

**THE COMPOSITE TERRAIN OF DUAL CITIZENSHIP CONCEPT:
AN ANALYTICAL STUDY OF THE KENYAN MODEL**

BY

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DECLARATIONS

This thesis is my original work except for relevant resources referred and appropriately acknowledged, and that it has not been submitted to any University or institution for any award.

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DEDICATION

To my Mum, and my late Dad posthumously

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I owe the development of this thesis to many individuals and institutions. However, it is not practicable to mention all by name and catalog their contributions as I would have wished. Above all else though, I am beholden to God for according me good health, energy and enthusiasm to pursue the course of my interest. I appreciate with thanks the scholarship awarded to me by the University of Nairobi to enable me advance my studies.

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ABSTRACT

Since citizenship is defined with reference to a state, advances of new forms of belonging, like dual citizenship is fundamentally adversative to the formation of the modern international order based on the state. Simultaneous loyalty to more than one state is incompatible with membership built on the principle of equality of citizenship and territorial connections. In spite, the community of nations appears to embrace the concept of dual citizenship.

Today, the fear of grave international frictions arising from dual nationality seems significantly diminished. To Thomas Faist,¹ dual citizenship is neither an evil nor an intrinsic value in political communities. Indeed, Citizenship and political loyalty to a state that has traditionally been considered inseparable, has in recent years increasingly tolerated multiple citizenship. More than half of all states now tolerate some form of dual citizenship.² Countries have made efforts to adopt the concept of dual citizenship in various forms. These varied forms of dual citizenship arrangements have produced multifaceted effects on the rights of an individual acquiring and the dual citizenship granting state. This fundamentally informs the basis of this study.

¹Thomas Faist, 'Dual Citizenship as Overlapping Membership' [2001] Sweden<<https://www.mah.se/upload/Forskningscentrum/MIM/Publications/WB%203.01.p>>accessed 28th March 2014.

²Thomas Faist and Jürgen Gerdes 'Dual Citizenship in the Age of Mobility'<<http://www.migrationpolicy.org/research/dual-citizenship-age-mobility>>accessed 17th April 2014.

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1. Afroyim v Rusk, 387 U.S. 253 (1967).
2. Bishop Donald Kisaka Mwawasi v Attorney General & 2 others [2014] eKLR.
3. John Elk v Charles Wilkins [1884] 112 U.S. 94.
4. Mahamud Muhumed Sirat v Ali Hassan Abdirahman & 2 others [2010] eKLR.
5. Nottebohm case, Liechtenstein v Guatemala - Judgment of 6 April 1955 -
Second Phase - Judgments [1955] ICJ 1 (6 April 1955).
6. Tunis and Morocco Nationality Decrees case, PCIJ Ser.B., No. 4 (1923).
7. United States v Wong Kim Ark [1898] 169 U.S. 649.
8. Vance v Terrazas, 444 U.S. 252 (1980).

ABBREVIATIONS AND ACRONYMS

EU	-	European Union
FRG	-	Federal Republic of Germany
GDR	-	German Democratic Republic
ICJ	-	International Court of Justice
INA	-	Immigration and Nationality Act
PCIJ	-	Permanent Court of International Justice
UK	-	United Kingdom
UN	-	The United Nations
USA	-	United State of America

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CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

The concept of citizenship signifies membership in a nation-state that carries with it set of rights and duties emanating from such membership. These members live in a territorially enclosed political community that evokes notions of national identity, sovereignty, and state control. Indeed, the word ‘citizenship,’ though with some variations, has been used to refer to an association that has social and symbolic ties encompassing legal status, rights, participation, and belonging.

The use of citizenship concept in United Nation’s (UN) discourse is quasi-exclusively limited to the national context, a definition of citizenship bounded by state borders.³ The same view is contextualized by the International Court of Justice (ICJ) in *Liechtenstein v Guatemala*,⁴ (Nottebohm case) when the court described the word ‘nationality’ as:

...a legal bond having as its basis a social fact of attachment, a genuine connection of existence, interests and sentiments, together with the existence of reciprocal rights and duties the individual upon whom it is conferred, either directly by law or as a result of the act of the authorities, is in fact more closely connected with the population of the State conferring the nationality than with any other State.

³Delcourt, Barbara 2007 as quoted by Auvachez, Elise. (2007) *Supranational citizenship-building and the UN: What can we learn from the European experience?* In: UNSPECIFIED, Montreal, Canada. (Unpublished)

⁴1953 ICJ Rep. 111;1955 ICJ Rep. 12

Conversely, although modern nation-states remain the repositories and main expression of citizenship, defining the concept of citizenship within the context of a single nation-state in the contemporary society is now confounding. That is, the conventional assumption that citizenship is an individual's exclusive relationships to a single state is no longer the norm. Today, citizenship appears to transcend geography or political borders where individual rights and responsibilities can be derived from membership to more than one state, occasioning duality of citizenship.

Although its rapid spread in the recent times is unparalleled, dual citizenship is not a new phenomenon.⁵ What is new though is the reality that the old apprehensive world view about dual citizenship appears to be fading by the day. Whereas during the 20th century dual citizenship was seen as an evil which has to be avoided, today it is *de facto* tolerated by many countries even though most immigrant receiving countries stop short of accepting it *de jure*.⁶ However, duality of citizenship comes with profound ramification both on the individual acquiring and the State granting it.

On the State, dual citizenship is not only an anathema to the traditional idea of citizenship as legal status tied to a nation state, but is also incompatible with the very concept of a State as having a defined territory and a permanent population. That is, the use of the word *citizen* in a dual sense is inconsistent with the concept of

⁵Thomas Faist and Jürgen Gerdes, 'Dual Citizenship in the Age of Mobility' (2008) Washington DC: Migration Policy Institute<<http://www.migrationpolicy.org/research/dual-citizenship-age-mobility>>accessed on 29th July 2014.

⁶Joachim K. Blatter, Stefanie Erdmann and Katja Schwanke (February 2009); *Acceptance of Dual Citizenship: Empirical Data and Political Contexts*; Some of the counties that allow dual citizenship are: Australia, Barbados, Belgium, Bangladesh, Canada, Cyprus, United States, United Kingdom, Switzerland, South Korea, South Africa (requires permission) , Egypt(requires prior permission), Greece, France, Finland, Germany (requires prior permission), Iraq, Italy, Israel, Ireland, Hungary, Iceland, Kenya, Sweden, Slovenia, Syria, Serbia, Armenia, Lebanon, Malta, Spain (allows only with certain Latin american countries), Tonga, Phillipines, Sierra Leone, Sri Lanka (by retention), Pakistan (accepts only with 16 countries), Portual, Turkey (requires permission).

citizenship and challenges the well established notions of state sovereignty. Indeed, such use effectively ‘decouples’ citizenship concept and disrupts the meaning of nation-state. Moreover, dual allegiance in the sense of the active exercise of loyalty and allegiance to more than one state offends national integration.

At the individual level, rights conferred on a dual citizen vis-à-vis citizen sole vary as countries that allow dual citizenship tend to limit rights of persons holding such statuses under their domestic laws.⁷ For instance, in the United States, citizens born abroad are not allowed to run for Presidency.⁸ In Pakistan, citizens with a foreign citizenship are barred from running for Parliament,⁹ and in Kenya, dual citizens are not allowed to hold any State office.¹⁰ Such distinction between citizens, leads to legal discrimination and violates their fundamental rights. Moreover, holders of dual citizenship are required to obey both the laws of countries of citizenship, and such countries have the right to enforce their laws and policies upon them. In such instances, a dual citizen may present a problem if one country’s claims on such a citizen, conflicts with those of another.

The ramifications and entitlements around this area, and the way it has been debated in the public space, lack clarity. Under the international law,¹¹ states are entitled to regulate citizenship laws within their domestic laws. Once a person who has dual

⁷Section 1 of Article Two of the United States Constitution sets forth the eligibility requirements for serving as president of the United States as ‘No person except a natural born Citizen, or a Citizen of the United States, at the time of the Adoption of this Constitution, shall be eligible to the Office of President; In Pakistan, citizens with a foreign citizenship are barred from running for Parliament; and In Kenya Article 78(2) of the Constitution provides that a “State officer or a member of the defense forces shall not hold dual citizenship” while under Article 137(2) (b) a person is not qualified for nomination as presidential candidate if the person owes allegiance to a foreign state.

⁸Barbara (n4).

⁹Ibid.

¹⁰Ibid.

¹¹Hague Convention on Certain Questions Relating to the Conflict of Nationality Laws, 1930

citizenship is in one of the country in which he is a citizen, that country is entitled to exercise jurisdiction in respect of that person within and in accordance with her own laws. Often, such laws are not uniform and are bound to create conflict and legal uncertainties.

Kenya is a *de jure* dual citizenship state.¹² Kenyans in Diaspora successfully implored for inclusion of the current dual citizenship provisions under the constitution of Kenya 2010. The proponents of dual citizenship then cited intense globalization and the need to maximize benefits that accrue from attaining such statuses to the home economy. However, the engagement the Kenyan people had during the Constitutional Review Process on the subject of dual citizenship did not reflect on its imprecise nature. Indeed, the desire to have dual citizenship enshrined within the supreme law of Kenya overrode any rational discourse on its multifaceted aspects. While using the Kenyan model as a case study, this research builds on abstraction, hypothesis, and theories to interrogate the multifarious implications of the concept of dual citizenship.

1.1.1 Citizenship and Nationality

Citizenship and nationality are closely connected legal concepts and although they are frequently used interchangeably, they refer to two different aspects of membership in a state.¹³ Even when the terms are used in the same legal system, they can designate different phenomena. For instance, the United State's law makes a distinction between "citizenship" and "nationality."¹⁴ All US citizens are also US nationals; however, some US nationals are not US citizens. The term "national of the United States" is defined in Section 101(a) (22) of the Immigration and Nationality Act,

¹²Constitution of Kenya 2010, Article 16

¹³Alison Symington, 'Dual Citizenship and Forced Marriages' (2001) 10 Dalhousie Journal of legal studies <https://www.soas.ac.uk/honourcrimes/resources/file55685.pdf>>accessed 27th July 2014.

¹⁴Immigration and Nationality Act, Section 101(a) (22)

(INA) as ‘a person who, though not a citizen of the United States, owes permanent allegiance to the United States.’¹⁵

In some States, a distinction is made between ‘nationality’ as a status independent of residence and, ‘Citizenship’ as a bundle of rights granted only to nationals residing in a territory.¹⁶ Under the International law,¹⁷ however, the word ‘Citizenship’ is used synonymously with ‘Nationality.’ Nationality signifies membership in a state *vis-a-vis* other states and stresses the international protections afforded by membership.¹⁸ Citizenship, on the other hand, refers to full membership within the state, especially the possession of full political rights.¹⁹

Undoubtedly, even though the words ‘Citizenship’ and ‘Nationality’ are often used interchangeably in the common parlance, the two are different. While Citizenship is voluntarily acquired by the operation of law of a sovereign state based on birth and immigration laws, nationality can be said to be an involuntary description of cultural identity that underlines territorial connection of a person through the principle of *Jus sanguinis*.²⁰ Reference to Nationality therefore means individual membership in a nation as a cultural, ethnic and historic community rather than a legal entity; for example one may make reference to the “Luo Nation” but not “Luo Citizenship.”

¹⁵Ibid.

¹⁶Frank Horn, *Conception and Principles of Citizenship in Modern Western Democracies: Science and Techniques of Democracy* (1998), no. 21

¹⁷The Convention on Certain Questions Relating to the Conflict of Nationality Laws, Articles 1 and 2

¹⁸Ibid.

¹⁹Ibid.

²⁰Legal rule that a person's citizenship is determined by that of his or her parents (by 'blood'). This rule is followed in most countries of the world.

Citizenship denotes the status of persons who enjoy full political rights and privileges, while ‘nationals’ are persons who are subjects of the state but who do not have full rights and privileges within the state that they permanently reside in. In this study, the terms ‘citizenship’ and ‘nationality’ are used as two expressions of matching status.

1.2 Problem Statement

Dual citizenship idea is incompatible with the conventional concept of citizenship as legal status connected to a nation state. It contradicts the very notion of a State as having a defined territory with a permanent population. A dual citizen faces problems of variation of rights, conflict of laws and claims arising from interplay of multiple jurisdictions. For instance, a State may not give consular assistance to its nationals if one is in a country whose citizenship that person also holds. Instances of multiple tax obligations on a dual citizen are unavoidable too.

At the time Kenya adopted dual citizenship *de jure*, not much reflection was made on the gravity of its implications.²¹ Such oversight has saddled its implementation. This study, therefore, brings to the fore, these multifaceted aspects of dual citizenship with a view to enabling legal and policy framers to make informed decisions on forms of residency statuses to adopt to minimize on such challenges.

