

**AN ANALYSIS OF THE IMPACT OF NATIONALISM ON THE RIGHTS OF  
DUAL CITIZENS IN ZAMBIA: AN EQUALITY APPROACH**

**By**

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**A dissertation submitted to the University of Zambia in partial fulfilment of the  
requirements for the degree of Master of Laws**

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## DECLARATION

**I, SHUBAYI CHATORA**, computer number 2015130742 do hereby declare that this dissertation is my original work and to the best of my knowledge has not been presented for a degree to the University of Zambia or any other University. All other sources of information cited herein have been duly acknowledged.

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## APPROVAL

This dissertation of SHUBAYI CHATORA has been approved as fulfilling the partial requirements for the award of the Degree of Master of Laws (Taught) by the University of Zambia.

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## ABSTRACT

Zambia's Constitution (Amendment) Act, No. 2 of 2016 provides rights and places duties upon the status of citizenship. Equality and non-discrimination are recognized as national values used to interpret the Constitution and in the enactment of laws. Nevertheless, the Constitution seemingly discriminates against citizens with 'Dual Citizenship', from eligibility to serve in public office such as the President, Vice President, National Assembly Speaker, and service under the Defense and National Security agencies. This demonstrates conflict of policy objectives underlying national values and the prohibitive clauses. For liberalists, this derogates from citizenship rights, because despite recognizing equality and non-discrimination, 'Dual Citizenship' is a status viewed as challenging to communitarian notions of nationalism. Underpinned by a doctrinal approach carried out through desk research and thematic analysis of the sources of the material, this study ascertains how nationalism impacts on dual citizen's rights, and whether justifications exist, in light of principles of equality and non-discrimination, among citizens. This study also interrogates the consequences of the said impact on the state and citizen, and what lessons could be learnt from other jurisdictions. The study revealed that notions of nationalism limit citizenship rights relating to political participation and equality of opportunity. The loyalty justification for the restrictions remains questionable, because reviewed studies do not reveal consensus that loyalty to a specific political state is the precondition for office holders. Furthermore, legislative provision for the limitations does not make them justifiable in a democratic society, as discriminatory practices are challengeable, even when legal. For differential treatment to be discriminatory, it should lack reasonable justification. A difference in enjoyment of citizenship rights was established despite the Constitution not distinguishing in its definition of 'citizen'. The study argues that the absence of conclusive data from studies on 'divided allegiances' makes the restrictions unreasonably justifiable treatment as the discrimination proves unfair, due to its impact on the victims. Adverse economic, social and political consequences of this for the state and the citizen are numerous. Conversely, the United Kingdom places no distinction in the nature of British citizenship that qualifies for office of Prime Minister. The United Kingdom extends its liberal approach to non-British citizens, particularly, Irish and Commonwealth citizens, including eligibility to join British armed forces. Nigeria is also progressive as 'Dual Citizenship' is no disqualification for high level public office for citizens by birth.

This study recommends legislative reforms to eliminate citizenship inequality by narrowing restrictions premised on perceived divided loyalties. These include: requiring dual citizens in public office to declare conflict of interest in specific situations, executing bilateral or multilateral agreements confining dual citizens' military service to countries of habitual residence and enlisting army personnel on professional basis than imputing loyalty associated with citizenship. The impact of the findings and recommendations on the study is that they provide a basis upon which the study can inform the need for reform both in policy and the law.

**Keywords:** Citizenship, 'Dual Citizenship', Nationalism, Equality and Non-discrimination

## **DEDICATION**

This work is dedicated to my family for their continued love and support.

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- The 1999 Constitution of the Federal Republic of Nigeria.
- The Electoral Administration Act 2006, Chapter 22 (British).

## ACRONYMS

ACHPR	African Charter on Human and Peoples Rights.
ICCPR	The International Covenant on Civil and Political Rights.
UDHR	Universal Declaration of Human Rights.

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## **CHAPTER ONE**

### **INTRODUCTION**

This study interrogates how nationalism impacts on the rights of dual citizens in Zambia and whether there are any justifications for this in light of the principle of equality and non-discrimination. The study also ascertains what consequences arise from this impact for both the state and the citizen. The study further establishes whether there are lessons to be learnt for Zambia from other jurisdictions regarding dual citizens' rights as they relate to the topic under interrogation, and what recommendations arise from these lessons. In so doing, Chapter one of the study identifies the problem statement, locates the study within literature reviewed and identifies the methodology adopted. Chapter two provides an overview discussion of the concepts of citizenship, nationalism, equality and non-discrimination and from a liberalist perspective, interrogates how nationalism impacts on dual citizens' rights in light of equality and non-discrimination, as well as the justifications advanced for the apparent derogations. The results of the study are presented under Chapter two, three and four which deploy the doctrinal research approach in the said interrogations. Lastly, based on the findings, the study makes conclusions and recommendations under Chapter five.

#### **1.1 Introduction**

This Chapter encompasses the introductory Chapter of the study. The chapter seeks to identify the problem statement, lay a background to the problem, locate the study within literature on the subject and identify the methodology adopted for the study. The Chapter further seeks to lay a Chapter outline for the study.

##### **1.1.1 Background**

Citizenship,<sup>1</sup> has been defined as that which bestows upon individuals, membership in a national political community. Up until the enactment of the Constitution of Zambia

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<sup>1</sup> Howard Morjé Marc (2009). *The Politics of Citizenship in Europe*. Cambridge, Cambridge University Press, p3.

(Amendment) Act, No. 2 of 2016<sup>2</sup> (hereinafter referred to as “the Constitution”), a person ceased being a Zambian citizen in the event that they acquired citizenship of a country other than Zambia or did any act indicating that they intended to adopt or make use of any other citizenship.<sup>3</sup> This was due to the widespread notion that ‘Dual citizenship’ contradicts the classic understanding of citizenship as single and exclusive affiliation to one state. Dual Citizenship<sup>4</sup> is a term used to refer to a person’s status as a citizen of two countries or one country still recognizing a person as a citizen even though that person has acquired citizenship in another country. The Mung’omba Constitution Review Commission<sup>5</sup> in fact observed that the rationale for the prohibition of ‘Dual Citizenship’ may be that it could lead to conflict of allegiance. However, on 5<sup>th</sup> January 2016, the recognition of ‘Dual Citizenship’ was enacted through Article 39, of the Constitution of Zambia (Amendment) Act,<sup>6</sup> which provides that:

- (1) A citizen shall not lose citizenship by acquiring the citizenship of another country.
- (2) A citizen who ceased to be a citizen, before the commencement of this Constitution as a result of acquiring the citizenship of another country, shall be entitled to apply, as prescribed, to the Citizenship Board of Zambia, for citizenship and the Citizenship Board of Zambia shall bestow citizenship on that person.

From this article, it is clear that in Zambia, the status of citizenship can either be mono or dual. The rationale for the adoption of ‘Dual Citizenship’ was that citizenship is a fundamental right to be protected and also that there should be continuity in enjoyment of citizenship rights despite foreign citizenship acquired as a result of foreign residency.<sup>7</sup> It is noteworthy that the Constitution<sup>8</sup> provides that, “a citizen shall be entitled to rights, privileges and benefits of citizenship, as provided for in the Constitution or as prescribed.”

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<sup>2</sup> Article 39(1), of the Constitution.

<sup>3</sup> Article 9(1) a and b, of the Constitution, Chapter 1 of the Laws of Zambia, as amended by Act No. 18, of 1996.

<sup>4</sup> Garner, Bryan A (1999). Black’s Law Dictionary 7<sup>th</sup> Ed: p.515.

<sup>5</sup> The Report of the Mung’omba Constitution Review Commission, Secretariat Constitution Review Commission, Lusaka, 29<sup>th</sup> December 2005, p.102.

<sup>6</sup> No. 2 of 2016.

<sup>7</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution, Government Complex Conference Centre, Lusaka Zambia 30<sup>th</sup> April, 2012 p.20.

<sup>8</sup> Article 42, of the Constitution.

Further, the national values and principles though various, as set out in the Constitution,<sup>9</sup> recognize equality and non-discrimination<sup>10</sup> which are of relevance to this study, as part of the national values that are used in the interpretation of the Constitution as well as enactment of law.<sup>11</sup> Equality<sup>12</sup> refers to the quality or state of being equal whilst non-discrimination is a prohibition of differential treatment which lacks an objective and reasonable justification.<sup>13</sup> However, despite embracing these principles, the same Constitution provides that ‘Dual Citizenship’ disqualifies one from nomination for election as Republican President and Vice President,<sup>14</sup> election as Speaker of the National Assembly,<sup>15</sup> and service as member of the Defense Force and National Security Services.<sup>16</sup> Looking at the above constitutional provisions which appear to be in effect derogations from the rights of citizenship, it is apparent that despite the recognized principle of equality and non-discrimination, ‘Dual Citizenship’ is a status that is viewed as posing a challenge to the notions of nationalism, which include national identity, loyalty and cohesion. Nationalism is “the view that a person’s ultimate loyalty is to the nation”.<sup>17</sup>

### **1.1.2 Statement of the Problem**

The right to ‘Dual Citizenship’, as introduced by article 39(1),<sup>18</sup> presents consequences both for those who possess it and for the government. Discussions on the concept of ‘Dual Citizenship’ in Zambia have focussed more on the perceived benefits of ‘Dual Citizenship’ and less on the limitations and challenges likely to be posed on both the citizen and the state by this concept. Article 42,<sup>19</sup> provides that a citizen shall be entitled to rights, privileges and benefits of citizenship as provided for in the Constitution or as prescribed.

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<sup>9</sup> Article 8, of the Constitution.

<sup>10</sup> Article 8(d), of the Constitution

<sup>11</sup> Article 9 (a) and (b), of the Constitution.

