Rights made the following presentation

- a) The Lawyers based their evidence on Amendment number 12 of 2001 to the Citizenship Act of Zimbabwe. The provision on renunciation has been in dispute resulting in the Registrar General's office refusing to issue passports to individuals or other identification documents.

Section 9(7) provides that;

A citizen of Zimbabwe of full age who

- a) At the date of the commencement of the Amendment Act, 2001, is also a citizen of another country; or*
- b) At any time before that date, had renounced or purported to renounce his citizenship of a foreign country and has, despite such renunciation, retained his citizenship of that country;*

shall cease to be a citizen of Zimbabwe six months after that date unless, before the expiry of that period he has effectively renounced his foreign citizenship in accordance with the law of that foreign country

- b) The Constitution of Zimbabwe confers citizenship by birth to people born in Zimbabwe. However, the RG Department has narrowly interpreted this provision despite guidance he has received from the High Court and the Government Notice 584 of 2002 in the Government Gazette to clarify these provisions. According to the RG, any person who is or was born in Zimbabwe from one or both parents who were foreigners had to renounce his entitlement or potential claim to foreign citizenship. Failure to renounce meant that that person automatically forfeits his Zimbabwean citizenship. This interpretation does not take into account the fact that a person is not automatically guaranteed of foreign citizenship merely because his parents were born in a foreign country. It is thus a wrong presumption that when one has a parent or parents of foreign descent by birth they also become citizens of that country by descent.
- c) The interpretation by the RG has led to the RG refusing to issue passports to certain individuals and has resulted in unnecessary litigation where the RG has lost and paid costs on a higher scale.
- d) To clarify the interpretation of Act number 12 of 2001, the Minister of Justice published a notice in the Government Gazette. This interpreted section 9 of the Citizenship of Zimbabwe Act as amended in 2001. Renunciation of citizenship would not apply to a potential, claim or entitlement to foreign citizenship. The Cabinet also endorsed that everyone born in Zimbabwe was a citizen of Zimbabwe by birth unless they 'acquired' foreign citizenship.
- e) Without citizenship, farm workers and other individuals cannot exercise basic rights such as voting, non-discrimination on the basis of origin, nationality, registration and the right to travel into and out of one's country. Citizenship is a man's basic right, without this possession; there remains a stateless person.

The Registrar General

The RG gave the following evidence:

- a) Between 1983-2001, a series of amendments to the Citizenship laws were made in an attempt to the abolition of dual citizenship. White officers who were acting in bad faith and wanted to retain dual citizenship through the back door drafted these amendments, which were ineffectual. Finally in 2001 an effective amendment was made. The Constitution of Zimbabwe granted citizenship at Independence to all those who were citizens by birth, descent and registration prior to April 1980.
- b) Section 5 of the Constitution of Zimbabwe governed the citizenship of persons born in Zimbabwe after independence. Subsection (1) of Section 5 of

the Constitution of Zimbabwe did not confer citizenship by birth to a person born in Zimbabwe whose father was at the time of that person's birth, a non-citizen envoy accredited to Zimbabwe. In cases where a person was born in Zimbabwe after independence, the person became a citizen by birth.