1.3 Research Objective

The objective of this study is to first analyze the notion of dual citizenship on the dichotomy of the concepts of citizenship and nation-state. The second objective is to interrogate connotations of conferring anecdotal rights on a dual citizen vis-à-vis citizen sole under selected jurisdiction with a particular focus on the provisions of the

²¹Dual citizenship was not a contentious issue during the constitutional reform debate.

Kenyan laws. Third, the study aims at examining implications of competing loyalties and conflicting obligations on the personal status of a dual citizen and the nation-state.

1.4 Research Questions

This research seeks to answer four key questions. First, is the idea of dual citizenship at variance with the concepts of citizenship and nation-state? Second, can the rights and duties associated with citizenship be implemented without variations if they are owed to more than one State? Third, what are implications of competing loyalties and conflicting obligations on the personal status of a dual citizen and the nation-state? Fourth, what form or model of dual citizenship is most suitable to adopt in a state-centric society?

1.5 Justification of the study

Dual citizenship concept produces citizenship statuses that are devoid of requisite accompanying rights and duties. It distorts attributes of nation-state and creates instances of legal uncertainties arising from interplay of multiple jurisdictions. However, apart from conventional thought for which dual citizenship is embraced and tolerated there exist limited scholarly explorations on the multifaceted manifestations of dual citizenship concept. Kenya has adopted dual citizenship idea in its municipal laws with little or no background awareness on its varied manifestations. Besides adding to the literature on dual citizenship, this study rationalizes facets of dual citizenship that are useful in enabling policy makers and other stakeholders make informed decisions on modes of residency most appropriate.

1.6 Hypothesis

The concept of dual citizenship has been adopted in diverse forms in various jurisdictions. In analyzing the effects produced by these varied forms on the rights of an individual acquiring and the dual citizenship granting state, this study hypothesizes that the impression of dual citizenship distorts the traditional concepts of citizenship and nation-state. In addition, the study assumes that granting of dual citizenship status leads to thinning bundle of rights of individuals acquiring such status. It is further premised that competing loyalties and conflicting obligations emanating from multiple jurisdictions have negative propositions on the personal status of a dual citizen and the State granting it.

1.7 Theoretical Framework

Although there is significant conventional thought behind the idea of citizenship, there is not as yet a complete, elaborate theory of citizenship. However, an orderly, integrated statement necessary in elucidating the concept of citizenship is not entirely absent. Hence, even though they may no longer provide satisfactory point of reference for the reason that the social conditions they presuppose no longer obtain, discourses on citizenship usually have as their theoretical orientation the liberal, the republican and communitarian philosophical thoughts.

The three theoretical perspectives can be distinguished in the contemporary literature on citizenship: liberal (with its emphasis on individual identity in a political community), communitarian (with its emphasis on cultural or ethnic identities), and republican (with an emphasis on civic identity).²² The liberal model recognize citizens

²²Filiz Kartal, 'Liberal and Republican Conceptualizations of Citizenship: A Theoretical Inquiry' (Vol. 27-28, 2001-2002) Turkish Public Administration Annual.

as sovereign, autonomous beings with duties to pay taxes, obey the law, engage in business, defend the nation if necessary, while in the republican eye, citizenship is about democratic participation, which can channel legitimate frustrations and grievances and bring people to focus on matters of common concern.²³ The liberals' citizenship is based on reason for the pursuit of enlightened self-interest, with republicans holding the view that citizenship usually happens in a public sphere.

Liberalists understand citizenship primarily as a legal status derived from a natural law tradition emphasizing the rights of individuals, representation, and material progress.²⁴ The Republicans link freedom to citizenship. To the Republicans, individual rights take second place, unlike is the case in the liberal model. The Republicans conceive rights as civil rights, created by the political process of formation of will, and not presupposed.²⁵ On the other hand, the Communitarian model, also known as the nationalist model contends that the identity of citizens cannot be understood outside the territory in which they live, their culture and traditions. To them the political subject, above all, belongs to a community, a community to which one owes allegiance and commitment.²⁶ The Communitarian, unlike in the other two theories, view the good of the community as being above individual rights.

²³Godana Yatani, 'Kenya's Nebulous Presumption of Citizen by Birth for Foundlings' (Unpublished desertation, University of Nairobi 2012).

²⁴Filiz Kartal, 'Liberal and Republican Conceptualizations of Citizenship: A Theoretical Inquiry' (Vol. 27-28, 2001-2002) Turkish Public Administration Annual.

²⁵Javier Peña, *La ciudadanía* (In Arteta, Andrés and others (eds.)Teoría as cited by Erika González García in the Article, On the Concept and Models of Citizenship 2003).

²⁶Erika González, 'On the Concept and Models of Citizenship'
Gracia<[https://www.ioe.ac.uk/about/documents/AboutOverview/Gonzalez Garcia E.pdf](https://www.ioe.ac.uk/about/documents/AboutOverview/Gonzalez%20Garcia%20E.pdf)>accessed 13th September 2014.

In some of the classifications communitarian model is included in republican one or vice versa.²⁷ Liberal and republican models, in fact, have some common denominators: such as the state is embedded in legal-rational authority; the view that state power should be framed by rule of law; and protection of basic rights and freedom are visible within both models.

The liberal and republican theories in this instance will be applied in examining individual rights and the political process that results in conferment or denial thereof of citizens' rights. The communitarian model will be used to analyze implications of dual citizenship on the idea of Nation-State since to them citizenship cannot be understood outside state territory.

1.8 Literature Review

While there is considerable literature on *citizenship* as a concept, writings on the idea of dual citizenship are not as elaborate. Nonetheless, the upsurge in acceptance of dual citizenship idea in recent times has rekindled scholarly reflections on the matter. Such views are as varied as there are number of scholars. In Kenya though, hardly any writing on dual citizenship, either in serious treatises or in theses or dissertations by students exist.

The conceptual framework of citizenship in the work of T. H. Marshall,²⁸ whether endorsed or critically appraised, constitutes the starting point for much of recent scholarship on citizenship in general. Inspired by Marshall, the scholarship has shifted

²⁷Filiz Kartal, 'Liberal and Republican Conceptualizations of Citizenship: A Theoretical Inquiry' (Vol. 27-28, 2001-2002) Turkish Public Administration Annual.

²⁸Thomas Humphrey Marshall (19 December 1893, London – 29 November 1981, Cambridge) a British sociologist, most noted for his collection of essays on *Citizenship and Social Class*.

away from a purely legal understanding of citizenship to include concerns about social and economic inclusion, and to questions of belonging and participation.²⁹ Much of the new work on the concept of citizenship has developed in response to global challenges such as dual citizenship that transcends boundaries of single nation state.

On dual citizenship, authors tend to provide historical analysis of the ways in which states have guarded against the granting of dual citizenship as it was seen as a division of loyalty to the nation state. Writers have also captured the fact that with the advent of globalization, continuing global migration and a decline in the significance of notions of loyalty to the nation state the numbers of those who hold dual citizenship has increased dramatically. Whilst these are important trends to document, significance of these changes can only be measured at the level of lived experience which authors are yet to take account of.

David Leblang,³⁰ in his paper *Harnessing the Diaspora: Dual Citizenship, Migrant Remittances and Return* argued that expatriate dual citizenship rights are extended by countries both as part of their broader competition for global capital and also as part of their experience of nation-building. He examined the extent to which expatriate dual citizenship rights help home countries connect with their Diasporas and increase their ability to attract both physical and human capital.

²⁹Yasemin Soysal, 'Oxford Bibliographies Online Citizenship' [2011] <<http://www.oxfordbibliographies.com/soz/forschung/pdf/OBOCitizenshipYS2011-11.pdf>>accessed 20th August 2014.

³⁰D Leblang, 'Harnessing the Diaspora: Dual Citizenship, Migrant Remittances and Return'

The relevance of the article by David Leblang in this study is the fact that the author dwelt at great length on the drive behind the desire for dual citizenship across the globe in the recent years. The theme of his article however, is confined to analysis of dual citizenship by expatriates and not the short-comings of acquiring dual citizenship statuses as a whole, which this study addresses.

Joachim K Blatter and others,³¹ in a paper *Acceptance of Dual Citizenship* present empirical data on the historical development, the current regulations and the political contexts of dual citizenship regulations in the world. Their data reveals steady trend towards a broader acceptance of dual citizenship. They conclude that both the traditional/conservative fear that dual citizens might produce military or diplomatic conflicts between states and the liberal/critical warning that dual citizenship might be used for expelling and denationalizing migrants, who are perceived as threats to the host society, have proven unwarranted so far.

Although this literature is important in tracing the historical development of the concept and practice of dual citizenship and its growing importance in contemporary debates, the authors did not consider its ramifications on the individual rights, which this study interrogates.

Marc Morjt Howard,³² conceptualizes, measure, and classifies variation in dual citizenship policies in the countries of the European Union (EU). Although the article focuses in particular on the fifteen “older” member-states of the EU it does provide

³¹J K Blatter, S Erdmann and K Schwanke (February 2009); *Acceptance of Dual Citizenship: Empirical Data and Political Contexts*.

³²Marc Morjt Howard, *Variation in Dual Citizenship Policies - in the Countries of the EU*(Georgetown University)

substantial literature on different modes that have been employed by states to embrace dual citizenship. Further, the article offers little on challenges emanating from variations in dual citizenship policies. This study with Kenyan experience as its fulcrum of discussion, will offer comparative analysis of such variations in policies by examining merits and demerits in each case.

Further, Howard, Marc Morjt,³³ in a book *The politics of citizenship in Europe*, offers a relatively new addition, this is a detailed comparative study analyzing why some European states have recently liberalized their citizenship laws while others have not. Colonial legacies and party politics are Howard's answer. Attention to politics and skillful combination of case studies with a cross-national quantitative analysis sets this book apart from others.

Thomas Faist,³⁴ in a paper *Dual Citizenship as Overlapping Membership* advanced that dual citizenship is neither an evil nor an intrinsic value in political communities. Dual citizenship mirrors border-crossing social and symbolic ties of citizens and thus emanates out of trans-state life worlds.³⁵ Faist too, in as much as he appreciates both the negatives and positive values of being a dual citizen, has not assessed the aspects of limitation of individual right as against the state.

³³Howard, Marc Morjt, 2009. *The politics of citizenship in Europe*. Cambridge, UK: Cambridge Univ. Press.

³⁴Thomas Faist (2001), *Dual Citizenship as Overlapping Membership* Willy Brandt Series of Working Papers in International Migration and Ethnic Relations

³⁵Ibid.

Francesca Mazzolari,³⁶ observed effects of dual citizenship as promoting a higher propensity to naturalize and a stronger attachment to the labor hence improved economic performance. Mazzolari projects benefits that can accrue from dual citizenship status both to the individual and the state that practices it. Mazzolari's literature is important to this research for the primary reason that such benefits will be contrasted with the diminishing right of the dual citizenship status as espoused in this discourse.

Spiro Peter J,³⁷ makes a bounded case for recognizing a right to acquire and maintain plural citizenship where an individual is otherwise eligible for the status. To Spiro, this is done through the optics of freedom of association and liberal autonomy values. He argues that the liberal state has no business obstructing alternate national ties in the absence of a compelling interest. To him that interest once existed, to the extent that dual nationality destabilized interstate relations, explains the historical opprobrium attached to the status.

Spiro advances the argument that laws directed at reducing the incidence of dual citizenship may also unjustifiably burden the exercise of Political rights. In his view, the material downside risks posed by plural citizens have dissipated to the point that the state is no longer justified in suppressing the status. He refutes the argument that dual citizenship undermines social solidarities necessary to liberal governance, terming it as 'too diffuse an interest to overcome individual autonomy values.'³⁸ His

³⁶Francesca Mazzolari, (August 2007) *Dual Citizenship Rights: Do They Make More and Better Citizens?*

³⁷Spiro, Peter J. (October 14, 2009). *Dual Citizenship as Human Right*. International Journal of Constitutional Law (I-CON), Forthcoming; Temple University Legal Studies Research Paper No. 2009-41. Available at SSRN: <http://ssrn.com/abstract=1489005>.

³⁸Ibid.

essay concludes with some indirect evidence from practice that dual citizenship is gaining footing as a right. The mainstay of Spiro's argument is that states should allow dual citizenship as a right. What he fails consider however, is the fact that acquisition of dual citizenship status comes with limitation of individual rights.