<sup>12</sup> Garner, Bryan A (1999). Black’s Law Dictionary 7<sup>th</sup> Ed: p. 557-558

<sup>13</sup> Cf. Eur. Court H.R., Case of Willis v. The United Kingdom, Judgement of 11 June 2002, para. 39; [http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20\\_health\\_.pdf](http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20_health_.pdf). (Accessed on 18<sup>th</sup> October 2017).

<sup>14</sup> Under articles 100(2) (b), and 110(2), of the Constitution, respectively.

<sup>15</sup> Article 82(2), of the Constitution.

<sup>16</sup> Under Article 194(a), of the Constitution.

<sup>17</sup> Hoffman John, (2004). Citizenship beyond the state, London, SAGE publications, p.49

<sup>18</sup> Of the Constitution.

<sup>19</sup> Of the Constitution.

Further, the national values and principles as set out in the Constitution<sup>20</sup> recognize equality and non-discrimination as part of the national values that are used in the interpretation of the Constitution as well as enactment of law.<sup>21</sup> This notwithstanding, the Constitution on the other hand disqualifies a dual citizen from nomination for election as Republican President and Vice President,<sup>22</sup> election as Speaker of the National Assembly,<sup>23</sup> and service as member of the Defense Force and National Security Services.<sup>24</sup> This demonstrates a conflict in policy objectives influencing the national values and the prohibitive clauses.

From a liberalist point of view that citizenship connotes a status, which entitles individuals to a specific set of universal rights granted by the state,<sup>25</sup> these Constitution provisions appear to be in effect derogations from the rights of citizenship as it is apparent that despite the recognized principle of equality and non-discrimination, 'dual citizenship' is a status that is viewed as posing a challenge to the communitarian notions of nationalism which emphasise the view that loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>26</sup> In the premises, purpose of this study is to ascertain how nationalism impacts on the rights of dual citizens in Zambia and whether there are any justifications for this, in light of the principle of equality and non-discrimination.

It is worthy of note that the Constitution<sup>27</sup> lists a number of national values and principles. However, of this list, the principle of equality and non-discrimination form part of the focus of this study on the basis that there are no apparent infringements identified on the other values listed under the constitution to warrant investigation within the realm of the topic at hand. The study further interrogates the consequences if any, which could result

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<sup>20</sup> Article 8(d), of the Constitution.

<sup>21</sup> Articles 9 (a) and (b), of the Constitution.

<sup>22</sup> Articles 100(2) (b) and 110(2) of the Constitution.

<sup>23</sup> Article 82(2), of the Constitution.

<sup>24</sup> Article 194(a), of the Constitution.

<sup>25</sup> Jones Emma and Gaventa Johns, IDS Development Bibliography 19 Concepts of citizenship: A review, Institute of Development studies, Brighton, Sussex, England, February 2002 (Accessed on 22<sup>nd</sup> January 2017) p3-5.

<sup>26</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>27</sup> Article 8(a) through to 8(f) of the Constitution

from the impact of nationalism for both the state and the citizen; and also determines what lessons if any could be learnt from other jurisdictions, on how best Zambia can mitigate the effects of the limitations posed on the rights of dual citizens.

### **1.1.3 Aim or Purpose of the Study**

This study is very important for purposes of ascertaining how nationalism impacts on the rights of dual citizens in Zambia and whether there are any justifications for this in light of the principle of equality and non-discrimination. Further, the study shall seek to determine the consequences if any, which could result from this impact for both the state and the citizen. The study also seeks to test and recommend whether there can be any lessons to be learnt from other jurisdictions, on how best Zambia can mitigate the effects of the limitations posed on the rights of dual citizens. Accordingly, if this study is not conducted, the right to ‘dual citizenship’ in Zambia as is framed may have social, political and economic ramifications for both the citizen and the state.

### **1.1.4 Study Objectives**

- i. To ascertain how nationalism impacts on the rights of dual citizens in Zambia and whether there are any justifications for this in light of the principle of equality and non-discrimination.
- ii. To establish what consequences if any result from this impact for both the state and the citizen.
- iii. To test and recommend whether there can be any lessons to be learnt from other jurisdictions, on how best Zambia can mitigate the effects of the limitations posed on the rights of dual citizens

### **1.1.5 Research Questions**

This research paper will seek to answer the following questions:

- i. In what way does nationalism impact on the rights of dual citizens in Zambia and are there any justifications for this impact in light of the principle of equality and non-discrimination?

- ii. What are the consequences if any, of this impact for both the state and the citizen?
- iii. What lessons can be learnt from other jurisdictions on how best Zambia can mitigate the effects of the limitations posed on the rights of dual citizens?

### **1.1.6 Significance of the Study**

This study is important because if it is found that nationalism impacts on ‘Dual Citizenship’ by unjustifiably limiting the enjoyment of the rights of citizens through excluding such citizens from eligibility for political participation (particularly in the form of taking up of public office) and service in the security wings of government, then the principle of equality of all citizens before the law remains to a large extent, ineffective. The apparent limitations on the right of dual citizens in Zambia as framed may have social, political and economic ramifications for both the citizen and the state. This study therefore benefits not only the general citizenry, but the government as well in that it will provide an informed position upon which calls for the necessary sensitization of these limitations and subsequent amendments to the law can be effected, if found necessary by this study.

### **1.1.7 Scope / Limitations of the study**

This study is limited by the fact that greater reliance shall be placed on studies conducted outside rather than within the jurisdiction as well, on grounds that very few or no studies at all have since been conducted on the subject within Zambia, owing to the novelty of the concept of ‘Dual Citizenship’ under the Zambian laws. Additionally, the study is limited by the Doctrinal research approach which merely relies on the law and secondary materials as sources of material in the investigation.

### **1.1.8 Theoretical Framework**

The right to acquire ‘Dual Citizenship’ as provided by the Constitution,<sup>28</sup> presents consequences both for those who acquire it and for the government. Particularly, this study focuses on the impact of nationalism on the rights of dual citizens within the Zambian

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<sup>28</sup> Article 39(1), of the Constitution.

context. Discussions on ‘Dual Citizenship’ in Zambia have focussed more on the perceived benefits of dual citizenship and less on the limitations posed on the enjoyment of this right, such as those brought about by the notions of nationalism. By excluding dual citizens from eligibility to take up various public offices, it becomes apparent that notions of nationalism under the Constitution limit the enjoyment of the rights of a dual citizen. ‘Dual Citizenship’ disqualifies one from nomination for election as Republican President and Vice President,<sup>29</sup> election as Speaker of the National Assembly<sup>30</sup> and service as members of the Defense Force and National Security Services.<sup>31</sup> This in effect is derogation from the national values and principles as set out in the Constitution,<sup>32</sup> which identifies equality and non-discrimination as part of the national values that are used in the interpretation of the Constitution as well as enactment of law.<sup>33</sup> As already noted, this study specifically focuses on equality and non-discrimination out of the rest of the national values and principles because the two appear to have been infringed, thereby forming part of the subject of this study. The consequent effect of the apparent conflict with the principle of equality of all citizens before the law is the likelihood of ‘Dual Citizenship’ becoming unattractive to both mono and non citizens and further questions the possible realization of the perceived benefits of ‘Dual Citizenship’ for the state, for example the inflow of capital and investment. The acceptance or tolerance of overlapping memberships in political communities represents an important element in the ongoing readjustment of the relationship between citizens and political communities in democratic systems.<sup>34</sup> In order to effectively address the questions raised by this study, the concept of ‘Dual Citizenship’ shall be evaluated using some theories of citizenship and democracy.

The Constitution provisions highlighted above which restrict the eligibility to take up various public offices appear to be influenced by the Communitarian theories of citizenship and democracy. Among the main political philosophers aligned with communitarianism are

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<sup>29</sup> Articles 100(2) (b) and 110(2), of the Constitution.

<sup>30</sup> Article 82(2), of the Constitution.

<sup>31</sup> Article 194(a), of the Constitution.

<sup>32</sup> Article 8(d), of the Constitution.

<sup>33</sup> Article 9 (a) and (b), of the Constitution.

<sup>34</sup> Joachim Blatter (2011) Dual Citizenship and theories of democracy, *Citizenship Studies*, 15:6-7, p.769 DOI: 10.1080/13621025.2011.600090. <http://dx.doi.org/10.1080/13621025.2011.600090> (Accessed on 11<sup>th</sup> November 2016).

Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer.<sup>35</sup> Communitarians, stress the socio-cultural underpinnings of political communities, since they provide not only orientation and identity for the individual, but also the common values and understandings, which are necessary for a stable democracy. A community based on a shared history and a common culture is seen as a precondition to uphold solidarity and social rights for the members of that specific community. In exchange, it demands and stimulates citizens' identification with and their loyalty to their nation.<sup>36</sup> The strongest opposition to 'Dual Citizenship' can be deduced from communitarian thinking. From a communitarian perspective, loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>37</sup> Further that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>38</sup>

The communitarian perspective on military service – individuals/males should be so loyal to a national polity that they are willing to fight and die for it – seems to lead straightforwardly to a rejection of 'Dual Citizenship', since membership in two polities undermines the loyalty to one specific polity.<sup>39</sup> Uncompromised loyalty might also be asked for when people take public offices.<sup>40</sup> That being politically active in two countries is problematic due to limited time and attention for each constituency, but especially because it leads to conflict of interest. Accordingly, it is clear that the notion of nationalism is among the tenets of the communitarian theory on the basis that nationalism raises questions about the notion of dual identity and stresses single identity, which is often defined in terms of common origin, ethnicity, or cultural ties, as a precondition for loyalty.

This study is however mainly guided by the theory of Liberalism of both citizenship and democracy, and supported by the 'Republican Developmental theory' because the two

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<sup>35</sup> Stanford Encyclopedia of Philosophy, First published Thu Oct 4, 2001; substantive revision Mon Mar 21, 2016, <http://plato.stanford.edu/entries/communitarianism/>. (Accessed on 21<sup>st</sup> December 2016).

<sup>36</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, 780.