- c) Section 6 of the Constitution of Zimbabwe granted citizenship by descent to any person born outside Zimbabwe after independence if his or her father in the case of a child born out of wedlock was at the time of his/her birth a citizen otherwise than by descent.
- d) Subsection 1 of Section 7 of the Constitution of Zimbabwe says that a person became a citizen of Zimbabwe if his/her father had qualifications which entitled him to register as a citizen and was given a period of five years after which he could lodge his or her application. Subsection 2 of Section 7 allowed any woman who at independence or thereafter became married to a Zimbabwean citizen to be registered as a citizen.
- e) The intentions of the legislation that all persons with foreign citizenship rights be required to renounce is enshrined in the following statement, "the Government considers that it is not possible for a person to have complete allegiance and loyalty to two sovereign States at the same time..." This however took many years from 1987 to 2001 with the white officers frustrating the process as a way of ensuring that their kith and kin that settled in Zimbabwe prior to 1980 continue benefiting from dual or multiple citizenship. The efforts of the Registrar General in trying to come up with an effective renunciation law came to fruition in 2001 when the Citizenship of Zimbabwe Amendment No. 12 of 2001 was put in place. Many people felt the impact of the amendment. There was an outcry especially from children born of migrant laborers from the SADC region who claimed that they had no foreign citizenship. In addition the question of interpretation of the law arose.
- f) The Citizenship of Zimbabwe Amendment Act, 2001 amended subsections 3,4,5,6 and 7 of Section 9 of the Act. Persons renouncing citizenship were now required to effectively renounce, "in accordance with the law of that foreign country" and further required to make a declaration confirming such renunciation in the prescribed form and manner of that foreign law. This therefore, provided for the effective renunciation to any person who had retained foreign citizenship and those who had not properly renounced, by renouncing in the form and manner prescribed by the Zimbabwe law. Affected parties had to renounce foreign citizenship through their embassies and those who could not afford could do it in their districts. SADC children are not exempted from renunciation but have a special renunciation procedure provided for in section 9A of the Citizenship of Zimbabwe Act, 2003. It must also be noted that some of the people who have foreign citizenship rights did

not come back to renounce using the effective law and consequently lost their citizenship by operation of the law.

- g) The Registrar General has never been confused by this act. The issue of citizenship by descent remains a problematic area because those who have it want to benefit from it as and when it is convenient for them. Nowadays due to illegal sanctions against Zimbabwe and visa regimes, descendants of foreign countries have made use of their citizenship by descent. They obtain passports from their countries of parentage-origin where visa regime is not required by countries they want to travel to. They obtain these documents on the basis that they are citizens by descent and indeed they are citizens by descent. The RG produced as evidence Zimbabwean passports surrendered by people in preference to holding passports of their respective countries of descent. He sited international traveling convenience as the push factor.
- h) The department also feels that the Human Rights activists were motivated by a number of factors. Due to forthcoming elections some politicians are campaigning to increase their support base using services provided by the government. The resistance to dual citizenship has been an ongoing battle fought in various fora. People with foreign citizenship will do anything to preserve their citizenship by descent for future use as and when it's convenient for them.

Findings of the Committee

Analysis of the court cases presented to this committee by the Zimbabwe Lawyers for Human Rights (ZLHR) and the RG's response shows that the RG regards all Zimbabwean citizens with a claim or entitlement to foreign citizenship by descent as dual citizenship holders. However both parties seem to share a similar understanding of section 9 of the Citizenship Act of Zimbabwe that what one 'acquires' or 'becomes' is citizenship and not entitlement. It is citizenship that Zimbabwean citizenship laws require to be renounced as do other countries laws. It is clear that most countries are against dual citizenship and declare any entitled citizen, by descent, a non-citizen once they hold a foreign citizenship until they renounce it. The RG continues to lose citizenship court battles because the applicants argue that they have no foreign citizenship to renounce since most of them were born and bred in Zimbabwe and have never held any document that prove them to be foreign citizens. The General Notice 584 of 2002 acknowledges that the proof that one is a Zimbabwean citizen is possession of a Zimbabwean passport, birth certificate, citizenship certificate, national registration card or other documents. It also regards possession of foreign passport, or any such certificate or written law of the country concerned as evidence required towards refuting of one's claim to Zimbabwean nationality.

It is clear that the law of Zimbabwe has abolished the principle of dual citizenship. It is equally clear that any person born in Zimbabwe is entitled to

Zimbabwe citizenship. The bone of contention is whether a person born in Zimbabwe and is a Zimbabwean citizen by birth automatically loses their Zimbabwean citizenship if they become entitled to citizenship of another country.

The difficulty lies in that the laws of some countries such as New Zealand and Botswana automatically grant citizenship by descent to any person born to their nationals regardless of whether or not that person has undertaken any positive act to claim that citizenship. In other countries, citizenship can only be vested if the concerned individuals have undertaken a positive act to claim that citizenship. The dispute between the lawyers and RG lies in that the RG office requires any person born of foreign parent to renounce the citizenship of his/her foreign country.