Green S,³⁹ discusses the policy and politics of dual nationality in Germany by contrasting the policy reality, in which dual nationality is tolerated in a wide range of cases, with Germany's continued opposition in principle to this phenomenon. In the article *Between Ideology and Pragmatism: The Politics of Dual Nationality in Germany* Green further analyzes political, cultural and electoral factors to explain the persistent opposition to dual citizenship concept in Germany despite its widespread acceptance in other parts of the globe. While the perspective of Green's article appears to capture the object of this research, it has ignored the diminishing rights of a dual citizen as against the state.

Linda Bosniak,⁴⁰ highlights the complex, multidimensional nature of citizenship, demonstrating that citizenship status and citizenship rights do not align flawlessly. In her book *The Citizen and the Alien: Dilemmas of Contemporary Membership*⁴¹ she argues that, from an inward-looking perspective, citizenship stands for universalism - for the inclusion and recognition of "everyone." this book focuses on the ambiguous status of non-citizen immigrants in the United States, and other liberal democratic states, as members and outsiders simultaneously.

³⁹ Green, S. (2005), *Between Ideology and Pragmatism: The Politics of Dual Nationality in Germany*

⁴⁰Linda Bosniak (2008) *The Citizen and the Alien: Dilemmas of Contemporary Membership*, Princeton University Press.

⁴¹Ibid.

Bosniak furthers the idea that the category of alienage at once reveals the limits of citizenship's claimed universality and its restructuring by global processes right "at the heart of national societies." This is the commitment expressed through the ideas of "equal citizenship" and "democratic citizenship" and "social citizenship" which are ever-present in contemporary legal and political theory.⁴² From a boundary-conscious perspective, in contrast, citizenship requires and sanctions the drawing of exclusive national membership boundaries.⁴³

Within the context of the liberal democratic nation-state and with a particular focus on the United States, the book considers how these twin commitments, to universalism and closure, are accommodated with mixed results. From her analysis, sets of second-class citizens based on gender and race differentiation emerges. Unlike in Linda's argument however, limitation of rights considered in this research, results from pure acquisition of citizenship of more than one country regardless of gender and race differentiation.

Stephen Castles and others,⁴⁴ linked key debates about citizenship with discussions about migration and ethnicity, citizenship and migration by examining new challenges globalization is creating throughout the world. As boundaries are being blurred and nation-state powers slowly getting eroded, millions of people have multiple citizenship and millions more lack citizenship of their country of residence.⁴⁵ Increasing numbers of citizens do not "belong," thus undermining the national state as

⁴²Ibid.

⁴³Ibid.

⁴⁴Stephen Castles, Alastair Davidson (2000), *Citizenship and Migration: Globalization and the Politics of Belonging*. Basingstoke: Macmillan.

⁴⁵Ibid.

the central site of democracy.⁴⁶ Particularly attentive to the impact of globalization on the conventional, legal definitions of citizenship, this study also recognizes that global integration has unleashed strong forces of multiculturalism. Their line of thought is similar to the one advancement by Spiro⁴⁷ and fails to interrogate the implications of acquiring dual citizenship on individual's rights.

Gerard Delanty,⁴⁸ provides a comprehensive and concise overview of the main debates on citizenship and implications of globalization. He argues that citizenship is no longer defined by nationality and nation state, but has become de-territorialized and fragmented into the separate discourses of rights, participation, responsibility and identity. Delanty appreciates the fact that the idea and spread of dual citizenship is unstoppable and like other writers in the field, he too fails to consider the corollary of acquiring such status on the rights of an individual as against the state that offers the status.

In a book, *Dual citizenship in global perspective: From unitary to multiple citizenship*,⁴⁹ leading scholars explore how the increasing tolerance of dual citizenship reveals the growing liberalization of citizenship law and the increasing securitization of citizenship alongside the erosion of popular sovereignty and the changing role of nationalism and nationhood. If dual citizenship is no longer seen as a self-evident absurdity nor the harbinger of post national citizenship beyond the state then how

⁴⁶Ibid.

⁴⁷Spiro, Peter J. (October 14, 2009). *Dual Citizenship as Human Right*. International Journal of Constitutional Law (I-CON), Forthcoming; Temple University Legal Studies Research Paper No. 2009-41. Available at SSRN: <http://ssrn.com/abstract=1489005>.

⁴⁸Gerard Delanty (200) *Citizenship in a Global Age: Society, Culture, Politics*, Open University press, Philadelphia.

⁴⁹Faist, Thomas, and Peter Kivisto, eds. 2007. *Dual citizenship in global perspective: From unitary to multiple citizenship*. Basingstoke, UK: Palgrave Macmillan.

should it be understood? Examining the expansion of individual rights on one hand and continued prerogatives of states over full membership in the political community on the other, contributors to this book question whether the liberalization of citizenship fundamentally changes the boundaries of the political and transforms the very core of the political sphere.

T.H. Marshall,⁵⁰ in his seminal essay on citizenship and social class in postwar Britain has acquired somewhat status of a classic. His cogent analysis of the principal elements of citizenship - namely, the possession of civil, political and social rights - is as relevant today as it was when it first appeared. Marshall argued that civil and political rights have been complemented with social rights as a third dimension of citizenship. To him, social citizenship is both constraint on, and a legitimation of, class inequality. Jack Barbalet,⁵¹ presents a key refinement of Marshall's model of citizenship development, underlining the importance of the state in the extension and retraction of rights and the persistence of structural class inequalities despite provision of social citizenship rights.

Kivisto, Peter, and Thomas Faist,⁵² in another book *Citizenship: Discourse, theory, and transnational Prospects*, provide a thematically organized survey of citizenship along four themes that the authors see underlining the debates and research in recent scholarship: historical patterns and contemporary modes of inclusion into the rights and community of citizenship; neoliberal erosion of citizenship rights; withdrawal

⁵⁰Marshall, T.H. (1965) "Citizenship and Social Class" in *Class, Citizenship, and Social Development* essays with an introduction by S. M. Lipset, NY: Anchor Books.

⁵¹Jack Barbalet, M. 1988. *Citizenship: Rights, struggle and class inequality*. Milton Keynes, UK: Open Univ. Press.

⁵²Kivisto, Peter, and Thomas Faist. 2007. *Citizenship: Discourse, theory, and transnational Prospects*. Malden, MA: Blackwell.

from civic life and participation in the public sphere; and expansion of citizenship as exemplified by increasing modalities of multiple citizenships.

In one of the earlier contributions that establish the link between citizenship and nation-state formation, Bendix Reinhardt,⁵³ analyzes the broad shifts in the relationship between subjects and authority, from feudalism to the modern nation-state, which freed individuals from their primordial ties and established a direct link between the state and individuals. Similarly, Thomas Janoski,⁵⁴ in *Citizenship and civil society: A framework of rights and obligations in liberal, traditional, and social democratic regimes* makes the conceptual connection between citizenship rights and obligations, and shows that historically the expansion patterns of rights and duties across different types of political regimes are highly intertwined.

Citizenship, nationality, and migration in Europe,⁵⁵ a popular collection of original contributions by prominent sociologists, historians, and lawyers addressing the interconnection between ideas of nation, modes of citizenship, and the treatment of migrants, further offer discussion on the historical context and contemporary changes in Europe, with a particular focus on the politicization of immigration and citizenship. Similarly, Tomas Hammar,⁵⁶ an early contribution discusses the extension of some citizenship rights to labor migrants and long-term residents (such as civil, economic,

⁵³Bendix, Reinhard. 1977. *Nation-building and citizenship: Studies of our changing social order*. Enlarged ed. Berkeley: Univ. of California Press.

⁵⁴Janoski, Thomas,⁵⁴ 1998. *Citizenship and civil society: A framework of rights and obligations in liberal, traditional, and social democratic regimes*. Cambridge, UK: Cambridge Univ. Press.

⁵⁵David Cesarani, and Mary Fulbrook, eds. 1996. *Citizenship, nationality, and migration in Europe*. London: Routledge.

⁵⁶Tomas Hammar, 1990. *Democracy and the nation state: Aliens, denizens, and citizens in a world of international migration*. Aldershot, UK: Avebury.

and certain social rights), in the absence of full political rights and formal citizenship status, coined the term “denizen” to reflect this condition.

Balibar Etienne,⁵⁷ in a collection of essays argues that borders are not simply situated at the outer limit of the European Union; new borders are emerging within Europe where immigrant communities are discriminated against on the basis of their race and nationality, indicative of the very contradictions of the European citizenship project. While Rainer Bauböck,⁵⁸ in a book, *Transnational citizenship: Membership and rights in international Migration*, examines changing principles of rights allocation in the context of regional integration, mass migration, and the development of transnational organizations, this book concludes that transnational citizenship is the liberal response to questions of equality and inclusiveness in a globalizing world.

David Jacobson,⁵⁹ discusses how citizenship is devalued in the face of the extension of rights to non-citizens, and how national sovereignty is undermined by supranational legal and judicial processes. The empirical focus is on the treatment of illegal immigration as reflected in the interplay between international human rights laws and national political cultures, while the case studies considered are from the United States, Germany, and France.

⁵⁷Balibar, Etienne, 2004. *We, the people of Europe? Reflections on transnational citizenship*. Translated by James Swenson. Princeton, NJ: Princeton Univ. Press.

⁵⁸Rainer Bauböck, 1994. *Transnational citizenship: Membership and rights in international migration*. Aldershot, UK: Edward Elgar.

⁵⁹David Jacobson, 1996. *Rights across borders: Immigration and the decline of citizenship*. Baltimore: Johns Hopkins Univ. Press.

Aihwa Ong,⁶⁰ gives a compelling contribution from anthropology coining the term “flexible citizenship” to describe the fluid and opportunistic engagements of transnational (Chinese) business elites in response to global capitalism. This phenomenon is paralleled by similar strategies developed by Southeast Asian governments through the exercise of “graduated sovereignty” by exerting differentiated levels of control and authority over particular groups of citizens.

Yasemin Soysal,⁶¹ provides in a book *Limits of citizenship: Migrants and post national membership in Europe*, a comparison of six western European states’ citizenship institutions and immigrant policies. This widely discussed book shows that while nation-state and their boundaries persist as reasserted by sovereignty narratives, restrictive immigration policies, and differentiated access schemes, paradoxically; universalistic personhood rights transcend the same boundaries, giving rise to new models and understandings of citizenship.

Bloemraad and others,⁶² in a Journal Article, *Citizenship and immigration: Multiculturalism, assimilation, and challenges to the nation-state*, offer a comprehensive review of the recent theoretical, empirical, and methodological developments in the study of the dynamics between citizenship and immigration. The attention to both North American and European literatures and methodological and analytical challenges to the study immigration and citizenship distinguishes this review article from others.

⁶⁰Aihwa. Ong, 1999. *Flexible citizenship: The cultural logics of transnationality* . Durham, NC:Duke Univ. Press.

⁶¹Yasemin Soysal, 1994. *Limits of citizenship: Migrants and post national membership in Europe*. Chicago: Univ. of Chicago Press.

⁶²Bloemraad, Irene, Anna Korteweg, and Gökçe Yurdakul. 2008. *Citizenship and immigration: Multiculturalism, assimilation, and challenges to the nation-state*. *Annual Review of Sociology* 34:153–182.

Shachar, Ayelet,⁶³ in a book, *The birthright lottery: Citizenship and global inequality*, gives a prominent contribution exploring access to citizenship via attribution rather than acquisition (naturalization), puts forward the challenging argument that global inequality is structurally enshrined in the principle of birthright citizenship. Innovatively proposes a re-conceptualization of citizenship as inherited property (as opposed to arbitrary distribution generated by birth) to inform debates over distributive justice and to ground alternative, more just models of citizenship.

Irene Bloemraad,⁶⁴ gives an empirically rich study of naturalization policies. She compares citizenship acquisition and political incorporation of immigrants in American and Canadian institutional settings (with a focus on Portuguese and Vietnamese communities). She finds that Canada's explicitly multicultural approach has yielded better immigrant incorporation than the US approach.

Christian Joppke,⁶⁵ in *Immigration and the nation-state: The United States, Germany, and Great Britain*, examines postwar developments in immigration, citizenship and the nation-state, comparing three Western liberal democracies. Joppke argues that the nation-state is still the main locus of control for immigration and citizenship, despite critics pointing out otherwise.

While a significant number of authors have, in their analysis and discourses occupied themselves with the changing individual and collective relationship in the welfare

⁶³Shachar, Ayelet. ⁶³ 2009. *The birthright lottery: Citizenship and global inequality*. Cambridge, MA: Harvard Univ. Press.

⁶⁴Irene Bloemraad, 2006. *Becoming a citizen*. Berkeley: Univ. of California Press.