<sup>37</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>38</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>39</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>40</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

conceptions “go hand in hand” since “the security provided by the authorities cannot just be enjoyed; it must itself be secured, and sometimes against the authorities themselves.”<sup>41</sup> Liberal theories<sup>42</sup> promote the idea that citizenship is a status, which entitles individuals to a specific set of universal rights granted by the state. Further, that granting each individual the same formal rights promotes equality through making a person’s political and economic power irrelevant to rights claims. Liberal citizenship among whose proponents is John Rawls<sup>43</sup> seeks to place rights at the centre and seeks to foster such membership through the granting of equal rights to all as such; Liberal citizenship has an Egalitarian impulse at its heart.<sup>44</sup> The term ‘equality’ connotes the quality or state of being equal.<sup>45</sup> Further, the equal protection principle is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to procedural enforcement of laws, but also to the substantive content of their provisions. In other words, the equal protection of laws is invariably treated as a substantive constitutional principle, which demands that laws will only be legitimate if they can be described as just and equal.<sup>46</sup> Liberal democracy<sup>47</sup> highlights the rights of individuals that should not only be secured with the help of governments, but also against the infringement of governments. In comparison to other theories of democracy such as the developmental Republican theory, there is much less emphasis on the duties of citizens, but nevertheless there are expectations on the behaviour of the members of a polity, which are seen as preconditions for the sustainability of a Liberal democracy. The first and central element of these expectations is that citizens respect the rule of law.<sup>48</sup>

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<sup>41</sup> Stanford Encyclopedia of Philosophy, First published Fri Oct 13, 2006; substantive revision Mon Aug 1, 2011, <http://plato.stanford.edu/entries/citizenship/>. (Accessed on 6<sup>th</sup> October 2016).

<sup>42</sup> Jones Emma and Gaventa Johns, IDS Development Bibliography 19 Concepts of citizenship: A review, Institute of Development studies, Brighton, Sussex, England, February (2002), p.3. <http://www.ids.ac.uk/files/dmfile/db19>. (Accessed on 22<sup>nd</sup> January 2017).

<sup>43</sup> Stanford Encyclopedia of Philosophy, First published Tue Mar 25, 2008; substantive revision Mon Sep 24, 2012, <http://plato.stanford.edu/entries/rawls/>. (Accessed on 18<sup>th</sup> October 2016).

<sup>44</sup> Michael Lister and Emily Pia, (2008). *Citizenship in Contemporary Europe*: Edinburgh, Edinburgh University Press Ltd, p.9.

<sup>45</sup> Garner, Bryan A, (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: St Paul Minn, West Group, p. 557.

<sup>46</sup> Garner, Bryan A, (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: pp.557-558.

<sup>47</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.776.

<sup>48</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.776.

Developmental Republican theory of democracy, among whose proponents is Aristotle,<sup>49</sup> starts from the premises that humans are political animals (*zoon politicon*) who can realise a good life and freedom only by participating in public affairs. In strong contrast to liberal thinking, it is the public or political domain that takes normative precedence.<sup>50</sup> Good citizens have to overcome narrow private interests and activities in order to live a good life.<sup>51</sup> Among the central elements of this philosophy are rights and opportunities for political participation, which have to be offered by the political system, and civic virtue as the complementary duty of the citizens. Further the theory argues that ‘Dual Citizenship’ opens up more rights and opportunities for political participation since dual nationals have those rights and opportunities in two and not just in one country. ‘Dual Citizenship’ makes it easier to live a meaningful and good life since dual citizens can contribute to the public good in a plurality of political communities.<sup>52</sup> According to the developmental Republican theory, there should be no restrictions on voting or taking office for dual nationals – they should be allowed to participate as much as possible in both polities.<sup>53</sup>

It is apparent from this theory that the phrase political participation includes both voting and taking up public office. However, the main focus of this study in terms of political participation is the ability to take up public office because this is what appears to have limitations when it comes to dual citizens’ political rights in Zambia. This study adopts the both the Liberal and Republican models as complementary. Political liberty is the necessary guarantee of individual liberty. The two conceptions “go hand in hand” since “the security provided by the authorities cannot just be enjoyed; it must itself be secured, and sometimes against the authorities themselves. The passive enjoyment of citizenship requires, at least intermittently, the activist politics of citizens.”<sup>54</sup> Contrary to the communitarian theory which, on the basis of nationalism supports restrictions on the right of dual citizens to be treated equally in terms of opportunities to fully participate in

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<sup>49</sup> Stanford Encyclopedia of Philosophy, First published Fri Oct 13, 2006; substantive revision Mon Aug 1, 2011, <http://plato.stanford.edu/entries/citizenship/>. (Accessed on 6<sup>th</sup> October 2016).

<sup>50</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.777.

<sup>51</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, pp.777-778.

<sup>52</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.778.

<sup>53</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.778.

<sup>54</sup> Stanford Encyclopedia of Philosophy, First published Fri Oct 13, 2006; substantive revision Mon Aug 1, 2011, <http://plato.stanford.edu/entries/citizenship/>. (Accessed on 6<sup>th</sup> October 2016).

national affairs; the liberal theory remains the primary theory in this study. This is mainly on grounds that the principle of equality is the premise of all rights which includes that of political participation under the Republican theory.

### **1.1.9 Operational definition of terms**

Among the core concepts in this study are Citizenship,<sup>55</sup> which has been defined as that which bestows upon individuals, membership in a national political community. In liberal democracies, it gives them the right to vote, to run for office, and to participate freely in public activities, while also requiring the obligation of paying taxes and possibly serving in the military. ‘Dual Citizenship’<sup>56</sup> on the other hand refers to a person’s status as a citizen of two countries or one country still recognizing a person as a citizen even though that person has acquired citizenship in another country. Another operational concept in this study is Nationalism, which has been defined as “the view that a person’s ultimate loyalty is to the nation”.<sup>57</sup> According to Triandafyllidou,<sup>58</sup> nationalism is further oriented towards developing and maintaining a national identity based on shared characteristics such as culture, language, race, religion, political goals and/or a belief in a common ancestry.

Aside from the aforementioned concepts is Equality and Non-discrimination. As a principle, equality<sup>59</sup> refers to the quality or state of being equal. Further, the equal protection principle is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to procedural enforcement of laws; but also to the substantive content of their provisions. In other words, the equal protection of laws is invariably treated as a substantive constitutional principle; which demands that laws will only be legitimate if they can be described as just and equal.<sup>60</sup> In

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<sup>55</sup> Howard Morjé Marc (2009). *The Politics of Citizenship in Europe*. Cambridge, Cambridge University Press,

p.3.

<sup>56</sup> Garner, Bryan A (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: p.515.

<sup>57</sup> Hoffman John, (2004). *Citizenship beyond the state*, London, SAGE publications, p.49

<sup>58</sup> Triandafyllidou, Anna (1998). "National identity and the other". *Ethnic and Racial Studies*. 21 (4):pp. 593–612.

<http://dx.doi.org/10.1080/014198798329784>. (Accessed on 24<sup>th</sup> February 2017).

<sup>59</sup> Garner, Bryan A (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: pp. 557-558

<sup>60</sup> Garner, Bryan A (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: pp. 557-558.

the case of *Andrews v. Law Society of British Columbia*,<sup>61</sup> the Supreme Court of Canada established that the right to equality includes substantive rather than merely formal equality. Equality before the law applies to the enjoyment of civil, political, economic and social rights, without any distinction.<sup>62</sup> As regards non-discrimination, this study adopts the understanding that non-discrimination is a prohibition of differential treatment which lacks an objective and reasonable justification.<sup>63</sup> As was observed by the Inter-American Court of Human Rights,<sup>64</sup> in international human rights law, non-discrimination enshrines equality between persons and imposes certain prohibitions on States.

### **1.1.10 Ethical Considerations**

This study is relies on documents as the source of data. Accordingly, there will be no ethical issues in that regard except concerning the sensitivity of the documents. Further, clearance shall be obtained from the University of Zambia Ethics Committee where circumstances so demand.

## **1.2 Literature Review**

### **1.2.1 The right to ‘Dual Citizenship’ and the impact of Nationalism in light of the principle of Equality and Non-discrimination in Zambia**

As noted under 1.1.9 herein, Howard,<sup>65</sup> defines Citizenship as that which bestows upon individuals membership in a national political community. Further that in liberal democracies, it gives them the right to vote, to run for office, and to participate freely in public activities, while also requiring the obligation of paying taxes and possibly serving in the military. ‘Dual Citizenship’<sup>66</sup> refers to a person’s status as a citizen of two countries, or one country still recognizing a person as a citizen even though that person has acquired

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<sup>61</sup> [1989] 1 S.C.R.143.

<sup>62</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003. In international human rights law, non-discrimination enshrines equality between persons and imposes certain prohibitions on States.

<sup>63</sup> Cf. Eur. Court H.R., Case of Willis v. The United Kingdom, Judgement of 11 June 2002, para. 39; [http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20\\_health\\_.pdf](http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20_health_.pdf). (Accessed on 18<sup>th</sup> October 2017).

<sup>64</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003

<sup>65</sup> Howard Morjé Marc (2009). *The Politics of Citizenship in Europe*. p.3

<sup>66</sup> Garner, Bryan A (1999). *Black’s Law Dictionary* 7<sup>th</sup> Ed: p.515.

citizenship in another country. A number of statements have been issued on the benefits of ‘Dual Citizenship’, generally by local politicians as well as Zambians living outside jurisdiction. However, it has been observed that in Zambia, these discussions have focussed less on the limitations to the enjoyment of this right. Among the perceived benefits identified, it has been stated<sup>67</sup> that:

Citizens who have lived abroad may, comparatively, be less corrupt, less dictatorial, less autocratic, less dishonest, and more democratic and fair in their approach to governance. The reason is simple, because they lived and absorbed those values which most developed countries subscribe to. In addition, a leader who has spent ten years squarely in Africa will be less industrious, less innovative, and less dexterous than another who lived or worked abroad, especially in the developed country.

