

Zimbabwe Human Rights NGO Forum

RESEARCH UNIT

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DISENFRANCHISEMENT OF PERMANENT RESIDENTS

The State very publicly disenfranchised mainly white former citizens who had failed to renounce a foreign nationality when dual citizenship was finally abolished on 7 January 2002. It is in fact probable that very many more, poorly-educated black Zimbabweans also born outside the country were similarly disenfranchised, with far less public fuss. Between one-third and one-half of all commercial farmworkers were themselves born in neighbouring states, or had foreign-born fathers.

Schedule 3 section 3(3) of the Constitution of Zimbabwe states:

'Qualifications and disqualifications for voters

(1) Subject to the provisions of this paragraph and to such residence qualifications as may be prescribed in the Electoral Law for inclusion on the electoral roll of a particular constituency, **any person who has attained the age of eighteen years and who -**

(a) is a citizen of Zimbabwe; or

(b) **since the 31st of December, 1985, has been regarded by virtue of a written law as permanently resident in Zimbabwe;**

shall be qualified for registration as a voter on the common roll.'

The State admitted that over 5 000 permanent residents (including former prime minister Garfield Todd) were affected. Having failed to renounce their foreign citizenship or having handed back their Zimbabwean passports, they received letters dated on or after 25 January 2002 from their constituency registrars, stating:

'You are hereby notified that I have reason to believe –

(a) that you are not entitled to be registered as a voter in
_____ constituency

(b) that you are not qualified for registration as a voter in
_____ constituency

on the grounds that you have in terms of Schedule 3 section 3(3) of the Constitution of Zimbabwe ceased to be a citizen of Zimbabwe and that, unless you give notice of appeal on the form annexed hereto before the expiration of seven (7) days from the date of this notice, or unless on representations made by you, I withdraw this objection -

(a) your claim to be registered as a voter will be rejected;

(b) your name will be struck off the roll.

If you give due notice of appeal, the matter will be set down for hearing before a magistrate of the province in which you reside and the day and place appointed for such hearing will be notified to you in due course.

Dated this _____ day of _____ 2002.

Constituency Registrar'

Many, perhaps most letters were received after the seven-day appeal deadline had expired. Moreover, the Presidential election was proclaimed on 10 and later changed to 27 January 2002.

These notices were presumably sent under the provisions of Part VII of the Electoral Act:

'25 Objections by constituency registrar

(1) If a constituency registrar has reason to believe that –

- (a) a claimant is not entitled to be registered; or
- (b) a claimant is not entitled to be registered on the voters roll on which he has claimed to be registered; or

(c) a voter registered on a voters roll is not qualified for registration on that voters roll; he shall send to the claimant or voter, as the case may be, written notice of objection to which a form of notice of appeal shall be annexed:

Provided that no such objection shall be taken or notice sent during the period between the issue of a proclamation referred to in section 38 or 39 and the close of polling at the election to which such proclamation relates.'

Sections 38 and 39 do not refer specifically to Presidential, only to Parliamentary general and by-elections and vacancies. However, under Part XIX of the Electoral Act, 'Provisions Relating to Elections to Office of President', no specific provisions alter the earlier provisions for registration on the voters roll. The only specific provision relates to the date of closure of the roll for the Presidential election, which s94(1)(c) allows 'may be on or after the date of publication of the notice [fixing the polling date(s)] or not more than 31 days before that date'. Therefore, the earlier provisions regarding voter registration and what may be altered on the voters roll also apply to Presidential elections.

Moreover, the General Laws Amendment Act (no 2 of 2002), s3(h), repealed s34 of the Electoral Act (cap(2:01) and replaced it with the following:

'34 Additional powers to alter voters rolls

- (1) In addition to other powers of alteration conferred by this Part, a voters roll may be altered –
 - (a) by the Registrar-General at any time to correct any error or omission or to change (whether on the oral or written application of a voter or not) the original name or address of the voter to an altered name or address;
 - (b) by the constituency registrar at any time by correcting any obvious mistake or omission, or by changing, on the written application of a voter, the original name or address of the voter to an altered name or address;
 - (c) by the constituency registrar at any time except during the period between the issue of a proclamation referred to in section 38 or 39 and the close of polling at the election fixed by any such proclamation, by striking out the name of any person, on proof that he has become qualified for and has secured registration on another voters roll.
- (2) In the case of an alteration in terms of paragraph (a) of sub-section (1) made otherwise than on the oral or written application of a voters, or paragraph (b) of sub-section (1), a notice of the fact shall be published in the *Gazette* by the Registrar-general or constituency registrar, as the case may be.'

The new s34(1)(c) of the amended Electoral Act makes it quite clear that the disenfranchisement of permanent residents **by the constituency registrars during the period between the proclamation of the presidential election and official closure of the voters roll on 10 and later 27 January 2002**¹

¹ SIs 3A/2002, 14B/2002.

and the end of polling on 10 March 2002, was both unconstitutional and *ultra vires*. And had it been done under the new s34(1)(a) by the Registrar-General during that period, he would have had to publish in the *Government Gazette* a list of all those voters struck off the roll. That evidence would have been available to those monitoring and observing the election.

The letter referred to hearing in a Magistrate's Court upon receipt of any objection. Section 25(3)(b)(ii) of the Electoral Act requires that, when notice of appeal is given by a voter struck off the register, 'the designated magistrate shall appoint a day and place for the hearing, the day so appointed being not more than 30 days after the date of receipt of the notice of appeal'.

Clearly, the magistracy does not have the necessary staff to hear some 5 000 cases within 30 days, before the presidential election. Therefore an urgent class action was launched against the Registrar-General in the High Court, not least because Justice Makarau had earlier ruled that permanent residents had the right to vote and that the names of any voters which had been removed by 18 January 2002 must be restored to the roll before polling. Whether those names were restored is unknown; but if they were, they were again removed from 25 January 2002 onwards.

The actions of the constituency registrars were a very blatant attempt to disenfranchise Zimbabwe permanent residents with the constitutional right to vote in all kinds of elections in this country.

The big worry is, how many possibly displaced and untraceable voters may have been affected without anyone yet knowing about it?

National identity numbers have three components. The double-digit 'prefix' number indicates the place of issue. The next six digits plus letter are the personal identifiers. The final double-digit 'suffix' number codes racial and ethnic identity. So 63-111111A-00 was issued in Harare to a white person, while 45-111111B-45, issued in a small town in Mashonaland Central, identifies someone of Korekore descent.

It is therefore possible to search the national identity registration database in various ways, to identify particular social categories of people, as well as those born outside Zimbabwe. Their national identity numbers can then be used to identify and remove their entries from the voters roll.

Since 4 February 2002, the Registrar-General has had the legal right to remove names from the voters roll **without** informing the persons concerned individually. He is supposed to publish in the *Government Gazette* any and all such alterations he may make, but **the law does not define any time limit within which he must undertake such publication**. It is therefore necessary to point out, without in any way impugning the Registrar-General personally, that **the structural position is such that voters names could be removed and the list of names so removed be published entirely legally only after the election**. This is an extremely undemocratic and dangerous position for Zimbabwe to be in.