⁶⁵Christian Joppke, 1999. *Immigration and the nation-state: The United States, Germany, and Great Britain*. Oxford: Oxford Univ. Press.

state and in the broader context of human rights, others focus on questions of belonging and participation in a world where nation-state boundaries can no longer be taken for granted. Indeed, presentations by these different authors offer an insight for further study on dual citizenship themes and debates.

1.9 Scope and Limitations of the study

Existing research studies form the basis of review of literature and helps lay the foundation for understanding the research problem one investigates. It is acknowledged, however, that lack of prior research on the topic of dual citizenship especially in Kenya have limited the intended object of the study. In the circumstance, the study adopted an exploratory rather than an explanatory design in order to realize its objectives. Strict time-lines within which submission of the research was required and the resources available for the exercise have further limited proper interrogation of other jurisdiction for comparative analysis.

1.10 Research Methodology

The study adopts qualitative research approach as it builds on abstraction, hypothesis, and theories rather than tests in understanding the meaning that has been constructed on the concept of dual citizenship. In particular, the grounded theory of qualitative approach, which is a systemic process for discovering, developing, refining theory and research to explain a phenomenon has been applied.

The qualitative research approach has been used in examining laws on citizenship and secondary literature such as leading textbooks on the subject, relevant law journal articles, and various other sources, including the internet and other online sources. Discussions and analysis of policy papers and publications of different organizations

tasked with policy formulation and implementation of dual citizenship idea have also been considered.

1.11 Chapter Breakdown

While it is not practicable to examine every form of dual citizenship and its attendant effects, this study offers the Kenyan model for discussion and provides a comparative analysis within the framework of the following chapters:

Chapter One: Introduction

This chapter delineates the substance of the study as captured in the research proposal. It introduces and builds background to the research. It captures problem statement, outlines the object and justification of the study and enumerates the research questions. It further sets out research hypothesis, conceptual and theoretical framework as well as limitations of the study.

Chapter Two: Theoretical Analysis

This chapter presents cogently, an elaborate analysis of the concept of dual citizenship from both descriptive and contextual theoretical perspectives. It introduces the varied discussions and theories that have arisen in recent years, and offers an analytical assessment of the various thematic discourses. In addition, the chapter offers in-depth analysis of the principles on which states anchor their citizenship laws.

Chapter Three: Dual Citizenship Concept: A Contradiction in Terms?

This chapter elaborates on the instances that may trigger dual citizenship occurrence be it voluntarily or otherwise as well as its contradiction with the traditional notion of citizenship. The chapter explores sources of anxieties about dual nationality and their relevance in a changed international context of tolerance by the community of Nations. It offers analysis of the rights and duties associated with citizenship and the

possibility of its implementation without variations even when owed to more than one State. It further examines implications of competing loyalties and conflicting obligations on the personal status of a dual citizen and on the traditional concept of the nation-state.

Chapter Four: A Comparative Analysis of Dual Citizenship Models

This chapter offers an elaborate analysis of the law and practice of dual citizenship in Kenya. Moreover, it examines selected categories of countries practicing dual citizenship regimes, analyze the criteria they use for conferring dual citizenship while making comparison with the Kenya model. The selection of the countries for comparison is based on the legal system in practice and the form of dual citizenship adopted by the identified states.

Chapter Five: Conclusion and Recommendations

The chapter wraps up the discussion by offering recommendations on the alternative statuses that can be granted to immigrants in order to obtain benefits that has spurred dual citizenship acceptance across the globe. It also proffers international best practices on dual citizenship with propensity to endure consequential legal effects and practices that have less distortion on the concepts of citizenship and nation-state.

CHAPTER TWO

THEORETICAL ANALYSIS

2.0 Introduction

The characteristic form of the traditional concept of citizenship until present has been single and exclusive in a nation-state. Dual citizenship as a form of overlapping membership, in which an individual has full membership in at least two nation-state marks a significant departure from the received understanding of the normative concept of citizenship. Nonetheless, the normative theories of citizenship play a significant role in disaggregating the concept of dual citizenship.

This chapter presents cogently, an elaborate analysis of the concept of dual citizenship from both descriptive and contextual theoretical perspective. It offers an overview of the three major theories of citizenship which inform and organize the field in which discussions on citizenship continue to unfold. It further provides in-depth explanations on the principles on which states anchor their citizenship laws.

2.1 Theories of Citizenship

This study situates itself in a theoretical perspective that grants both an analytical and a normative value to the concept of dual citizenship. Although the liberal, republican and the communitarian models are not homogeneous or antagonistic and are not presented as pure models, most contemporary researchers on citizenship consider them resonant to use and this study is not an exemption too. As such, the subsequent part of this chapter analyses in detail the liberal, republican and the communitarian theories of citizenship.

2.1.1 Liberal Concept of Citizenship

The Liberal model's origin is traceable to the Roman Empire and early-modern reflections on Roman law.⁶⁶ The liberal tradition understands citizenship primarily as a legal status derived from a natural law tradition emphasizing the rights of individuals, representation, and material progress.⁶⁷ It stresses individual rights within the framework of the rule of law. Liberals recognize that citizens have certain obligations, such as obedience to the law and payment of taxes, which are essential to maintenance of the state.

The liberal theory rest political legitimacy on a foundation of consent which puts it on collision course with the legal principles that allow citizenship based on place of birth. That is, where belonging to a nation is perceived to be non-voluntary, in which case membership is acquired by being born to a certain country or a group, this defies consent basis as advocated for by the liberal theorists.

The rights of liberal citizenship are of a dual nature. As moral rights they are natural or universal - the rights pertaining to all persons in their capacity as human beings with reason and dignity. In this regard whether an individual acquires citizenship of a single state, multiple states or decides to remain stateless, liberalist leaves it to the discretion of the individual as of right. As legal rights they are particular - the rights of citizens of a given state.⁶⁸ There is thus, a tension within liberal citizenship between moral universalism and political particularism.⁶⁹ If this is not always apparent it is because liberal theory tends to focus on what rights persons have, while

⁶⁶Heater Derek, *A Brief History of Citizenship* (New York University Press, 2004)

⁶⁷Ibid.

⁶⁸Seyla Benhabib, *The Rights of Others: Aliens, Residents and Citizens* (Cambridge CUP p55-57 2004).

⁶⁹Ibid pp.43-45.

leaving aside the bounded communities where these rights are upheld.⁷⁰ Thereby it glosses over the question of who can claim the status of citizenship when and where.⁷¹

This theory captures aspects of voluntary acquisition of dual citizenship. A person who acquires citizenship of a second country by registration and opts to retain citizenship of the 'original' state, in liberalist view is in exercise of individual right since individual rights have precedence over group or community rights. They consider the state as an entity that has to remain neutral and intervene as little as possible as far as individual rights are concerned.

2.1.2 The Republican Model of Citizenship

The Republican model's sources can be found in the writings of authors like Aristotle, Tacitus, Cicero, Machiavelli, Harrington and Rousseau, and in distinct historical experiences: from Athenian democracy and Republican Rome to the Italian city-states and workers' councils.⁷² Aristotle saw the citizen as a political being, who took turns in ruling and being ruled. Also known as civic self-rule, the republican citizenship includes equalizing practices such as the rotation of offices, open discussion between office-holders and citizens and the ability of all citizens to actively participate in government.⁷³ Here citizens are not subjects but rather active participants of their own rule.

⁷⁰Lomasky 2001, pp.55-56, Vincent & Plant 1984, pp.164-165).

⁷¹Rikke Wagner, 'Rethinking the concept of citizenship –the challenge of migration' Paper prepared for Political Studies Association's Annual Postgraduate Conference 6-7 December 2010, University of Oxford.

⁷²Ibid.

⁷³Rachel Watkins, 'Theories of Citizenship' <http://www.ehow.com/info_8087929_theories-citizenship.html>accessed 14th July 2014.

As opposed to liberal emphasis on rights, republican tradition stresses the promotion of a common good through political participation which is the only way to be free in their view.⁷⁴ For republicans, to participate in collective decision-making is the fundamental political duty of citizens. Republicanism has its axis precisely in the concept of man as a *citizen*, that is, as someone who understands himself in relation to the city, who believes that the guarantee of liberty lies in the commitment to republican institutions and the performance of duties to the community.⁷⁵ Therefore, republicans are opposed to liberal individualism, its idea of freedom as well as the instrumental conception of citizenship and political participation.⁷⁶

Like the liberal, the republican citizen values individual autonomy, but embraces link to participation in the public sphere.⁷⁷ Freedom is not defined in opposition to any external body, but rather for its link to a legal system created and maintained by political institutions, which are fed by the participation and virtuous commitment of citizens.⁷⁸ On the other hand, rights are not conceived as individual faculties prior to their recognition by political institutions, but as *civil* ights, created by the political process of formation of will.⁷⁹ To them, civic virtue is exercised through the citizen's *participation* in public life.⁸⁰ Therefore, limiting a dual citizen from holding a public office negates the foundation of this theory.

⁷⁴Filiz Kartal, 'Liberal and Republican Conceptualizations of Citizenship: A Theoretical Inquiry' (Vol. 27-28, 2001-2002) Turkish Public Administration Annual.

⁷⁵Erika González, 'On the Concept and Models of Citizenship'

García<https://www.ioe.ac.uk/about/documents/About_Overview/Gonzalez_Garcia_E.pdf>accessed 13th September 2014.

⁷⁶ Ibid.

⁷⁷ Ibid.

⁷⁸ Ibid.

⁷⁹ Ibid.

⁸⁰ Ibid.

2.1.3 The Communitarian Model of Citizenship

The communitarian model takes communities as its starting point, rather than the nation or city state of the civic republican model, and focuses on how social groups influence values and behaviours.⁸¹ Citizenship in this context focuses on the identity and feelings of belonging to a group, and the need to work towards the collective benefit of this group. The communitarian model of citizenship has fewer direct associations with a specific country than the civic republican or liberal model, as it focuses on communities rather than countries, but has been influential in regards to the liberal model.⁸²

Communitarians advance that the identity of citizens can only be understood within the territory in which they live, their culture and traditions, arguing that the basis of its rules and procedures and legal policy is the shared common good. As a result, the good of the community is much above individual rights and the state cannot be a neutral player but rather a provider of political identity in a social and cultural context within a given territory and develops active and participatory political subjects. Therefore, the State must provide a policy for the common good, according to the way of life of the community.

The communitarian model formulates a conception of the political subject as someone defined primarily by their membership of a community, a territory, an ethnic group

⁸¹Bryony Hoskins and others, 'Contextual Analysis Report Participatory Citizenship in the European Union Institute of Education' Report 1 European Commission, Europe for Citizens Programme Submitted 10th May 2012.

⁸²Ibid.

who is given his identity by the link to his community.⁸³ A citizen is a member of a community of memory and beliefs that preceded it and to which he owes allegiance and commitment before being a subject of rights.⁸⁴ This means the primacy of community over individual rights and a rejection of the liberal thesis on the ethical neutrality of the state.⁸⁵

2.2 The Legal Principles of Citizenship

Two legal principles embody acquisition of citizenship generally; *Jus soli* (the law of the soil) and *Jus sanguinis* (the law of the bloodline). In Kenya the above conditions of acquisition of citizenship have been adopted with detailed elaborations both in the Constitution of Kenya 2010 and the Kenya Citizenship and Immigration Act, 2011.

2.2.1 *Jus Soli*

Jus soli is a rule of common law under which citizenship is granted on the basis of birth in a territory no matter the legality or status of the parents. The principle of *jus soli* has become an explicit part of the Constitution of many countries. For instance, reference to ‘natural born’ in the United States constitution is an implicit rule of *jus soli*. Such as, a child born to a Kenyan citizen in the United States (whether they are in the USA legally or not) is automatically a US citizen provided the birth occurred within the territory of the United States.

⁸³Erika González, ‘On the Concept and Models of Citizenship’ García<https://www.ioe.ac.uk/about/documents/About_Overview/Gonzalez_Garcia_E.pdf>accessed 13th September 2014.

⁸⁴ Ibid.

⁸⁵ Ibid.

*United States v Wong Kim Ark*⁸⁶ is a United States Supreme Court case in which the Court held that virtually everyone born in the United States is a U.S. citizen. This case contrasts an earlier decision by the same court where in *Elk v Wilkins*;⁸⁷ the Supreme Court denied the birthright citizenship claim of an American Indian. The court ruled that being born in the territory of the United States is not sufficient for citizenship; those who wish to claim citizenship by birth must be born subject to the jurisdiction of the United States.