Further, that the new law, that is, Article 39(1) of the Constitution puts the country on a progressive road as most people living in the diaspora would be able to come back home and contribute positively towards development. For people living in the diaspora, this puts them at great advantage even foreigners who wish to be Zambians can now apply.<sup>68</sup> Others have also stated that “a possible future effect is that if Zambians who have settled in their adopted countries were allowed to hold double citizenship, they would be motivated to invest back home because their businesses would not be subjected to some conditions”.<sup>69</sup> On the other hand, Schlenker,<sup>70</sup> notes that in spite of the recent increase in ‘Dual Citizenship’, there are widespread fears that this double status undermines loyalty towards the state, understood as identification with and political participation in the country of residence.

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<sup>67</sup> “10 reasons why dual citizenship is good for Zambia”, July 02, 2015, <http://www.pambazuka.org/governance>. (Accessed on 23<sup>rd</sup> June 2016).

<sup>68</sup> ‘You can apply for dual citizenship now’, Published On January 6, 2016, [www.times.co.zm](http://www.times.co.zm) (Accessed on 8<sup>th</sup> June 2016).

<sup>69</sup> Diaspora Policy Vs employment ; February 10, 2016, [www.times.co.zm](http://www.times.co.zm). (Accessed on 8<sup>th</sup> June 2016).

<sup>70</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

European Political Science Review, European Political Science Review / First View Article / June 2016, p.1

[http://journals.cambridge.org/abstract\\_S1755773915000168](http://journals.cambridge.org/abstract_S1755773915000168). (Accessed on 19<sup>th</sup> June 2016).

It is noteworthy that the law as set out in the Constitution,<sup>71</sup> provides that a citizen shall be entitled to rights, privileges and benefits of citizenship as provided for in the Constitution or as prescribed. Further, the national values and principles as set out in the Constitution<sup>72</sup> recognize equality and non- discrimination as part of the national values that are used in the interpretation of the Constitution as well as enactment of law.<sup>73</sup> However this despite, the same Constitution on the other hand disqualifies a dual citizen, from nomination for election as Republican President and Vice President,<sup>74</sup> election as Speaker of the National Assembly<sup>75</sup> and service as member of the Defense Force and National Security Services.<sup>76</sup> From a liberalist point of view, these constitutional provisions appear to be in effect derogations from the rights of citizenship as it is apparent that despite the recognized principle of equality and non- discrimination, ‘ Dual Citizenship’ is a status that is viewed as posing a challenge to the communitarian notions of nationalism, which include national identity, loyalty and cohesion.

Similar to Liberalists, Republicans argue that ‘Dual Citizenship’ makes it easier to live a meaningful and good life since dual citizens can contribute to the public good in a plurality of political communities.<sup>77</sup> According to the developmental Republican theory, there should be no restrictions on voting or taking office for dual nationals – they should be allowed to participate as much as possible in both polities.<sup>78</sup> The Constitution provisions highlighted above which restrict the eligibility to take up various public offices, are influenced by the communitarian theories of citizenship and democracy. This clearly demonstrates the extent of the impact of nationalism on the right of dual citizens in Zambia in that, the right to political participation is limited based on notions of divided loyalty and identity. It is in this regard that a number of studies have been conducted to test the basis for the communitarian opposition to ‘Dual Citizenship’ that loyalty to a specific political community/state is the central precondition for office holders and cannot be

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<sup>71</sup> Article 42 of the Constitution.

<sup>72</sup> Article 8(d), of the Constitution.

<sup>73</sup> Article 9 (a) and (b), of the Constitution.

<sup>74</sup> Articles 100(2) (b), and 110(2), of the Constitution.

<sup>75</sup> Article 82(2), of the Constitution.

<sup>76</sup> Article 194(a), of the Constitution.

<sup>77</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.778.

<sup>78</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.778.

compromised.<sup>79</sup> Further that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>80</sup>

In support of the communitarian perspective of ‘Dual Citizenship’, Renshon,<sup>81</sup> cites a study of the identifications of immigrants with their country of origin and the United States of America ( hereinafter referred to as the United States) conducted by a Harvard student, Kambiz Ghanea Bassiri.<sup>82</sup> In this study, it was found that immigrants are extremely ambivalent about the United States. The study found that a significant number of immigrants, do not have strong ties or loyalty to the United States. Further, that another sample felt more allegiance to a foreign country than to the United States . Also in the United States’ context, Cain and Doherty,<sup>83</sup> found that dual citizens are significantly less likely to vote in comparison with mono United States citizens. In addition, Staton,<sup>84</sup> also reports that not only are dual nationals associated with a lower level of civic duty, they are less likely to think of themselves as “American” and to consider the United States to be their homeland. As noted by Schlenker,<sup>85</sup> the limitation of both studies conducted by Staton and Cain and Doherty is that they use data on first-generation Latin Americans. Interestingly, the disconnecting effect of ‘Dual Citizenship’ did not hold beyond the first generation. In this regard it is arguable that the sample was limited.

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<sup>79</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>80</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>81</sup> Renshon A. Stanley, Dual Citizenship And American Democracy: Patriotism, National Attachment, and National Identity, *Social Philosophy and Policy* / Volume 21 / Issue 01 / January 2004, p.118. <https://doi.org/10.1017/S0265052504211050>. (Accessed on 19<sup>th</sup> June 2016).

<sup>82</sup> Kambiz Ghanea Bassiri, *Competing Visions of Islam in the United States: A Study of Los Angeles* (Westport, CT: Greenwood Press, 1997) cited in : Renshon A. Stanley, Dual Citizenship And American Democracy: Patriotism, National Attachment, and National Identity, p.118

<sup>83</sup> Cain, B.E. and B.J. Doherty (2006), ‘The impact of dual nationality on political participation’, in L. Taeku, S.K.

Ramakrishnan and R. Ricardo (eds), *Transforming Politics, Transforming America: The Political and Civic*

*Incorporation of Immigrants in the United States*, Charlottesville/London University of Virginia Press, pp. 89–105.

<sup>84</sup> Staton K Jeffrey, Jackson A Robert, Canache Damarys, Dual Nationality Among Latinos: What Are the Implications for Political Connectedness? *The Journal of Politics*, *Volume 69, Issue 2*, May 2007 pp. 479–480. <http://www.jstor.org/stable/10.10111/j.1468-2508.2007.00544.x>. (Accessed on 19<sup>th</sup> June 2016).

<sup>85</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*. p.5.

However, in contrast to the above studies, Ramakrishnan,<sup>86</sup> found that dual nationality increases the likelihood of voting among immigrants (except for Cubans) in the United States. Evidence from Canada also revealed that ‘Dual Citizenship’ does not diminish civic participation and the sense of belonging to Canada.<sup>87</sup> Also, analysing Turkish and Surinamese immigrants in the Netherlands, Mügge,<sup>88</sup> even concludes that ‘migrants with dual nationality are more likely to participate in the host country’s political life than those who only have Dutch nationality. Further, based on data from a 2013 survey of dual citizens in Switzerland with very different migration backgrounds, Schlenker,<sup>89</sup> argues that dual citizens are more loyal in many respects than foreign residents, but there are no significant differences between dual citizens and mono citizens in their level of identification with Switzerland and political participation there. That they are even more likely than mono citizens to participate in serving its interests. In addition, there is no trade-off between these forms of loyalty to the country of residence and identification and political participation in the country of descent. Thus ‘Dual Citizenship’ does not seem to diminish loyalty to the country of residence and countries therefore do not stand to lose anything by allowing it.<sup>90</sup>

In light of the above synopsis, it is noteworthy that the researcher is more inclined to agree with the scholars that have found and argued that ‘Dual Citizenship’ does not seem to diminish loyalty to the country of residence. This is mainly because samples used by scholars supporting this argument were much broader than those with the contrary argument. In any event, some studies conducted to test the level of civic knowledge among American citizens for example, who are not necessarily immigrants have shown uninspiring results in terms of the knowledge levels. A nationwide survey conducted by the

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<sup>86</sup> Ramakrishnan, S.K, (2005). *Democracy in Immigrant America: Changing Demographics and Political Participation*, Stanford, CA: Stanford University Press. pp.93–94.

<sup>87</sup> Wong, L., ‘Transnationalism, active citizenship, and belonging in Canada’, *International Journal* 63(1) (2008): p.87. <https://doi.org/10.1177/002070200806300106>. (Accessed on 19<sup>th</sup> June 2016).

<sup>88</sup> Mügge, L, ‘Dual nationality and transnational politics’, *Journal of Ethnic and Migration Studies* 38(1) (2012):p.15. <http://dx.doi.org/10.1080/1369183X.2012.640003>. (Accessed on 19<sup>th</sup> June 2016).

<sup>89</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*. p.1.

<sup>90</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*. p.1.

National Constitution Centre”<sup>91</sup> found that, “only 6 percent [of Americans surveyed] can name all four rights guaranteed by the First amendment; 62 percent cannot name all three branches of the Federal government; 35 percent believe the Constitution mandates English as the official language; and more than half of Americans do not know the number of senators. From this study, it is therefore arguable that there are no guarantees that mono-citizens are necessarily more inclined to have a keener interest or knowledge of political affairs of their country. Renshon,<sup>92</sup> notes that “Some ask whether it is legitimate to hold immigrants to a standard unmet by citizens, as if any ignorance among the latter is good reason to allow the same among the former. Yet, the question does contain a point”.

However, as an additional step to the studies cited in this review whose focus was investigating the levels of loyalty in mono and dual citizens, it should be noted that this study aims to further interrogate whether the impact of notions of nationalism such as national identity, loyalty and cohesion have any justification in what appears to be limiting the rights of dual citizens in light of the principle of non-discrimination and equality. As Howard,<sup>93</sup> argues, in liberal democracies citizenship gives individual membership the right to vote, to run for office, and to participate freely in public activities, while also requiring the obligation of paying taxes and possibly serving in the military. In addition, Kastoryano,<sup>94</sup> in discussing citizenship argues that membership in a political community takes shape through rights and duties that are embodied in the very concept of citizenship. It is therefore the researcher’s considered view that citizenship guarantees certain rights obligations and entitlements to individuals within a polity.