Conclusion

In the view of the Committee the law is well summarized and set out in Government Gazette General Notice 584 of 2002 under the sub heading Renunciation and proof of foreign Citizenship: Governing Rules as quoted below:

“It is hereby notified, for public information, that Cabinet has approved the following clarification and declaration of the existing statutory rules governing the renunciation and proof of foreign citizenship.

Section 9 of the Citizenship of Zimbabwe act [*Chapter 4:01*] precludes the holding of dual or multiple nationality by Zimbabwean citizens.

The provisions of section 9 have in recent months created several difficulties of interpretation and application, resulting in many claimants being denied their Zimbabwean status and the attendant privilege of holding a Zimbabwean passport.

In view of these difficulties, it is necessary to clarify and declare the correct legal position governing the renunciation of foreign citizenship and the retention of Zimbabwean citizenship.

Accordingly, Cabinet has endorsed and approved the following rules to be applied by the Registrar-General of Citizenship and his officials in the implementation of section 9 of the Act:-

- a) A person who is a citizen of Zimbabwe by birth may not be deprived of or denied his citizenship of Zimbabwe unless he is or has become a citizen of some foreign country.
- b) A Zimbabwean citizen who holds any foreign nationality will have lost or

will lose his Zimbabwean citizenship unless he has renounced or renounces his foreign citizenship as required by section 9 of the Act, within the applicable period are as follows:-

- i) by the 6th of January, 2002, in the case of a citizen of full age who was also a foreign citizen at that time;
 - ii) one year, in the case of a citizen who acquires foreign citizenship by marriage;
 - iii) one year, in the case of a citizen who acquires foreign citizenship by some means other than voluntary act or marriage;
 - iv) one year after attaining the age of majority, in the case of a citizen minor who is also a citizen of a foreign country;
 - v) six months, in the case of a foreign citizen who acquires Zimbabwean citizenship by registration.
- c) This renunciation requirement only applies to a person who is actually and presently a citizen of a foreign country. Such citizenship may have been acquired by birth, descent registration or naturalization, according to the citizenship laws of the country in question.

For example under the British Nationality Act 1981, a person born in the United Kingdom is a citizen by birth if at the time of his birth his father or mother is a British citizen or is settled in the United Kingdom. A person living outside the United Kingdom is a citizen by descent if at the time of his birth his father or mother is a British citizen otherwise than by descent or is a British citizen on State service outside the United Kingdom.

- d) The renunciation requirement does not apply to a person who only has a potential right to acquire a foreign citizenship, a person who merely has a claim or entitlement to foreign nationality, whether by official discretion or as a matter of legal right, is not presently a foreign citizen and therefore cannot be required to renounce a citizenship that he does actually and presently possess.

For example, under the British Nationality Act 1981, a foreigner who has continuously resided in the United Kingdom for five years may on application be granted certificate of naturalization if the Secretary of State thinks fit. On the other hand, a British protected person who continuously resided in the United Kingdom for five years is on application entitled to be registered as a British citizen. In both cases, however, neither person become British citizen unless and until he applies for and obtains British citizenship.

e) A person who claims to be a Zimbabwean citizen presumed, *prima facie*, to be a citizen of Zimbabwe produces a passport, birth certificate, citizenship certificate, national registration card or other document evident his Zimbabwean nationality. Such person shall not be required to produce written proof or confirmation that he is not a citizen of a foreign country in order to establish Zimbabwean citizenship status.

e) A claim to Zimbabwean nationality may be refuted and disallowed if it is shown that the claimant is in fact a citizen of a foreign country. Evidence to this effect may take the form of a foreign passport or certificate or may appear from the written law of the country concerned. Such evidence may also appear from records in the possession of the Registrar-General's Office or from investigations conducted by that office into the citizenship status of the claimant concerned."

It is your Committee's view that the above quoted General Notice comprehensively and accurately interprets the law on renunciation of foreign citizenship.

Recommendations

- 1.** It is recommended that the RG should abide by the rulings and interpretation of the courts and Cabinet as given in the Zimbabwean Government Gazette General Notice 584 of 2002.
- 2.** There should be a vigorous nationwide awareness campaign by the RG on the Citizenship of Zimbabwean Act.