Pure *Jus soli* may often be over inclusive by awarding citizenship to persons born in the territory by mere chance or because their parents moved there in order to obtain a particular citizenship for their child.⁸⁸ However, in a number of countries, to put off illegal immigration, automatic birthright citizenship has been repealed by imposing conditions requiring one of the parents be a legal permanent resident or the condition that the parent must have resided in the country for a specific period of time.⁸⁹

Jus soli is generally accepted for foundlings, and for children who would otherwise be stateless at birth, even in countries whose laws are otherwise based on *jus sanguinis*.⁹⁰ The Kenyan Constitution at Article 14(4) provides that, a child found in Kenya who is, or appears to be, less than eight years of age, and whose nationality and parents are not known, is presumed to be a citizen by birth.⁹¹ This provision embraces application of pure *jus soli*.

⁸⁶*United States v Wong Kim Ark* [1898] 169 U.S. 649.

⁸⁷*John Elk v Charles Wilkins* [1884] 112 U.S. 94.

⁸⁸Godana Yatani, 'Kenya's Nebulous Presumption of Citizen by Birth for Foundlings' (Unpublished desertation, University of Nairobi 2012).

⁸⁹ Ibid.

⁹⁰Iseult Honohan, *Jus Soli Citizenship, "EUUDO CITIZENSHIP"*<<http://eudo-citizenship.eu/docs/ius-soli-policy-brief.pdf>> Accessed 8th July 2014.

⁹¹The Constitution of Kenya (n4).

The inclusive effect of *jus soli* is amplified when dual citizenship is allowed, and gets reduced if it is not. Whereas many countries accept dual citizenship when it is acquired on the basis of descent, not all accept it in connection with *jus soli* acquisition, but require its nationals to choose between citizenships.⁹²

Birthright citizenship as captured in *jus soli* offer several practical advantages.⁹³ *Jus soli* has the advantage of clarifying property rights, promoting immigration while avoiding jurisdictional conflict as well as easing fears of massive expatriation in war time.⁹⁴ It has the advantage of offering membership of a given political community to those most likely to live there, to be subject to its laws and to contribute to its society and the economy.⁹⁵ It provides a way of promoting social integration and democratic legitimacy, and reducing concerns about internal exclusion and insecurity of residence.⁹⁶ In some instances, *jus soli* prevents persons born and raised in a state from remaining an alien with limited rights to residence and political participation.⁹⁷

2.2.2 *Jus Sanguinis*

Jus sanguinis which is *Latin* for “right of blood” is a concept of Roman or civil law under which a person’s citizenship is determined by the citizenship of one or both parents.⁹⁸ It is a social policy by which citizenship is not determined by place of birth as in the case of *jus soli* but rather by having one or both parents who are citizens of the nation. The proponents of this principle argue that birth at a state’s territory does

⁹² Yatani(n70)

⁹³ Ibid.

⁹⁴ Ibid.

⁹⁵ Ibid.

⁹⁶seult Honohan (n19).

⁹⁷ Ibid.

⁹⁸ Yatani(n70)

not necessarily reflect a link between the individual and the state. Rather, descent and heritage play a pivotal role in defining who is, and can become, a citizen.⁹⁹

Jus sanguinis remains the most ordinary means of passing on citizenship in most countries. Application of this principle is explicit in the Constitution of Kenya 2010 at Article 14(1) which provides that a person is a citizen by birth if on the day of the person's birth, whether or not the person was born in Kenya, either the mother or father of the person is a Kenyan.¹⁰⁰

In general, the principles of *jus soli* and *jus sanguinis* remain valuable in explaining the deviating outcomes of citizenship policies across the globe. These outlines of citizenship policies continue to blur the distinction between the two principles by including elements of both in their broader procedures. The word choice of The 1961 Convention on the Reduction of Statelessness at Article 2 brings to the fore the interplay between *jus soli* and *jus sanguinis*.

The 1961 Convention, rather than allow a child found abandoned on the territory of the State to automatically acquire the citizenship of that State, it declares the child to implicitly have both the essential *jus soli* and *jus sanguinis* connections with the State.¹⁰¹ The act of being “born on the territory” brings about the element of *jus soli* while “birth to parents possessing the nationality of the state” carries *jus sanguinis* ingredients.¹⁰² In such a scenario, the child will basically acquire citizenship *ex lege*

⁹⁹Elizabeth Grieco, 'Defining 'Foreign Born' and 'Foreigner' in International Migration Statistics' [July 1, 2002]<<http://www.migrationpolicy.org/article/defining-foreign-born-and-foreigner-international-migration-statistics>>accessed 13th June 2014.

¹⁰⁰Constitution of Kenya 2010, Article 14(1).

¹⁰¹Yatani (n70)

¹⁰²Ibid.

under the ordinary operation of the State's citizenship laws which brings about similar effects in both *jus soli* and *jus sanguinis* regimes.¹⁰³

However, the dominance of either a "by birth" or "by blood" citizenship policy concurrently reflects and defines how a country views "link" and who does, and does not, belong.¹⁰⁴ In the circumstance, registration of birth is a critical factor in establishing the right to a citizenship in all legal systems, for the birth certificate will indicate where the child is born, making acquisition of nationality by *jus soli* possible, and to whom the child is born, and making acquisition of nationality by *jus sanguinis* possible.¹⁰⁵

2.3 Conclusion

The foregoing theories and discourses on citizenship indicate that a comprehensive study of dual citizenship poses underlying theoretical and methodological challenges. The formation of theories of citizenship emanate from vital components that defines the concept of citizenship. These components include rights and duties, which when the dual aspect of citizenship is introduced, not only distorts its meaning but also results in thinning bundle of rights of the affected citizen.

Broadly speaking, citizenship law is based either on *jus soli* or *jus sanguinis*, or on a combination of the two. A significant number of countries apply a mixture of these two principles resulting in involuntary occurrence of dual citizenship. In such instances, it is actually the interplay of citizenship laws adopted by different states that activates occurrence of dual citizenship.

¹⁰³ Ibid.

¹⁰⁴ Ibid.

¹⁰⁵ Carol A. Batchelor, 'Statelessness and the Problem of Resolving Nationality Status' [2012]<<http://www.mcrg.ac.in/AddReading/2012/carol.pdf>>accessed 17th July 2014.

CHAPTER THREE

DUAL CITIZENSHIP CONCEPT: A CONTRADICTION IN TERMS?

3.0 Introduction

Dual citizenship mirrors border-crossing social and symbolic ties of citizens and thus emanates out of trans-state life worlds.¹⁰⁶ This chapter elaborates on the instances that trigger dual citizenship occurrence be it voluntarily or otherwise. The aversion to the traditional conception of the state and its relationship to individuals, a conception dominated by notions of indivisible allegiance, which leave little room for multiple attachments has elicited resistance and tolerance in equal measure. In assessing this controversy, this chapter explores the historical source of anxieties about dual nationality and their relevance in a changed international context of tolerance by the community of Nations.

Further, the thrust of modern citizenship, indeed what makes it modern, is the notion of equality. Citizens are equal in the eyes of the state and of their fellow citizens. In this context, the chapter offers analysis of the rights and duties associated with citizenship and the possibility of its implementation without variations if owed to more than one State. It further examines implications of competing loyalties and conflicting obligations on the personal status of a dual citizen and the nation-state.

3.1 Dual Citizenship Occurrence

Dual citizenship situation arises when an individual is placed within the scope of citizenship laws of two or more countries. Such situations may arise from “natural”

¹⁰⁶Thomas Faist (2001), *Dual Citizenship as Overlapping Membership* Willy Brandt Series of Working Papers in International Migration and Ethnic Relations

methods of *jus sanguinis*, where an individual's parentage determines eligibility for citizenship, or *jus soli*, where place of birth is the determining factor. Secondly, dual citizenship may result from a marriage unifying two people of differing citizenships whereby each acquires the spouse's citizenship; in some cases if combined with the principles of *jus soli* and *jus sanguinis* this may permit the couple's children to have up to three citizenships. Finally dual citizenship situation may occur from the legal process of naturalization.

The interplay of nationality laws of different states and principles of ascription of citizenship, create conditions that may prompt occurrence of dual citizenship. A considerable number of dual citizenship instances have resulted from the interaction of different birthright nationality laws under which citizenship at birth can be ascribed both by place of birth (the rule of *jus soli*) and by parentage (*jus sanguinis*). Children born to foreign parents in *jus soli* countries may have citizenship attributed to them by *jus soli* and another *jus sanguinis*. For instance, The United States applies a strict rule of *jus soli*, where all children born within the territory of United States except for diplomats are extended citizenship at birth. Whereas in Kenya the rule of *jus sanguinis* applies, in which case, any child born to a Kenya citizen, regardless of location of birth, is a Kenyan citizen by birth.¹⁰⁷ Thus, a child borne to Kenyan citizens in the United States will be a birthright dual Kenyan-American citizen.

In addition, many gender-neutral citizenship laws permit the transmission of citizenship through both maternal and paternal filiations, thus children of mixed-

¹⁰⁷The Constitution of Kenya 2010 Article 14(1) a person is a citizen by birth if on the day of the person's birth, whether or not the person is born in Kenya, either the mother or father of the person is a citizen. See also section 6 of The Kenya Citizenship and Immigration Act, 2011.

nationality marriages may inherit both the mother's and the father's citizenship.¹⁰⁸ The children of these unions will often be entitled to citizenship through *jus sanguinis* rules as attached to the nationalities of both parents. In some instances such children can be born with three nationalities, where two parents of different nationality have a child in another country applying *jus soli* principle. For example, a child born in the United States to a Kenyan married to a French national is considered a Kenyan and a French citizen through *jus sanguinis* and an American citizen by *jus soli* rule.

Finally, whenever the acquisition of a new citizenship through naturalization or registration is not accompanied by renunciation or automatic loss or revocation of the original citizenship, the individual will have multiple citizenships. In Kenya for instance, a person who does not avail evidence of renunciation after registering as a Kenyan citizen is deemed to be a dual citizen.¹⁰⁹ However, under the repealed constitution of Kenya failure to renounce resulted in automatic laws of citizenship.¹¹⁰ As is the case with the others conditions, this category has increased as a consequence of high immigration levels complemented by record levels of subsequent registration. This source of dual citizenship is also being magnified by changes in the laws of other countries. States continue to amend their nationality laws to allow individuals to retain their citizenship even when they naturalize in another country.

The outcome of each of the foregoing situations is dictated by the municipal laws of a State based on the ascription principle in practice. In addition, principles of

¹⁰⁸Alison Symington, 'Dual Citizenship and Forced Marriages' (2001) 10 Dalhousie Journal of Legal Studies <<https://www.soas.ac.uk/honourcrimes/resources/file55685.pdf>> accessed 27th July 2014.

¹⁰⁹The Kenya Citizenship and Immigration Act, s20(2) & (3).

¹¹⁰The constitution of Kenya Revised Edition 2009 (2008) s97 repealed 2010.

international law such as equality and rules of nationality and state succession do influence these laws albeit indirectly.

3.2 Resistance to Dual Citizenship

In 1849, historian George Bancroft, who later went on to become the first American ambassador to Germany, exclaimed rather provocatively that one should “as soon tolerate a man with two wives as a man with two countries; as soon bear with polygamy as that state of double allegiance which common sense so repudiates that it has not even coined a word to express it.”¹¹¹ Bancroft not only expressed his views verbally, but later institutionalized them in 26 different bilateral agreements known collectively as the “Bancroft Treaties,” which effectively prevented dual citizenship for naturalized Americans who originally hailed from a series of different countries, many of them European.¹¹²

Arguments against dual citizenship recognition may be based on whether dual citizenship is permissible under international law or may relate to technical challenges arising from the concept or mere socio-political objections to the concept of dual citizenship per se as reflected in Bancroft’s opinion.

3.2.1 International Law and Dual Citizenship

Resistance to dual citizenship became enshrined internationally by the League of Nations in its 1930 Convention on Certain Questions Relating to the Conflict of Nationality Laws. The Convention provides that it is in the interest of the international

¹¹¹As cited by Marc Morjt Howard, ‘Variation in Dual Citizenship Policies - in the Countries of the EU’ (2005) 39 International Migration Review<<http://www.u.arizona.edu/~jag/POL596A/IMRDualcitz.pdf>>accessed 10th November 2013.

¹¹² Ibid 700

community that every person should have a nationality and should have one nationality only.¹¹³ According to its preamble, the 1963 convention finds its basis in the concern that cases of multiple nationalities are liable to cause difficulties and that joint action to reduce as far as possible the number of cases of multiple nationalities, as between member States, should be adopted. Since, however, only a few states became members of the convention, it never had any particular practical significance. This position continued to hold sway in the post-World War II period as the International Law Commission of the United Nations determined in 1954 that all persons are entitled to possess one nationality, but one nationality only.¹¹⁴

As reflected from the Bancroft Treaties to The Hague Convention and regional agreements,¹¹⁵ until a few decades ago, there has been international consensus that dual citizenship should be avoided as much as possible. However, in 1977 and 1993, two protocols were added to the convention, which no longer aimed to abolish dual citizenship. It therefore appears that recognition of dual citizenship is not a problem under the international law at present.