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<sup>91</sup> Cited in Margaret Stimmann Branson, “The Role of Civic Education,” a report issued as part of the National Standards for Civics and Government (Calabasas, CA: Center for Civic Education, 1998), available on-line at

[http://www.civiced.org/articles\\_role.html](http://www.civiced.org/articles_role.html). (Accessed on 11<sup>th</sup> November 2016).

<sup>92</sup> Renshon A. Stanley, *Dual Citizenship And American Democracy: Patriotism, National Attachment, and National Identity*, p.108.

<sup>93</sup> Howard Morjé Marc (2009). *The Politics of Citizenship in Europe*.p.3.

<sup>94</sup> Kastoryano Riva, *Citizenship, Nationhood, and Non-Territoriality: Transnational Participation in Europe: Political Science & Politics / Volume 38 / Issue 04 / October 2005, p. 693.*

<http://www.jstor.org/stable/30044352>.  
(Accessed on 26<sup>th</sup> January 2017).

### **1.3. Methodology**

#### **1.3.1 Research Design**

This study deploys doctrinal research as a means of collecting, analysing and locating sources of the law as well as other sources of materials. This is mainly on the basis that this type of research enables the researcher to address the objectives of the study through a determination of the perimeters and consequences of the law under investigation. Doctrinal research is qualitative on the basis that such research is a process of selecting and weighing materials, taking into account hierarchy and authority as well as understanding social context and interpretation.<sup>95</sup> The investigation was by desk research of the relevant primary sources of material, that is, legislation statutes and Case law. Secondary sources relied on include International Instruments, Journals, text books, articles and so forth.

#### **1.3.2 Data Analysis**

The research sources of material were analysed through thematic analysis which enabled the researcher to organise the material among emerging common themes from the research objectives.

### **1.4 Chapter Outline**

Chapter Two, of this study will interrogate how nationalism impacts on the rights of dual citizens in Zambia as well as interrogate justifications if any. The Chapter covers an overview discussion of the concepts of citizenship, ‘Dual Citizenship’, equality and non-discrimination as well as nationalism. Chapter Three, will discuss whether there are any ramifications or consequences resulting from the impact of nationalism on the rights of dual citizens, for both the state and the citizen. Chapter Four, will consist of an assessment of whether there are lessons to be learnt for Zambia from other jurisdictions on the rights of dual citizens. Lastly, Chapter Five shall consist of conclusions and recommendations if any for amendment to the law on ‘Dual Citizenship’ as provided under the Constitution.

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<sup>95</sup> McConville Mike and Chui Wing Hon,(2007). Research Methods For Law, Edinburgh, Edinburgh University Press Limited. p40.

## **1.5 Conclusion**

This Chapter has introduced the study by asserting the problem statement which lies in the Constitution provisions with apparent restrictions on the eligibility of dual citizens to take up various public offices due to notions of nationalism in Zambia. The Chapter has also positioned the study within literature reviewed, which shows no consensus among scholars on the the impact of ‘Dual Citizenship’ on identification and political participation in the country of residence. Whilst some have found and argued that ‘Dual Citizenship’ does not seem to diminish loyalty to the country of residence, others have found and argued that it does. This then begs the question of whether the impact of the notion of nationalism on the rights of dual citizens in Zambia has any justifications in light of the principle of equality and non-discrimination. Therefore, if it is found that nationalism impacts on ‘Dual Citizenship’ by unjustifiably limiting the enjoyment of the rights of citizenship through excluding such citizens from eligibility for political participation (particularly in the form of taking up of public office) and service in the security wings of government, then the principle of equality of all citizens before the law remains to a large extent, ineffective in Zambia. The Chapter has identified the methodology to be adopted by the study, as well as the Chapter outline. The next Chapter covers an overview discussion of the concepts of citizenship, dual citizenship, nationalism, equality and non-discrimination and largely, the interrogation of how nationalism impacts on the rights of dual citizens in Zambia as well as the justifications if any.

## CHAPTER TWO

### **CITIZENSHIP, DUAL CITIZENSHIP, NATIONALISM, EQUALITY AND NON-DISCRIMINATION: AN INTERROGATION OF THE JUSTIFICATIONS FOR DISCRIMINATING AGAINST DUAL CITIZENS**

#### **2.1 Introduction**

This Chapter seeks ascertain how nationalism impacts on the rights of dual citizens in Zambia and whether there are any justifications for this in light of the principle of equality and non-discrimination. In so doing, the Chapter gives an overview discussion of the concepts of citizenship, ‘dual citizenship’, nationalism, equality and non-discrimination. The concepts are considered under the same chapter on the basis of their interrelatedness to the main question in this study as well as the relevant study objectives. By discussing these concepts, a foundation is sought to be laid for the interrogation to be conducted in this Chapter, on how nationalism impacts on the rights of dual citizens in Zambia as well as the nationalistic and legality arguments typically advanced for the limitations in Zambia, amongst other jurisdictions.

#### **2.2 An outlook on Citizenship and its attributes**

Howard,<sup>1</sup> defines Citizenship as “that which bestows upon individuals, membership in a national political community.” In liberal democracies, it gives them the right to vote, to run for office, and to participate freely in public activities, while also requiring the obligation of paying taxes and possibly serving in the military. Citizenship is basically the status of being a citizen.<sup>2</sup> A Citizen, has also been defined as a person who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and protections; a member of the civil state, entitled to all its privileges.<sup>3</sup> There are three main schools of thought or perspectives of

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<sup>1</sup> Howard Morjé Marc (2009). The Politics of Citizenship in Europe. p.3.

<sup>2</sup> Garner, Bryan A. (1999). Black’s Law Dictionary 7<sup>th</sup> Ed; p.237.

<sup>3</sup> Garner, Bryan A. Black’s Law Dictionary 7<sup>th</sup> Ed , p.237.

what citizenship is. Citizenship in the Liberal thought,<sup>4</sup> connotes a status, which entitles individuals to a specific set of universal rights granted by the state. Central to this school of thought is the notion that individual citizens act rationally to advance their own interests and that the role of the state is to protect the citizens in the exercise of their rights. Further, that granting each individual the same formal rights is understood to promote equality through making a person's political and economic power irrelevant to rights claims. As this implies, exercising rights is seen as the choice of citizens, on the assumption that they have the necessary resources and opportunities. While rights to participate have long been central to the liberal thought, these are largely rights to political participation. In contrast to the Liberal thought, Republicans<sup>5</sup> argue that basic resources are necessary to enable participation in community life, rather than conceiving them as basic rights *per se*. Further that citizenship should be understood as a common civic identity, shaped by a common public culture. The classical communitarian<sup>6</sup> thought on citizenship places great emphasis on belonging. From the different perspectives of citizenship outlined by the three schools of thought, it is noteworthy that citizenship is not a single dimensional concept.

According to Bosniak,<sup>7</sup> the concept of citizenship has an extraordinarily broad range of uses; it is invoked to characterize modes of participation and governance, rights and duties, identities and commitments, and statuses. To be a citizen is to "possess the legal status of a citizen." In this usage, citizenship refers to formal or nominal membership in an organized political community. In the conception of citizenship as rights, the enjoyment of rights is the defining feature of societal membership: citizenship requires the possession of rights, and those who possess the rights are usually presumed thereby to enjoy citizenship.<sup>8</sup> In its' third sense as political activity, "citizenship" most commonly denotes active engagement in

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<sup>4</sup> Jones Emma and Gaventa Johns, IDS Development Bibliography 19 Concepts of citizenship: A review, Institute of Development studies, Brighton, Sussex, England, February 2002, p.4. <https://www.ids.ac.uk/files/dmfile/Db19.pdf>. (Accessed on 22<sup>nd</sup> January 2017).

<sup>5</sup> Jones Emma and Gaventa Johns, IDS Development Bibliography 19 Concepts of citizenship: a review, p.4.

<sup>6</sup> Jones Emma and Gaventa Johns, IDS Development Bibliography 19 Concepts of citizenship: A review p5.

<sup>7</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium)," Indiana Journal of Global Legal Studies:Vol. 7: Is. 2, Article 2.p.450.<http://www.repository.law.indiana.edu/ijgls/vol7/iss2/2> (Accessed on 7<sup>th</sup> December 2016).

<sup>8</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p463-4.

the life of the political community. According to Aristotle,<sup>9</sup> the citizen is, "one who participates in the rights of judging and governing;" he is a man who both rules and is ruled. Reference to citizenship as identities and commitments has to do with citizenship's psychological dimension,<sup>10</sup> that part of citizenship that describes the affective ties of identification and solidarity that we maintain with groups of other people in the world. The term citizenship here is deployed to evoke the quality of belonging, the felt aspects of community membership.

**(i) Factors determining entitlement to citizenship**

It is important to note that each country has its own policies, regulations and criteria as to who is entitled to its citizenship. This position was affirmed by the Permanent Court of International Justice in 1923.<sup>11</sup> Since that date, however, international human rights law has increasingly asserted limits to state discretion, in this as in other areas.<sup>12</sup> In 1930, the Hague Convention on 'Certain Questions Relating to the Conflict of Nationality Laws', affirmed in its preamble that it is in the interest of the international community to ensure that all countries recognise that "every person should have a nationality."<sup>13</sup> The Universal Declaration of Human Rights ("UDHR")<sup>14</sup> guarantees the right to citizenship by providing that "everyone has a right to a nationality" and that no one shall be arbitrarily deprived of his nationality.

It is noteworthy however that none of the international treaties compels states to grant their nationality. Nonetheless, they do limit state discretion over citizenship, by requiring measures to reduce statelessness, including the grant of nationality to children who would

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<sup>9</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p471.

