

# Zimbabwe: highly restrictive provisions

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External voting by post was part of the electoral laws that were introduced in Zimbabwe after 1980 when the country attained political independence. It is limited to electors who are absent from Zimbabwe while in the service of the government, such as diplomats, civil servants, and members of the armed forces and police. An estimated 3.5 million Zimbabweans now live outside the country, mainly as a result of economic and political hardship, and about two-thirds of these are probably of voting age. This situation has given rise to increased demands by those living in the diaspora for external voting arrangements to be extended to them as well. Zimbabwean laws prohibit dual citizenship.

External voting is provided for in part XIV of the Electoral Act (Act no. 25/2005), which deals with postal voting. The act only makes reference to postal voting and does not provide for voting at a diplomatic mission. Eligibility to vote by post is limited to persons ordinarily resident in Zimbabwe who are resident in the constituency (electoral district) in which the election is to take place or were resident in that constituency 12 months preceding polling day and have good reason to believe that they will be absent from the constituency or unable to attend at the polling station by reason of being 'absent from Zimbabwe in the service of the Government of Zimbabwe' (section 71(1)(b)). The spouses of persons absent from Zimbabwe on government service are also eligible to vote by post.

Sections 71–81 of the Electoral Act describe in detail the procedure for applying for postal ballot papers, the issuing of the postal ballot papers, postal voting, the handling of the postal ballot boxes, and offences related to postal ballot votes. A person who is eligible to vote by post may apply to the chief elections officer for a postal ballot paper. The application, to be received by the chief elections officer ten days before polling day, is made on a prescribed form that the applicant signs in front of a competent witness. The chief elections officer shall number consecutively and keep every application received by him or her open for public inspection until the final result of the election is announced.

Once the chief elections officer is satisfied that the application satisfies the legal requirements, he or she will send the ballot paper to the applicant by registered post or by hand together with other documents stipulated in the act. The ballot paper shall be numbered and shall be indistinguishable from the ballot papers at other polling stations. Upon receiving the postal ballot, the voter shall produce the numbered ballot paper before a competent witness. Both the voter and the competent witness will sign a declaration of identity. The voter will then mark the ballot paper with the candidate of his preference in the presence of a competent witness but without disclosing how he or she has voted. The voter will place the marked ballot paper in an envelope marked 'ballot paper' and place it together with the identity declaration in a cover envelope for dispatch by registered post or hand it directly to the constituency election officer.

The constituency election officer shall, no later than three days after nomination day, notify each candidate of the time and place at which he or she will seal the postal ballot box. At the appointed time and place the constituency electoral officer will show the postal ballot box open and empty and then seal it with his seal and the seals of any candidates who wish to affix their seals. All postal votes received before the close of the poll will be placed unopened in that ballot box. The constituency elections officer will give each candidate 24 hours' notice of the place and time at which the postal ballot boxes and envelopes will be opened.

The electoral authorities have taken great care to ensure the transparency, credibility and security of the external voting process through the provisions described above. However, despite increasing demands, the government maintains that it has no obligation to introduce external voting arrangements to allow the growing number of Zimbabweans living outside the country to vote.

In a recent case a group of Zimbabwean citizens living in the United Kingdom, sought an order compelling the government to make arrangements to allow them to vote externally. The Zimbabwe Supreme Court (Case no. SC 22/05) ruled that the case had no merit. The ruling, made on 18 March 2005, indicated that full reasons for the judgement would be given later. At the time of writing the full judgement is still to be made available.

The applicants—who were not employed by the government but were legally resident in the UK—argued that they were entitled to exercise their right to vote in terms of the Zimbabwean Constitution and that their exclusion from voting was discriminatory and therefore unconstitutional. They further contended that the exclusion from voting of those living outside Zimbabwe curtailed their rights to freedom of expression to an extent that was not acceptable in a democratic society, and advanced the argument that the Zimbabwean Government was committed to full participation by its citizens in political and electoral processes by its citizens by virtue of being party to the Universal Declaration of Human Rights, the African Charter on Human and Peoples' Rights and the Southern African Development Community (SADC) Principles and Guidelines Governing Democratic Elections. They argued that there was a distinction between eligibility to register as a voter and eligibility to vote. The electoral law was therefore discriminatory to the extent that it permitted certain citizens to vote externally while excluding others.

In response, the Zimbabwean minister of justice, legal and parliamentary affairs,

who was cited as first respondent in the case, denied that Zimbabweans living abroad were being discriminated against by the absence of external voting arrangements. He argued that the electoral law provided for the disqualification of voters who had been absent from Zimbabwe for 12 months or more. He contended that the SADC Principles and Guidelines are a political document pegging out a road map for the region that SADC countries must follow towards a future democratic ideal, but that it is not a legal document that is binding on member states. He argued further that, while the Zimbabwean Government acknowledged that Zimbabwean citizens had the right to freedom of expression, assembly and association, the government was not discriminating against anyone but that, under the current political and economic situation, Zimbabwe was unable to allow electors from the diaspora to vote externally because of practical logistical problems. He pointed out that most of the countries in which Zimbabweans were living had adopted measures and sanctions that prohibited government officials from entering such countries. (Sanctions have been adopted by mainly the European Union countries and the United States.) This, he argued, would create an uneven political playing field where the ruling party would not have access to would-be voters while the opposition would have easy access.

It is clear that in Zimbabwe the provisions for external voting are elaborate but restrictive. There is no doubt that, given the growing number of citizens living outside the country, there is going to be increasing demand for similar arrangements to be extended to citizens who are not abroad on government service. The case referred above also raises the fundamental issue of a rights-based approach to electoral administration and how far governments should be held responsible for realizing citizens' right to vote.