3.2.2 Technical Challenges to dual citizenship

The technical concerns expressed against multiple citizenship, are based first and foremost on possible conflicts that may arise from military and tax obligations, choice

¹¹³The 1930 Convention on Certain Questions Relating to the Conflict of Nationality laws, preamble para 2

¹¹⁴n 25

¹¹⁵Some regional treaties on nationality include; the American Convention on Human Rights of 1969, The 1963 European Convention on the reduction of cases of multiple nationality and on military obligations in cases of multiple nationality and the 1977 and 1993 protocols, The 1997 European Convention on Nationality, which was born out of the perceived need to create a single text that consolidated all the developments in domestic and international law regarding nationality since the 1930 Hague Convention addressed the issue of conflicts of nationality laws.

of law, demographic ambiguities of world population and confusion with regard to rights to diplomatic protection.

Dual military obligations remain poignant reason applied by the opponents of dual citizenship idea. The risk that people might be doubly obliged to service in national military service remains at the centre of the debate. Historically, multiple allegiances in military service were seen as an impossibility. A dual national would have difficulty fulfilling duties owed to two different states especially in instances where the states for which an individual is a citizen, go to war with each other.

As people travel and take up citizenship in different countries, they necessarily expose their personal lives to an array of different legal structures. Under international law, nationality is one of the criteria used to determine the applicability domestic law, especially in the area of family and inheritance law. However, according to private international law – i.e. the principles which decide which domestic law applies in a given situation – the principle of effective citizenship means that the applicable law is that of the country to which those concerned individual have effective ties, in other words the country where one normally resides.

Regarding inheritance law and dual citizenship, as soon as a foreign jurisdiction is involved in an estate matter, the future testator and the beneficiaries are normally confronted with a complex set of problems. Very likely, national estate laws with mutually excluding provisions will apply. Similarly, personal matters of divorce are naturally a complicated issue, and these complications are compounded by different laws in different states. For instance, laws governing legal separation and those

concerning marital property, can easily throw persons holding dual citizenship statuses into a mix if they originate from different jurisdictions.

Possible double taxation of dual nationals may arise where a state taxes its nationals regardless of their place of residence. For example the United State of America (USA) has a unique double taxation policy. The USA taxes people based on their citizenship and not their residency status. This means that one can live in any other country and in theory, never actually have ever lived in the USA though a US citizen, such an individual will still owe taxes to the United State regardless of residence. Therefore, the requirement that people must regularly meet their tax obligation in the country where they are economically active adds an extra burden on the dual citizens.

Another technical objection dual citizenship status relates to claiming diplomatic protection, whereby a state is entitled to protect its subjects against acts contrary to international law committed by another state. In the case of dual nationals, there could be some dispute as to which state may provide legal protection. On the other hand, conflict may arise if a state intervenes on behalf of a citizen residing in another state of which he or she is also a citizen.

Dual citizenship status distorts world population census in varied ways. In undertaking world population census, estimates from national population censuses are relied on in obtaining global figures. A dual citizen poses the challenge of multiple counts that may results in erroneous estimates of world population. A case in point is where a Kenya citizen who holds dual nationality is likely to be counted in Kenya during census and be counted in the other country of his/her citizenship.

Thomas Faist and Jurgen Gerdes, in a paper, '*Dual Citizenship in an Age of Mobility*,' set out reasons for States' opposition to dual citizenship in the past.¹¹⁶ To them, States regarded dual citizenship as a potential catalyst for treason, espionage and other subversive activities.¹¹⁷ They identified that, from the mid-19th century until long after World War II, States adhered to two iron laws.¹¹⁸ The first was that losing one's original citizenship was the price for adopting another.¹¹⁹ Most states expatriated their citizens automatically when they became naturalized in another state, but they also expatriated them if there was significant evidence of political or social loyalty to another state, such as entry into military service or the assumption of a political office in the other state or even participation in political elections abroad.¹²⁰ In some cases, immigration countries made naturalization conditional on the relinquishment of the previous citizenship.¹²¹

The second iron law as identified by Thomas Faist and Jurgen Gerdes through which many states attempted to overcome the problem of dual citizenship ensuing from birth in their territory was that such individuals on reaching maturity had to choose one of the two citizenship or they were otherwise repatriated.¹²²

In Kenya, the same 'iron laws' (in the words of the two writers), were in operation before the promulgation of the Constitution of Kenya 2010. For instance, section 97

¹¹⁶Thomas Faist and Jurgen Gerdes, '*Dual Citizenship in an Age of Mobility*' (2008) page 5 Washington, DC: Migration Policy Institute<<http://www.migrationpolicy.org/transatlantic/docs/Faist-FINALpdf>>accessed 16th March 2014.

¹¹⁷*Ibid.*

¹¹⁸*Ibid.*

¹¹⁹*Ibid.*

¹²⁰*Ibid.*

¹²¹*Ibid.*

¹²²*Ibid.*

of the repealed constitution of Kenya provided that a person who, upon the attainment of the age of twenty-one years, is a citizen of Kenya and also a citizen of some country other than Kenya shall cease to be a citizen of Kenya unless he has renounced his citizenship of that other country, taken the oath of allegiance and, in the case of a person who was born outside Kenya, made and registered such declaration of his intentions concerning residence as may be prescribed by or under Commonwealth citizens.

From the foregoing, divided loyalties and the inconveniences of coordinating multiples statuses appear to be sufficient reason to deny someone citizenship, when they are already a citizen of another state.

3.3 Growing Tolerance

The aversion to dual nationality remains, but there is abundant evidence that it is becoming more acceptable.¹²³ The international context has changed so that dual nationals are not perceived as posing a threat.¹²⁴ The problem of dual nationality is now seen more as one of coordination.¹²⁵

Specific problems such as conflicting military obligations have been addressed by international agreements and bilateral treaties have been negotiated to resolve conflicts between states.¹²⁶ Furthermore, it is increasingly recognized that multiple loyalties are neither unusual nor improper.¹²⁷ Dual citizenship corresponds well with

¹²³Alison Symington, 'Dual Citizenship and Forced Marriages' (2001) 10 Dalhousie Journal of Legal Studies<<https://www.soas.ac.uk/honourcrimes/resources/file55685.pdf>>accessed 27th July 2014.

¹²⁴Ibid.

¹²⁵Ibid.

¹²⁶ Ibid.

¹²⁷ Ibid.

the multiple social and cultural identifications of many immigrants, internationally mobile persons and families of migrant ancestry.¹²⁸ It provides formal recognition of the social fact of dual identification that is experienced by many citizens, some of it involuntary and accepting multiple nationalities is therefore seen as a positive development by the proponents of the idea.¹²⁹

The changing attitude can be found, for example, in European conventions relating to nationality. The 1963 *Convention on Reduction of Cases of Multiple Nationality and Military Obligations in Cases of Multiple Nationality*, as the name implies, sets out criteria to limit individuals to single nationalities in most situations, noting in the preamble that "cases of multiple nationality are liable to cause difficulties and that joint action to reduce as far as possible the number of cases of multiple nationality, as between member States, corresponds to the aims of the Council of Europe."¹³⁰

The 1993 *Second Protocol* amending the Convention, however, is more accommodating of multiple citizenship. The preamble states: Considering the large number of migrants who have settled permanently in the member States of the Council of Europe and the need to complete their integration, particularly in the case of second generation migrants, in the host State, through the acquisition of the nationality of that State;

Considering the large number of mixed marriages in member States and the need to facilitate acquisition by one spouse of the nationality of the other spouse and the acquisition by their children of the nationality of both parents,

¹²⁸ *ibid*

¹²⁹ *Ibid.*

¹³⁰ Alison Symington, 'Dual Citizenship and Forced Marriages' (2001) 10 *Dalhousie Journal of Legal Studies* <<https://www.soas.ac.uk/honourcrimes/resources/file55685.pdf>> accessed 27th July 2014.

in order to encourage unity of nationality within the same family; Considering that conservation of nationality of origin is an important factor in achieving these objectives, _ The Protocol then amends the provisions of the Convention to allow individuals to maintain more than one citizenship.¹³¹

Finally, the 1997 *European Convention on Nationality* acknowledges the varied approaches of States to questions of multiple nationality and the desirability of finding appropriate solutions to the problems of coordination that result. Chapter V of the Convention explicitly permits multiple nationality and provides full rights to dual nationals.¹³² These successive conventions illustrate the general changing attitude towards dual and multiple citizenship.¹³³ While for the most part each state's policy is considered an internal matter, increasingly multiple citizenship is being treated as a problem of international coordination which can be addressed without requiring the renunciation of other nationalities, as illustrated by recent citizenship trends.¹³⁴ It is worth noting that the right to a nationality is now recognized as an international human right.¹³⁵ It is considered both a basic right and a precursor to the exercise of other rights.¹³⁶ While there is no human right to dual nationality nor even a human right to the nationality of one's choice, the content of the right to a nationality is developed, the tolerance of multiple statuses will certainly continue to increase.¹³⁷

Ironically perhaps, the growing tolerance towards multiple nationalities which is seen as advancement in a rights-based, globalized world is used as a reason by the U.K.

¹³¹ Ibid.

¹³² Ibid.

¹³³ Ibid.

¹³⁴ Ibid.

¹³⁵ Ibid.

¹³⁶ Ibid.

¹³⁷ Ibid.

authorities to deny protection to British- Asian women.¹³⁸ The tensions created by the increasing acceptance of dual nationalities, its importance for women forced into marriage and the uncertainty surrounding the "rules" of dual citizenship leads to a legal lacuna.¹³⁹ Despite efforts to limit multiple nationalities, recent changes in nationality laws such as eliminating gender discrimination and removing requirements to renounce former citizenship when one naturalizes have increased the number of people of multiple nationalities.¹⁴⁰ In recent years, however, there has been a growing tolerance of dual nationality and even, in some instances, a recognition that multiple citizenship can be consistent with state and individual interests.¹⁴¹

3.4 Capping Rights of a Dual Citizen

The mere fact of being a citizen makes the person a creditor of a series of rights. According to T. H Marshall,¹⁴² citizenship is that status granted to members of a community with full rights. Its beneficiaries are equal in rights and obligations. Marshall, distinguishes three types of rights that historically have been established in succession: the *civil*, or the rights necessary for the development of individual liberty; *political*, i.e. the right to participate in the exercise of political power, as an elected member or as a voter and *social* rights, which are those that guarantee the right to public safety, health, the right to education, etc., that is the right to a decent life.¹⁴³

Marshall's differentiation of civil, political and social citizenship, however, does not divide citizens into one-third fragments but only makes sense cumulatively. One is

¹³⁸Alison Symington, 'Dual Citizenship and Forced Marriages' (2001) 10 Dalhousie Journal of Legal Studies<<https://www.soas.ac.uk/honourcrimes/resources/file55685.pdf>>accessed 27th July 2014.

¹³⁹Ibid.

¹⁴⁰ Ibid.

¹⁴¹ Ibid.

¹⁴²Marshall T.H and Bottomore, 1998, p. 20

¹⁴³n14

truly a citizen if one possesses all three types of rights. To him, the notion of citizenship was concerned with the civil, political and social rights bestowed by the state to the individual citizens in conformity with the principle of formal equality. It is precisely these rights that give the status of citizens, and to enjoy these means to be a full member of society. His view is inconformity with the Liberal citizenship conceptualization, based on individual freedom and equality with bundle of individual rights against the state.

Formal and legally defined differentiation and gradation among citizens, a state where membership rights and privileges vary according to personal status, goes against the normative concept of equal rights for all citizens. This, however, is the direction dual citizenship appears to take and states are hard pressed to avoid such a path. The notion of limiting rights of a dual citizen arises as a direct consequence of the reasons for the traditional resistance to the idea.

The question of persons who do not receive the full benefits of citizenship because of dual status is a result of continuing patterns of discrimination within nationality laws of different states. Dual citizens may very often have formal citizenship of the country in which they live but may still be prevented from full participation in that society. For instance, to moderate on the risk of multiple allegiances where a dual national may have difficulty fulfilling duties owed to two different states such as military service, provisions have been adopted to bar dual citizens from holding certain offices.