<sup>10</sup> Heater Derek Benjamin, (1990). Citizenship: the civic ideal in world history, politics, and education, Michigan, Longman the University of Michigan, p.184.

<sup>11</sup> Tunis and Morocco Nationality Decrees case, PCIJ Ser.B., No. 4 (1923).  
[http://www.worldcourts.com/pcij/eng/decisions/1923.02.07\\_morocco.htm](http://www.worldcourts.com/pcij/eng/decisions/1923.02.07_morocco.htm). (Accessed on 18<sup>th</sup> October 2017).

<sup>12</sup> Manby Bronwen , (2010). Citizenship Law in Africa: A Comparative Study, New York, Open Society Foundations , p.18.

<sup>13</sup> Manby Bronwen, Citizenship Law in Africa: A Comparative Study, p.19.

<sup>14</sup> Article 15(1), and (2), the Universal Declaration of Human Rights. Adopted by the United Nations General Assembly on 10<sup>th</sup> December 1948. <http://www.un.org/en/universal-declaration-human-rights/> (Accessed on 1<sup>st</sup> February 2017).

otherwise be stateless. Further, by prohibiting discrimination in granting citizenship and arbitrary deprivation of citizenship.<sup>15</sup> These principles were confirmed in the case of *Dilcia Yean and Violeta Bosico v. Dominican Republic*,<sup>16</sup> a judgment of the Inter-American Court of Human Rights which held that:

Although the determination of who is a national of a particular state continues to fall within the ambit of state sovereignty, states' discretion must be limited by international human rights that exist to protect individuals against arbitrary state actions. States are particularly limited in their discretion.....by their obligations to guarantee equal protection before the law and to prevent, avoid, and reduce statelessness.

In Zambia, citizenship may be acquired by birth.<sup>17</sup> This arises where a person is born in Zambia, and at the date of that person's birth, at least one parent of that person is or was a citizen. Citizenship may also be acquired by descent,<sup>18</sup> where for a person born outside Zambia, at the date of their birth, at least one of their parents is or was a citizen by birth or descent. Citizenship by registration<sup>19</sup> may arise where a person is entitled to apply to the Citizenship Board of Zambia to be registered as a citizen if that person has attained the age of eighteen years and in any of the following circumstances listed under Article 37(1) of the Constitution:

- (a) was born in Zambia and has been ordinarily resident in Zambia for a period of at least five years;
  - (b) was born outside Zambia, has or had an ancestor who is, or was, a citizen and has been ordinarily resident in Zambia for a period of at least five years; or
  - (c) has been ordinarily resident in Zambia for a continuous period of at least ten years;
- immediately preceding that person's application for registration, as prescribed. Also, a person who is, or was married to a citizen, for a period of at least five years is entitled to apply to the Citizenship Board of Zambia, to be registered as a citizen, as prescribed.

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<sup>15</sup> Manby Bronwen, *Citizenship Law in Africa: A Comparative Study*, p19.

<sup>16</sup> *Dilcia Yean and Violeta Bosico v. Dominican Republic*, Inter-American Court of Human Rights Case No. 12.189, 8 September 2005. [http://www.corteidh.or.cr/docs/casos/articulos/seriec\\_130\\_%20ing.pdf](http://www.corteidh.or.cr/docs/casos/articulos/seriec_130_%20ing.pdf). (Accessed on 18<sup>th</sup> October 2017).

<sup>17</sup> Article 35(1), of the Constitution.

<sup>18</sup> Article 36, of the Constitution .

<sup>19</sup> Article 37(1), of the Constitution .

Adoption,<sup>20</sup> is another categorization of citizenship. This occurs when a child who is not a citizen and who is adopted by a citizen, becomes a citizen on the date of the adoption. From the provisions of the Zambian Constitution outlined above on citizenship, there is not much of a disparity from what Manby observes<sup>21</sup> as set out below, regarding the basis of citizenship law from the general trend world over:

The laws governing citizenship in most African countries—as in most countries in the world—reflect a compromise between two basic concepts: *jus soli* (literally, law or right of the soil), whereby an individual obtains citizenship because he or she was born in a particular country; and *jus sanguinis* (law or right of blood), where citizenship is based on descent from parents who themselves are or were citizens. In addition to these two principles based on birth, two other factors are influential in determining citizenship for adults: marital status, in that marriage to a citizen of another country can lead to the acquisition of the spouse's citizenship, and residence within a country's borders.

## **(ii) The rights and obligations attributed to citizenship**

As noted above,<sup>22</sup> the rights approach stems from Liberal thought, in which Citizenship is understood as a formal status which entitles individuals to specific universalized rights enshrined in law.<sup>23</sup> 'Citizenship as obligations' has its roots in the civic republican thought, in which political participation is understood as the civic duty of all citizens and the expression of their citizenship and social membership.<sup>24</sup> Among the most influential scholars on the conception of citizenship-as- rights is Marshal,<sup>25</sup> who divided citizenship rights into three categories: civil rights, political rights and social rights. Marshal, argued that by guaranteeing civil, political and social rights to all, the welfare state ensures that every member of society feels like a full member of society. Further, that they are able to

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<sup>20</sup> Article 38, of the Constitution.

<sup>21</sup> Manby Bronwen, *Citizenship Law in Africa: A Comparative Study*, p2.

<sup>22</sup> Under sections 1.1.8 and 2.2 above.

<sup>23</sup> Jones Emma and Gaventa Johns, *IDS Development Bibliography 19 Concepts of citizenship: A review* P.8.

<sup>24</sup> Jones Emma and Gaventa Johns, *IDS Development Bibliography 19 Concepts of citizenship: A review* P.8.

<sup>25</sup> Kymlicka Will and Norman Wayne . *Return of the citizen: A survey of recent work on citizenship theory.* *Ethics* 104(2) (January 1994):p364, , <http://www.jstor.org/stable/2381582>. (Accessed on 27<sup>th</sup> January 2017)

participate in and able to enjoy the common life of society. That where any of these rights are withheld or violated, people will be marginalized and unable to participate.<sup>26</sup> Other additional scholars on rights-based citizenship, such as Black and later, Karst, employed the concept of citizenship to refer to the rights necessary to achieve "full and equal membership".<sup>27</sup> Under article 42, of the Constitution of Zambia, the rights of a citizen are framed as follows:

A citizen is entitled to

- (a) the rights, privileges and benefits of citizenship as provided in this Constitution or as prescribed; and
- (b) a document of identification issued by the State to citizens.

It is apparent that under article 42,<sup>28</sup> aside from the right to a document of identification, there are no other rights, privileges and benefits specifically outlined as flowing from the status of being a citizen. As the article suggests, the rights privileges and benefits are provided for generally under the Constitution. Among the Articles that specifically provide for the rights privileges and benefits of members of society are those under the Bill of rights of the Constitution,<sup>29</sup> which comprise of civil and political rights. In addition, other articles under the Constitution generally make provision for the guarantee and protection of citizens' rights. Particularly, under the national values and principles,<sup>30</sup> the constitution recognizes equality and non- discrimination as part of the national values that are used in its interpretation as well as in the enactment of law.<sup>31</sup> A question arises as to whether or not these rights under the constitution are a preserve of Zambian citizens. According to Bosniak,<sup>32</sup>

Aliens, it may be argued, enjoy a modicum of "citizenship" by virtue of the various social and economic rights they have been afforded in national and international law, however paradoxical this may sound. Yet, the fact that aliens

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<sup>26</sup> Kymlicka Will and Norman Wayne . Return of the citizen: A survey of recent work on citizenship theory, p.364.

<sup>27</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.464.

<sup>28</sup> Of the Constitution.

<sup>29</sup> Part III, Chapter 1, of the laws of Zambia.

<sup>30</sup> Article 8(d), of the Constitution.

<sup>31</sup> Article 9 (a) and (b), of the Constitution .

<sup>32</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium)," pp.461-462.

enjoy these rights does not mean that their formal or nominal legal status vis-a-vis the political community in which they reside has changed. When citizenship is understood as formal legal membership in the polity, aliens remain outsiders to citizenship. They reside in the host country only at the country's discretion; there are often restrictions imposed on their travel;<sup>33</sup> they are denied the right to participate politically at the national level; and they are often precluded from naturalizing. Furthermore, they symbolically remain outsiders to membership in the polity.

From the above it is clear that although non-citizens may enjoy various rights under the Zambian Constitution, this on its own does not entitle the said individuals to enjoyment of citizenship or societal membership rights. States can no longer be said to be the sole source of existing positive rights. As is well-known, in the post-World War II period, a sizable human rights regime, or set of regimes, have taken shape at the international level, which are designed to implement standards, set out in a variety of multilateral agreements, for the treatment of individuals by states.<sup>34</sup> In this regard, aside from domestic legislation, international instruments such as the UDHR and the International Convention on Civil and Political Rights (“ICCPR”)<sup>35</sup> also provide for Civil and political rights akin to those provided under the constitution.<sup>36</sup> The UDHR was adopted by the United Nations General Assembly in the form of a resolution having no force of law.<sup>37</sup> The premise underlying the Declaration is that all human beings are born free and equal in dignity and rights. Further, that they are endowed with reason and conscience and should act towards one another in a spirit of brotherhood. Among the rights guaranteed is equality before the law, freedom from discrimination<sup>38</sup> and the right to take part in one’s government.<sup>39</sup> Although the UDHR was originally not intended to be law, there has been increasing disposition to

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<sup>33</sup> An example is Article 22 (3)(b), of the Constitution, Chapter 1 of the laws of Zambia which allows the restriction on the freedom of movement for non-Zambian citizens. The case of *Radebe v the Attorney General*

(1972) ZR, 237 also confirms this position.

<sup>34</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium)," p.467.

<sup>35</sup> The International Covenant on Civil and Political Rights. Adopted by the General Assembly of the United Nations on 19 December 1966 <https://treaties.un.org/doc/publication/unts/volume%20999/volume-999-i-14668-english.pdf> (Accessed on 1<sup>st</sup> February 2017).

<sup>36</sup> Chapter 1, of the laws of Zambia.

<sup>37</sup> Anyangwe Carlson, (2004). Introduction to Human Rights and International Humanitarian Law, Lusaka, Unza Press, p.33.

<sup>38</sup> Article 7, the UDHR.

<sup>39</sup> Article 21, the UDHR.

attribute legal character to many, if not all, of its provisions.<sup>40</sup> Today, the UDHR is regarded by many as an authoritative interpretation of the United Nations Charter. This is as to the meaning of fundamental human, or as an authoritative listing of human rights that the United Nations and its members have agreed to promote under the Charter. It is also regarded as a basic concept of international customary law binding all states.<sup>41</sup>

The ICCPR, on the other hand is a treaty that guarantees a large number of well-known individual civil and political rights. Among these rights are the rights to equality before the law and without discrimination to equal protection of the law,<sup>42</sup> to take part in the conduct of public affairs<sup>43</sup> and so forth. It is noteworthy however that Zambia is amongst the countries that are party to the Covenant as well as to its first optional protocol. The said protocol enables private persons claiming to be victims of a violation of the Covenant, to file individual communications with the Human Rights Committee.<sup>44</sup> The African Charter on Human and Peoples Rights (“ACHPR”)<sup>45</sup> also prohibits non-discrimination,<sup>46</sup> promotes equality<sup>47</sup> and political participation, as well as the right to access public service.<sup>48</sup> As regards citizens’ obligations, the Constitution of Zambia,<sup>49</sup> is more elaborate in stating the duties of a citizen under Article 43(1), than it does in relation to stating the rights of citizens. Article 43(1), provides, among other duties that citizens shall be patriotic to Zambia, pay taxes, provide national, defence and military service when called upon by the State and co-operate with law enforcement agencies for the maintenance and enforcement of law and order. Borer<sup>50</sup> argues that:

Our duties as citizens follow naturally from our rights. Having won the right to be consulted about our own government, we must abide by the results of it, for in

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<sup>40</sup> Anyangwe Carlson, Introduction to Human Rights and International Humanitarian Law, p.33.

<sup>41</sup> Anyangwe Carlson, Introduction to Human Rights and International Humanitarian Law, p.33.

<sup>42</sup> Article 26, the ICCPR.

<sup>43</sup> Article 25(a), the ICCPR.

<sup>44</sup> Anyangwe Carlson, Introduction to Human Rights and International Humanitarian Law, p.37.

<sup>45</sup> Adopted in Nairobi June 27, 1981. Entered into Force October 21, 1986. <http://www.humanrights.se/wp-content/uploads/2012/01/African-Charter-on-Human-and-Peoples-Rights.pdf>. (Accessed on 18<sup>th</sup> October 2017).

<sup>46</sup> Article 2 of the ACHPR.

<sup>47</sup> Article 3(1) of the ACHPR.

<sup>48</sup> Articles 13(1) through to 13(3) of the ACHPR.

<sup>49</sup> Act No.2, of 2016.

<sup>50</sup> Borer Cathcart Mary, (1962). Citizenship: its rights and responsibilities, London, Museum press limited, p.23.

obeying the laws of our country, we are obeying a code which we ourselves have established. This does not mean blind acquiescence to everything that happens in the government.

From this argument, it is inevitable to note the complimentary nature of both citizen's rights and duties. The rights guaranteed to a citizen need not only be enjoyed, but rather, the citizen has an obligation to actively participate in society by making the government accountable for the security of these rights. In this vein, it becomes clear that the Liberal and Republican conceptions of citizenship reinforce each other.

### **2.2.1 'Dual Citizenship' and its attributes.**

#### **(i) The acceptance and tolerance of 'Dual Citizenship'**

Constituting a legal tie that connects an individual to two countries; 'Dual Citizenship' contradicts the classic understanding of citizenship as single and exclusive affiliation to one state.<sup>51</sup> The implications of this transnational status for the other dimensions of citizenship, citizenship practices and identities and political loyalty in the country of residence, are a matter of heated debate.<sup>52</sup> Theoretically, 'Dual Citizenship' is favoured by two of the three main conceptions of citizenship and democracy. The liberal theorists build on a strong connection between legal rights of citizens and political rights since only the combination of the rule of law and the accountability of governments secures the natural rights and liberties of individuals.<sup>53</sup> Therefore, separation of these two components of modern citizenship should be avoided.

The proponents of 'Dual Citizenship' have argued that it's the acceptance facilitates naturalisation of immigrants and thereby contributes to conformity in the receiving country.<sup>54</sup> That the requirement to renounce the citizenship of the country of decent has been suggested as the major constraint to naturalise. Therefore, it is assumed that

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<sup>51</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

p.3.

<sup>52</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

p.3.

<sup>53</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.775.

<sup>54</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.775.

acceptance of ‘Dual Citizenship’, leads to higher naturalisation rates. Additionally, it is argued that ‘Dual Citizenship’, is a more straightforward answer to the fact that many migrants have a stake in more than one country,<sup>55</sup> It is further argued,<sup>56</sup> that “since we can observe a clear trend to internationalise and universalise legal rights of individuals, it seems adequate to also expand the scope of political rights beyond the confinements of a single nation state”. ‘Dual Citizenship’ is a step towards such an expansion of political rights and contributes not only to the similarity principle but also to the realignment and reconnection of legal and political rights.

However, in response to this argument, Blatter<sup>57</sup> reports that others have argued that this presents inequality on grounds that since dual citizens can vote in two different countries, whereas mono nationals have the right to vote only in one country, dual nationals seem to be privileged because of the ability to have a say in more than one country.<sup>58</sup> In counter, Baubok,<sup>59</sup> provides two arguments against this widespread feeling of a privilege for dual citizens. First, the voting right should not be conceptualised as a resource which can be accumulated, but as a means to control all those governments whose decisions will affect the future of the citizen. Since dual citizens have a stake in two countries they should also have a say in both. Second, as long as the vote in the first country does not have any influence on the aggregation of interests within the second polity, the principle of equal weight of individual votes is not violated within the sphere of each polity. Only when the aggregation of votes and governmental decision-making is connected between the two polities, inequality arises because a dual national can make his or her preferences counted twice. The Developmental Republican theorists,<sup>60</sup> in their arguments for ‘Dual Citizenship’, argue that it opens up more rights and opportunities for political participation.

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<sup>55</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.776.

<sup>56</sup> Cohen, J.L., 1999. Changing paradigms of citizenship and the exclusiveness of the demos. *International sociology*, 14 (3), pp.258-259. <https://doi.org/10.1177/0268580999014003002> (Accessed on 7<sup>th</sup> December 2016).

<sup>57</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.776

<sup>58</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.776.

<sup>59</sup> Baubock, R., 2007. Stakeholder citizenship and transnational political participation: a normative evaluation

of external voting. *Fordham law review*, p.2428. <http://ir.lawnet.fordham.edu/flr/vol75/iss5/4>. (Accessed on 8<sup>th</sup> October 2017).

<sup>60</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.778.

That this is so since dual citizens have those rights and opportunities in two and not just in one country. Further, that ‘Dual Citizenship’ makes it easier to live a meaningful and good life since dual citizens can contribute to the public good in a plurality of political communities. In as much as the Developmental Republican theory argues against restrictions on voting as well, which also appears to be understood as a form of political participation<sup>61</sup>, it should be noted here that the main focus of this study in terms of political participation is the ability to take up public office because this is what appears to have limitations when it comes to dual citizens’ political rights in Zambia.

Nevertheless, two main arguments<sup>62</sup> are formulated against ‘Dual Citizenship’ based on Communitarian understandings of citizenship and democracy. First, being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism. Second, dual citizens, like immigrants with strongly different cultural backgrounds endanger the integration into and the identification with a nation, as well as the solidarity among members of the national community.

According to Schlenker,<sup>63</sup> during the 20<sup>th</sup> century vigorous attempts were made, through international norms and state regulations, to ensure that every individual had one, but just one citizenship. Migrants were expected and asked to renounce their former nationality in order to become naturalized in the receiving country and thus to prove their undivided loyalty to the new home country. At the turn of the 21<sup>st</sup> century, this changed dramatically. An increasing number of states worldwide now permit dual or multiple citizenship and many people use the opportunity to formalize their multiple affiliations. Spiro,<sup>64</sup> also observes that developing states once equated emigration with abandonment, forsaking those who left by terminating nationality. That today, developing countries seek to harness emigrant communities as diasporas for economic and other purposes. Citizenship is part of

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<sup>61</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.778.

<sup>62</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.779.

<sup>63</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*.

p.1.

<sup>64</sup> Spiro Peter J. *At Home in Two Countries: The Past and Future of Dual Citizenship*, Nyu Press, 2016. [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2807898](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2807898) . (Accessed on 4<sup>th</sup> February 2017) p.8.

the toolbox for keeping diasporas connected to the homeland. These “sending” states have moved from merely tolerating ‘Dual Citizenship’ to actively embracing it. This is partly in response to the demands of the diaspora members themselves, who have used their economic and political muscle to win acceptance of the status by their countries of origin. Other countries, including most European states, have also come to appreciate ethnic kin outside the homeland. Because citizenship no longer provokes turf battles between states, many states have abandoned previous restrictions on the status. With a few major hold-outs, a clear majority of countries now permit ‘Dual Citizenship’, and the trend has one direction.<sup>65</sup>

Aside from Zambia, it is noteworthy that in recent years, many African states have changed their rules to allow ‘Dual Citizenship’ or are in the process of considering such changes. Among those that have changed the rules in the last decade or so are Angola, Burundi, Djibouti, Gabon, Gambia, Ghana, Kenya, Mozambique, Rwanda, São Tomé and Príncipe, Sierra Leone, Sudan, and Uganda. Others, including Egypt, Eritrea, and South Africa, allow ‘Dual Citizenship’ but only with the official permission of the government.<sup>66</sup>

### **(ii) Advantages and Disadvantages of ‘Dual Citizenship’**

According to Spiro,<sup>67</sup> some among so-called sending states (states that are net sources of immigrants) have determined that ‘Dual Citizenship’ is in their national interest. For these states, emigrants represent an important source of foreign exchange and entrepreneurial capital. More recently, allowing emigrants to retain their original citizenship after naturalizing in the state to which they have immigrated has been adopted as a strategy for cementing the home-state tie, with ancillary economic benefits.<sup>68</sup> At the same time that additional citizenships pose few additional obligations, they may present some added benefits. Among these benefits are rights of entry and residence, some public benefits

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<sup>65</sup> Spiro Peter J. *At Home in Two Countries: The Past and Future of Dual Citizenship*, p.8.