3.5 Conclusion

Due to emerging fluidity of memberships in different forms, it is no longer appropriate to define citizenry as membership bounded by one state border or identity; hence any reference to a citizen as such, is a contradiction in terms indeed. It is evident that there are contradictory forces shaping and changing citizenship practices and policies. These developments stand in stark contrast to the traditional order of citizenship, where citizenship was the bastion of the nation-state and consequential for a variety of reasons—it was the basic element of national sovereignty, of political identity, of one’s rights, benefits, and duties, of one’s community and culture.¹⁴⁴

Characterized by an absence of global governance, dual citizenship occupies a grey area in the international arena, as no international conventions directly apply to this citizenship status.¹⁴⁵ In this absence, there are fragmented state responses based on geopolitical and geographical demand — dual citizenship can be permitted, avoided, restricted or renounced — according to the whims of states.¹⁴⁶ This has created a messy terrain around rights, state responsibilities, security and migration.¹⁴⁷

¹⁴⁴André Liebich, *Dual citizenship, no problem?* Graduate Institute of International and Development Studies, Geneva July 16, 2010

¹⁴⁵Busra Hacioglu and others, ‘Policy Brief Dual Citizenship: Reducing Governance And Protection Gaps’ [2014] Cigi Junior Fellows<http://www.cigionline.org/sites/default/files/cigi_jrf_no15.pdf>accessed>accessed 16th October 2014.

¹⁴⁶Ibid.

¹⁴⁷ Ibid.

CHAPTER FOUR

A COMPARATIVE ANALYSIS OF DUAL CITIZENSHIP MODELS

4.0 Introduction

A considerable number of countries throughout the world permit its citizens to be citizens of another nation-state in some form or another. More and more states are changing their laws to explicitly permit dual nationality and other states whose laws ostensibly forbid dual nationality have often tolerated it in practice. As established in the preceding chapters, dual citizenship is generally linked to immigration and emigration where people being naturalized in a new (host) country will become dual citizens if they do not renounce their previous citizenship assuming that both the sending and receiving countries recognize dual citizenship.

Dual-citizenship recognizing countries may be immigrant-receiving, immigrant-sending or a country with traditional Diasporas like the Jews in Diaspora and the Turks in Germany. This categorization combined with the internationally recognized principles of *jus sanguinis* and *jus soli* for the ascription of nationality, produce different forms of dual nationality. Therefore, multiple nationality is primarily as a result of interaction of the nationality policies of two or more states and their involvement in international cooperation, whether on a bilateral or on multilateral basis.

While comparative method is one of the principal methods of social science research, it often is criticized for having too many variables for analysis in too little cases, facing the problem of theoretical overload even when analyzing a small number of

cases.¹⁴⁸The comparative approach chosen for this study is that of most different cases aiming at seeing the impact of one variable on dual-citizenship debates in countries with different migratory backgrounds in current context. The selection of the countries for comparison is further based on the legal system in practice and the form of dual citizenship adopted by the identified states. This analysis is necessary to better understand dual nationality and the state policies that lead to its occurrence or prevention.

This study cannot possibly address each country that employs dual citizenship, but the goal of this chapter is to investigate dual citizenship regimes, analyze the criteria different countries use for conferring dual citizenship while making comparison with the Kenya model.

4.1 Dual Citizenship law and practice in Kenya

Kenya has historically been among those countries most opposed to dual nationality. However, the growing Diaspora population and the economic significance of their remittances to and investments especially from sport talents in Kenya did produce the necessary political pressure that has resulted in changing the law to accommodate dual citizenship concept. Clearly the need to retain and attract remittance as a way to reverse loss of resources stemming from emigration was part of the reasoning in passing the law on dual citizenship. Additionally, an increase in remittances was seen as a way to increase the state's position in the international community as an increase in remittances is usually equated to an increase in resources.

¹⁴⁸Thomas Denk, (2010), Comparative Multilevel Analysis: Proposal for a Methodology", International Journal of Social Science Methodology 13(1): 29-39.

Further development such as the controversial court decision in the *Mahamud Muhumed Sirat v Ali Hassan Abdirahman & 2 others*,¹⁴⁹ prompted the desire to have clear provisions in the law regarding dual citizenship too. In this case Kimaru J, advanced that there is nothing in the constitution (now repealed) that specifically prohibits the petitioner from acquiring such citizenship while at the same time retaining his Kenyan citizenship provided that Australian law allows for its citizens to acquire and have dual nationality.¹⁵⁰ In his view there is only one exception; this is where the petitioner specifically renounces his citizenship of Kenya and acquires citizenship of another country that does not allow dual citizenship.¹⁵¹ However, the judge's statement ignored section 97(3)(a) of the Constitution, "A citizen of Kenya shall...cease to be such a citizen if - (a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Kenya by voluntary act."¹⁵²

The petitioner had taken Australian citizenship when undertaking further studies in that country. So he would have been over 21, and he would have become an Australian by a voluntary act. The result would be automatic loss of his Kenyan citizenship. Whether Australia permits dual nationality is a complete irrelevance. Although it petered into party politics without proper interrogation, the citizenship status of the former employee of the office of the prime minister, Mr. Miguna Miguna,¹⁵³ could have been challenged based on the provisions of section 97(3)(a) of the repealed constitution then.

¹⁴⁹[2010] eKLR www.kenyalaw.org

¹⁵⁰ibid.

¹⁵¹ibid.

¹⁵²The Constitution of Kenya (repealed) Revised edition 2008 (2001)

¹⁵³Miguna Miguna is a Canadian trained attorney and former advisor to the Prime Minister of the Republic of Kenya. It was alleged that he lost his Kenyan citizenship on acquiring Canadian citizenship and passport.

The promulgation of the constitution of Kenya 2010 and its attendant citizenship and immigration laws has made Kenya *de jure* dual citizenship country. Kenya being an immigrant-sending country has offered in its laws to protect loss of citizenship of its emigrants. For instance, the constitution of Kenya 2010 provides that a person who is a Kenyan Citizen by birth and who has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.¹⁵⁴ It further provides that a citizen by birth does not lose citizenship by acquiring the citizenship of another country.¹⁵⁵

Kenya Citizenship and Immigration Act,¹⁵⁶ also provides that a citizen of Kenya by birth who acquires the citizenship of another country shall be entitled to retain the citizenship of Kenya subject to the provisions of the Act and the limitations, relating to dual citizenship, prescribed in the Constitution. From the foregoing, both the constitution and the Kenya citizenship and immigration Act allow expressly dual citizenship for Kenyan citizens by birth. However, *dual* citizenship status for citizens by registration is implied under section 20 of the Kenya Citizenship and Immigration Act.¹⁵⁷

Kenya applies the principle of *Jus Sanguinis* to ascribe citizenship. a person is deemed to be a Kenyan citizen by birth regardless of where the birth occurred provided one of the parents is a Kenyan at the time of birth. In such instances interaction of the principle of *jus sanguinis* with *jus soli* practicing state results in dual

¹⁵⁴Article 14(5)

¹⁵⁵Article 16

¹⁵⁶Kenya citizenship and immigration Act, 2011 section 8(1).

¹⁵⁷Kenya Citizenship and Immigration Act, 2011, s20 (1) A foreign national who applies for registration as a citizen of Kenya shall indicate in the application whether he or she intends to renounce the citizenship of the other country ... (3) A person who does not avail the evidence of renunciation as required in subsection (2) shall be deemed to be a dual citizen.

citizenship status under the Kenyan law as is the case with children of Kenyan citizens born on the American soil.

4.1.1 Limitation of Dual Citizens' Rights under the Kenyan Laws

The flipside to the *de jure* acceptance of dual citizenship in Kenya is that, While it is in the spirit of the Kenyan Constitution to provide equal rights for all citizens and to generate a feeling of solidarity among them, the articles that limit rights of a dual citizen appear to create a separate class of citizenship. By virtue of Article 78(2) of the Constitution, a person who holds dual citizenship is barred from holding state office.¹⁵⁸

The Constitution provides a comprehensive definition of “State office,” encompassing everything from President through the Attorney General, to a member of county assembly. Article 260 further proclaims that “any office designated as a State Office by national legislation” shall be deemed so. Therefore, no holders of such offices shall be elected or appointed to state office if they hold dual citizenship. It appears therefore the supreme law forbids Kenyan citizens holding dual citizenship from playing any meaningful part in public service.

¹⁵⁸Article 260 of the Constitution of Kenya 2010 definitions: “State officer” means a person holding a State office; “State office” means any of the following offices—(a) President; (b) Deputy President; (c) Cabinet Secretary; (d) Member of Parliament; (e) Judges and Magistrates; (f) member of a commission to which Chapter Fifteen applies; (g) holder of an independent office to which Chapter Fifteen applies; (h) member of a county assembly, governor or deputy governor of a county, or other member of the executive committee of a county government;(i) Attorney-General; (j) Director of Public Prosecutions; (k) Secretary to the Cabinet; (l) Principal Secretary; (m) Chief of the Kenya Defence Forces; (n) commander of a service of the Kenya Defence Forces; (o) Director-General of the National Intelligence Service; (p) Inspector-General, and the Deputy Inspectors-General, of the National Police Service; or (q) an office established and designated as a State office by national legislation.

In the case of *Bishop Donald Kisaka Mwawasi v Attorney General & 2 other*,¹⁵⁹ Justice David Majanja Majanja ruled based on the Article 78(2) of the Constitution where a State officer or a member of the defence forces is barred from holding dual citizenship. Although on appeal, the Court of Appeal relying on 31(2) of Leadership and Integrity Act,¹⁶⁰ found that a dual citizen is eligible to stand for election but upon election he cannot hold office unless and until he voluntarily and officially renounces citizenship of the other country according to the law... the proscription is not against a dual citizen vying for an election but against a dual citizen holding a State office, dual citizens stand discriminated against under the Kenyan supreme law.

4.2 Dual Citizenship in the United States

The United States is a country founded on immigration, originally by way of competing colonies, and the forced immigration of Africans through slave trade. Historically the United States has had to constantly deal with influxes of immigrants into the country; as a result, the country has had to find ways of accommodating and regulating newcomers, in addition to being selective about choosing which immigrants were ‘desirable.’¹⁶¹ Classic examples of this policy include the creation of an Asian-barred zone, preventing immigrants from Central, South, Southeast, or East Asia access to the country, and the implementation of quotas to limit the influx of undesirable elements primarily from South and Eastern Europe.¹⁶² Initially the

¹⁵⁹Bishop Donald Kisaka Mwawasi v Attorney General & 2 others [2014] eKLR

¹⁶⁰A person who holds dual citizenship shall, upon election or appointment to a State office, not take office before officially renouncing their citizenship in accordance with the provisions of Kenya Citizenship and Immigration Act, 2011”.

¹⁶¹Stanley Renshon, “Dual Citizenship and American National Identity.” Center for Immigration Studies, Washington, DC. October, 2001. pg. 45.

¹⁶²ibid.

anticipation was that American citizens, especially those naturalizing, would relinquish their former citizenship.¹⁶³

However, the first sentence of the 14th Amendment to the Constitution of the United States often called the "citizenship clause" provides, "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside."¹⁶⁴ Although the original intent of this provision was to guarantee citizenship to the former slaves and their descendants following, the Supreme Court held in *U.S. v Wong Kim Ark*,¹⁶⁵ that the "citizenship clause" applied to anyone born in the US, of any ethnicity or national origin.

The 14th Amendment to the Constitution of the United States incorporates the traditional legal principle of *jus soli* under which citizenship results from being born on the United State's soil. In this instance, dual-citizenship situations result where there is an interaction of the United States law which embrace *jus soli* with another that adopts *jus sanguinis* in its citizenship laws. For example, a child might acquire the citizenship of the country in which the birth occurred (via *ius soli*), and also the citizenship of the parents' country (via *ius sanguinis*), and as a result start life as a dual citizen.

¹⁶³*Ibid.*

¹⁶⁴U.S Constitution 14th Amendment section 1.

¹⁶⁵*United States v Wong Kim Ark*, 169 U.S. 649 (1898), is a United States Supreme Court case in which the Court ruled that practically everyone born in the United States is a U.S. citizen. This decision established an important precedent in its interpretation of the Citizenship Clause of the Fourteenth Amendment to the Constitution.

The US statutes on immigration and citizenship are codified in the Immigration and Nationality Act, (INA). Section 301,¹⁶⁶ of INA, in line with the provisions 14th Amendment, gives citizenship to anyone born in the US subject to its jurisdiction. Regarding naturalized persons, a description of the US naturalization oath is given in INA. Of particular relevance to the dual citizenship issue is that, as part of the oath, a new citizen must pledge "to renounce and abjure absolutely and entirely all allegiance and fidelity to any foreign prince, potentate, state, or sovereignty of whom or which the applicant was before a subject or citizen."¹⁶⁷ In practice, however, it is unclear if this statement has significance any more since US does not require a new citizen to take any formal steps to renounce old citizenship before officials of the that country; and when the other country continues to claim a naturalized US citizen as one of its own, dual citizenship status is realized. Further, major Supreme Court decisions have necessitated repeal of revocation provisions in the immigration and nationality laws of the United States resulting in dual citizenship status.¹⁶⁸

Although there are no express provisions in the immigration and nationality laws of United States allowing dual citizenship as is the case in Kenya, there has not been any effort to outlaw the foregoing circumstances that result in dual citizenship statuses. Hence the setting in the United States has come to be understood as *de facto* recognition of dual citizenship.

¹⁶⁶Section 301 defines the following classes of people as having US citizenship from the time of birth: anyone born in the US and subject to its jurisdiction (basically meaning anyone other than a child of foreign government representatives with diplomatic immunity); Indians and other aboriginal people born in the US; anyone born outside the US, if at least one parent is a US citizen and certain residency or physical presence requirements were fulfilled by the citizen parent or parents prior to the child's birth; anyone who is found in the US while under five years of age, whose parents cannot be identified, and who is not shown prior to his or her 21st birthday to have been born outside the US.

¹⁶⁷Section 337(a) of INA

¹⁶⁸Revoking citizenship for voting in foreign elections (*Afroyim v. Rusk*), moving abroad following naturalization (*Schneider v. Rusk*), and desertion from the armed forces during wartime (*Trop v. Dulles*) were all repealed.

4.3 Dual Citizenship in Germany

Before the fall of the Communist regime, Germany was a divided country consisting of the German Democratic Republic (GDR), the communist part, and the Federal Republic of Germany (FRG), being the liberal part. This division also led to the different nationality law. While the GDR followed the idea of a separated nationality, the FRG based its nationality law on the Citizenship law of 1913 pointing out that “every German acquiring German nationality by descent was still to be considered as German regardless of holding residence in GDR and FRG.”¹⁶⁹

Until the year 2000 when the Germany undertook a major reform regarding nationality law, country tended to follow the rule of *jus sanguinis* with respect to citizenship. The reform however introduced element of *jus soli* into the nationality law where the “optional model” was muted. The “optional model” enabled children of immigrant to acquire German nationality and to decide at the age of 23 whether to keep the German nationality or not.

Under article four of the reformed nationality law, a child of foreign parents acquires German citizenship under the optional model on the condition that one parent has legally had his/her habitual residence in Germany for eight years and is in possession of residence permit for three years.¹⁷⁰ Therefore, until the 23rd birthday an immigrant’s child is allowed to hold dual citizenship. Moreover, the 2000 reform also allowed the European Union (EU) citizens to naturalize without giving up their previous nationality if the country granted reciprocity.

¹⁶⁹Hailbronner, 2010, p.2.

¹⁷⁰Hailbronner,2010,p.7

The “Optional model” as adopted in Germany is similar to provisions in the repealed Constitution of Kenya.¹⁷¹

Current debate on citizenship in Germany is mainly centered on the general acceptance of dual or multiple nationality. The discussion has gained a lot of momentum because recent figures indicate that although dual nationality is meant as an exception to the German Nationality Act, in practice there has been an enormous increase of naturalizations in acceptance of dual nationality.

Recently, the German parliament passed a law that will allow children born to immigrants in Germany to hold dual citizenship. The new law provides dual citizenship to those, who by the age of 21, have lived in Germany for at least eight years or have at least six years of schooling in the country. This provision is an improvement on the optional model that required children of the immigrant to choose one nationality at the age of 23.

4.4 Dual Citizenship in Uganda

Historically, like in Kenya, Uganda was opposed to the idea of dual citizenship. According to the 1967 constitution, Ugandan nationals holding dual citizenship who failed to renounce their other citizenship would lose their Ugandan citizenship. The most important purpose of these provisions was to deprive those Asians who had dual citizenship and those whose applications for Ugandan citizenship had not been approved by 1967 of any claim to be Ugandan nationals.¹⁷² The 1995 Constitutional

¹⁷¹Section 97(3)(a)), “A citizen of Kenya shall...cease to be such a citizen if - (a) having attained the age of twenty-one years, he acquires the citizenship of some country other than Kenya by voluntary act”.

¹⁷²Rita M. Byrnes (ed.), *Uganda: A Country Study*. Washington, GPO for the Library of Congress, 1990.

provisions were based on the 1962 and 1967 Constitutions, and reaffirmed the earlier position denying dual citizenship.

However, in 2005 legislation was finally passed to amend the constitution to allow both Ugandans and non-Ugandans to acquire dual citizenship. In May 2009, a new Uganda Citizenship and Immigration Control (Amendment) Act was finally passed by parliament, setting out the detailed rules for dual citizenship applications. Dual citizenship, according to the Act, means the simultaneous possession of two citizenships one of which is Ugandan. The possession of a third citizenship disqualifies one from holding or being a dual national of Uganda unless the third citizenship is renounced.

The rationale for dual citizenship in Uganda was based on the realization that Ugandans in the Diaspora make enormous contribution to the socio-economic development of the country and there was need to enable them maintain linkages with their roots without any legal hindrances. Further, there was the need to attract potential investors reap advantages that accrue from the grant of dual citizenship. Dual Citizenship on account of investment to foreigners is meant for any person who holds a citizenship of a country that permits dual nationality and also seeks Uganda citizenship and satisfies the requirements for grant of such status.

The conditions for qualification to hold dual citizenship in Uganda is quite liberal in approach. Any person holding Uganda citizenship and who seeks citizenship of another country that allows dual citizenship and also fulfils the requirements for dual nationality qualifies to be a dual citizen. Conversely, any person who holds a

citizenship of a country that permits dual nationality and also seeks Uganda citizenship and satisfies the requirements for grant of dual citizenship is eligible to be a dual citizen in Uganda.

Both Kenya and Uganda allow dual citizenship *de jure*. The Ugandan law allows “strict dual citizenship,” that is, the law expressly limits acquisition of dual citizenship to possession of two citizenships one of which is Ugandan. In Kenya though, no explicit provision is given on the number of countries to which one is a citizen at a given time.

Being largely immigrant-sending states, Kenya and Uganda have similar legal provisions primarily aimed at protecting their population in the Diaspora. For instance, under the Kenyan law, a person who is a Kenyan Citizen by birth and who has ceased to be a Kenyan citizen because the person acquired citizenship of another country, is entitled on application to regain Kenyan citizenship.¹⁷³ The law further provides that a citizen by birth does not lose citizenship by acquiring the citizenship of another country.¹⁷⁴ Correspondingly, in Uganda, a citizen of Uganda who voluntarily acquires citizenship of a country other than Uganda may retain the citizenship of Uganda subject to Ugandan laws.¹⁷⁵

The flipside to acquiring dual citizenship in Uganda is that such an individual will not be permitted by law to hold some Offices. Whereas the limitations of right to hold certain offices is limited to state offices under the constitution of Kenya 2010, the

¹⁷³Constitution of Kenya, 2010, Article 14(5).

¹⁷⁴Constitution of Kenya, 2010, Article 16.

¹⁷⁵Uganda Citizenship and Immigration Control (Amendment) Act No. 53, 2009.

Uganda Citizenship and Immigration Control (Amendment) Act No. 53, 2009,¹⁷⁶ offers a comprehensive list of offices from which dual citizens are barred from holding.

4.5 Conclusion

Dual citizenship is becoming more common in today's increasingly interconnected global economies. Indeed, as asserted availability of dual citizenship has now become a matter of course in a globalizing world. Even those states long opposed to dual nationality like Germany have softened their opposition. The global trend is that countries have sought to utilize the advantages of dual citizenship by liberalizing their citizenship laws. The dual citizenship arrangement adopted in any given country is unique to that particular country; some expansive, and some restrictive.

The selected cases present a wide array of issues and levels influencing debates on dual citizenship, and show the importance of migration dynamics on the changes in citizenship legislation. Despite the sharp dissimilarities of the cases compared, all the rules rely on the presumption of a citizenry bounded to the nation-state and a norm of a singular citizenship. In an administrative legal sense with these rules one is able to tell who is a citizen.

¹⁷⁶Offices of State which a person holding Dual Citizenship is not qualified to hold; President, Vice President, Prime Minister, Cabinet Minister and other Ministers, The Inspector General and the Deputy Inspector General of Government, Technical Head of the Armed Forces, Technical Heads of Branches of the Armed Forces, Commanding Officers of the Armed Forces Units of at least battalion strength, Officers responsible for heading departments responsible for records, personnel and logistics in all branches of the Armed Forces, Inspector General of Police and Deputy Inspector General of Police, Heads and Deputy Heads of national Security and Intelligence Organisations (ESO, ISO and CMI), Members of the National Citizenship and Immigration Board.

CHAPTER FIVE

CONCLUSION AND RECOMMENDATIONS

5.0 Conclusion

To concretize what appears an amorphous concept, dual citizenship presents challenges and opportunities in equal measure. As society becomes more global and integrated, the value of Dual Citizenship is increasingly becoming a necessity. State authorities have gradually come to see dual citizenship neither as evil nor as an intrinsic value desirable as such. Globally there states that bar dual citizenship, states that allow *de facto* dual citizenship and states that are *de jure* dual citizenship.

Conceptually, the traditional bond between citizen and the state is withering, and gradually getting replaced by more fragmented loyalties that explain lifestyle of the contemporary society. Involuntary instances of dual citizenship statuses have become common phenomena. Hence, the notion of ties between citizen and state no longer hold sway.

Despite the fundamental challenges raised by dual citizenship, the number of cases of multiple nationalities worldwide has increased rapidly, and for various reasons as captured in the study, this is being tolerated more and more by sovereign states. Nonetheless, the degree to which dual nationality is tolerated by states differs widely. The forms of dual citizenship adopted in various countries reflect migration history, economic situation and the legal principle of ascription of citizenship embraced in a given country. Further, as is the norm in accordance with the provisions of

international law, national citizenship laws are applied to ascribe and regulate entitlement to citizenship. In some instances, as illustrate in this study, some countries appear to grant such entitlements in a differentiated manner through stringent limitation of rights of a dual citizen.

5.1 Recommendations

Kenya's *de jure* dual citizenship status is illustrative of the global trend. The comfort of being a Kenyan and at the same time maintaining another acquired nationality provides an individual with an abundance of benefits and set of liberties. Dual citizenship provides access to financial investment rights. British citizens for instance, are afforded access to adequate medical benefits, including potentially free healthcare, especially for those reaching the age of retirement and a Kenya dual citizen can benefit from such. Access to educational benefits, including higher education, are all possibilities within the reach of Kenyans who enjoyed dual citizenships. The need to seek, identify and maintain individuals whose expertise and experiences transcend the day-to-day norms of the Kenyan society is a responsibility, which all Kenyans cannot afford to ignore.

Although the parliament had made effort to impliedly cure the apparent discrimination against 'registered' citizens in respect of acquisition of dual citizenship, in the Kenya Citizenship and Immigration Act, there is need place an express provision in the supreme law to remove such discrimination. In view of the forgoing, and considering that Article 16 of the Constitution of Kenya is potentially inconsistent with the spirit and intent of the Bill of Rights, it is in the interests of Kenya's social-economic and political affairs that the discriminating spirit of the

article should be moderated to accommodate all, may be to something like, “*A Citizen Does Not Lose Citizenship by Acquiring the Citizenship of another Country.*”

The dual citizenship provision under the Constitution of Kenya 2010 appear to be in direct contravention of the equal protection clause of the Constitution that extends equality of opportunity and rights for all citizens without discrimination. The provision is also not in line with UN Declaration of Human Rights and other international treaties which mandate all Governments to allow all citizens the right to enjoy equality before the law, participate in the government and the public service.

Therefore, Shutting out dual from all echelons of public service is not in the best interest of the country. While it may be sensible to have constitutional prohibition for senior government officials such as the President and leaders of armed forces not to hold dual citizenship, there is no similar justification for holders of other public offices. It makes little sense to prohibit national and county governments from recruiting the best simply because they hold dual citizenship. Therefore, the study recommends that the definition of “state officer” be narrowed to allow the dual citizens reasonable space to participate in national and county development, and as such, it is in Kenya’s best interest not to limit rights of an individual who has dual citizenship.

The study further recommends coordination and integration of citizenship law through bilateral protection agreements, which will improve citizenship rights for all Diaspora groups. The United Nations should play a greater role in facilitating and promoting the global governance of dual citizenship, particularly by enshrining the principles that guarantee access to dual citizenship as a human right.

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