<sup>66</sup> Manby Bronwen, *Citizenship Law in Africa: A Comparative Study*, p.7.

<sup>67</sup> Spiro J. Peter, *Dual citizenship as human right*. I • CON (2010), Vol. 8 No.1, p.117. <https://academic.oup.com/icon/article-pdf/8/1/111/1992408/mop035.pdf>. (Accessed on 12<sup>th</sup> February 2017).

<sup>68</sup> Spiro J. Peter, *Dual citizenship as human right*. p.117.

(most additionally contingent on residence, such as educational benefits), eligibility for employment, and the like.<sup>69</sup> On the other hand, the opponents of ‘Dual Citizenship’ argue that ‘one cannot serve two masters’ and are concerned that loyalty towards the state, national cohesion and democracy are undermined by ‘Dual Citizenship’.<sup>70</sup>

### **(iii) ‘Dual Citizenship’ under the Zambian context**

Up until January 2016,<sup>71</sup> ‘Dual Citizenship’ was not acceptable under the Zambian Constitution. ‘Dual Citizenship’ became recognised with the enactment of the Constitution,<sup>72</sup> specifically under article 39(1). It is noteworthy that regarding renunciation and deprivation of citizenship, article 40, makes no mention of deprivation of Zambian citizenship on grounds of failure to renounce citizenship of another country. Further, on the mode of renunciation, the current constitution provides that it shall be as prescribed.<sup>73</sup> The requirement for renunciation under the current Citizenship Act, No. 33 of 2016 (hereinafter referred to as “the Citizenship Act”) only arises where a citizen by birth no longer wishes to hold ‘Dual Citizenship’,<sup>74</sup> or wishes to assume sole citizenship of another country.<sup>75</sup> Subsequent to the repeal of the previous Citizenship Act,<sup>76</sup> ‘Dual Citizenship’ is now recognised under section 25, of the current Citizenship Act,<sup>77</sup> which provides that:

- (1) A citizen may apply for ‘Dual Citizenship’ in the prescribed manner and form.
- (2) Subject to Article 39 of the Constitution and this Act, a citizen who acquires the citizenship of another country is entitled to retain the citizenship of Zambia.

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<sup>69</sup> Spiro J. Peter, Dual citizenship as human right. p.117.

<sup>70</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

p.2.

<sup>71</sup> The assenting into law of the Constitution of Zambia (Amendment) Act No.5 of 2016, on 5<sup>th</sup> January 2016.

<sup>72</sup> Act No. 2, of 2016.

<sup>73</sup> Article 40(1) (a), of the Constitution.

<sup>74</sup> Section 32(2) (a), the Citizenship Act.

<sup>75</sup> Section 32(2) (b), of the Citizenship Act.

<sup>76</sup> Chapter 124, of the laws of Zambia.

<sup>77</sup> Act No. 33, of 2016.

As regards who qualifies to apply for registration as a citizen under the current Citizenship Act,<sup>78</sup> qualification has to be in accordance with the provisions of Article 37, of the Constitution. Unlike the previous requirement,<sup>79</sup> Article 37, makes no mention of the need to demonstrate willingness to renounce citizenship of another country. Further on application for citizenship, such application can no longer be rejected on grounds that the applicant holds citizenship of another country.<sup>80</sup> As regards the renunciation under the current Citizenship Act,<sup>81</sup> it is no longer a requirement for Zambian citizens that are of age and hold citizenship of countries other than Zambia.

### **2.2.2. The notion of nationalism and its features**

Hoffman,<sup>82</sup> refers to nationalism as “the view that a person’s ultimate loyalty is to the nation”. Further, that nationalism is tied to the state, either as a reality to be defended or as a dream to be realised. That in either case, the monopolistic exclusivity of the state translates itself into the exclusivity of nationalism. Hoffman, further points out that citizenship defined in statist terms necessarily privileges a particular national identity and marginalizes all others.

Druckman,<sup>83</sup> in tracing the bases of nationalism argues that although granting that nationalism is a political, economic, and sociological phenomenon, it becomes a social-psychological phenomenon to the extent that individuals develop attitudes about their own and other nations. Such attitudes reflect the feelings that persons have toward these objects and their sense of loyalty to them. These feelings of attachment are at the heart of nationalism. In distinguishing between "patriotism" and "nationalism", Druckman,<sup>84</sup> points out that Patriotism seems to lead to strong attachments and loyalty to one's own group

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<sup>78</sup> Section 17, of the Citizenship Act.

<sup>79</sup> Section 16(2), of the repealed Citizenship Act, Chapter 124 of the laws of Zambia.

<sup>80</sup> Section 20, of the Citizenship Act.

<sup>81</sup> Section 32, of the Citizenship Act.

<sup>82</sup> Hoffman John, (2004). *Citizenship beyond the state*, London, SAGE publications, p.49.

<sup>83</sup> Druckman, Daniel. Nationalism, Patriotism, and Group Loyalty: A Social Psychological Perspective. *Mershon International Studies Review*, Vol. 38, No. 1 (Apr., 1994), p.43.

<http://www.jstor.org/stable/222610>

(Accessed on 17<sup>th</sup> August 2016).

<sup>84</sup> Druckman, Daniel. Nationalism, Patriotism, and Group Loyalty: A Social Psychological Perspective. pp. 63-

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without the corresponding hostility toward other groups, while nationalism encourages an orientation involving liking for one's own group and disliking of certain other groups. While those strong in patriotism are willing to risk their lives for their country, they are not as prone to war as those strong in nationalism who have an enemy built into their attachments to their nation. Nationalism is further oriented towards developing and maintaining a national identity based on shared characteristics such as culture, language, race, religion, political goals and/or a belief in a common ancestry.<sup>85</sup>

### **(i) National identity and cohesion**

National identity is one's identity or sense of belonging to one state or to one nation.<sup>86</sup> Through socialization, a system of beliefs, values, assumptions and expectations is transmitted to group members.<sup>87</sup> Under various social influences, people incorporate national identity into their personal identities by adopting beliefs, values, assumptions and expectations which align with one's national identity.<sup>88</sup> According to Renshon,<sup>89</sup> Social psychologists, who use the term, tend to equate it with 'patriotism', and 'patriotism' with what can only be called 'aggressive nationalism'. Essentially, this entails agreement with survey items that reflect a tendency to see the world in an "us" versus "them" way and a willingness to take whatever steps are necessary to see that "us" comes out ahead.

### **(ii) Loyalty**

Loyalty is a complex concept and an even more complex emotion. Psychologically, loyalty is basically an attachment to, a sense of identification with, and feelings toward a person,

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<sup>85</sup> Triandafyllidou, Anna (1998). "National identity and the other". *Ethnic and Racial Studies*. **21** (4): 593–612.

<http://dx.doi.org/10.1080/014198798329784>. ( Accessed on 24<sup>th</sup> February 2017).

<sup>86</sup> Ashmore, Richard (2001). Jussim, Lee; Wilder, David. *Social Identity, Intergroup Conflict, and Conflict Reduction*.: Oxford, Oxford University Press, pp.74–75.

<sup>87</sup> Smith, Anthony (1991). *National Identity*. Nevada, University of Nevada Press, pp. 8–15.

<sup>88</sup> Bar-Tal, Daniel; Staub, Ervin (1997). *Patriotism in the Lives of Individuals and Nations*. Chicago, Nelson-Hall Publishers, pp. 171–172.

<sup>89</sup> Renshon, Stanely. *Dual Citizenship And American Democracy: Patriotism, National Attachment, And National Identity*, p.108.

place, or thing. These can run from the shallow to the profound, from the episodic to the immutable, and from the singular to the diverse.<sup>90</sup>

### **2.2.3 The principle of equality and non- discrimination**

The observance of principle of equality and non-discrimination is a standard that is supported by both national legislation of countries generally, as well as international human rights instruments and norms. In defining equality, this study adopts the following definition: the quality or state of being equal. Further, the equal protection principle is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to procedural enforcement of laws; but also to the substantive content of their provisions. In other words, the equal protection of laws is invariably treated as a substantive constitutional principle; which demands that laws will only be legitimate if they can be described as just and equal.<sup>91</sup> Further, in the case of *Andrews v. Law Society of British Columbia*,<sup>92</sup> the Supreme Court of Canada established that the right to equality includes substantive rather than merely formal equality. It is important to note that the principle of equality before the law applies to the enjoyment of civil, political, economic and social rights, without any distinction.<sup>93</sup>

In international human rights law, the principle of non-discrimination enshrines equality between persons and imposes certain prohibitions on States. Distinctions based on gender, race, religion or national origins are specifically prohibited in relation to the enjoyment and exercise of the substantive rights embodied in international instruments. Regarding these categories, any distinction that States make in the application of benefits or privileges must be carefully justified on the grounds of a legitimate interest of the State and of society, “which cannot be satisfied by non-discriminatory means”.<sup>94</sup> In emphasising the value of the two principles, the Inter-American Court of Human Rights held,<sup>95</sup> that:

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<sup>90</sup> Renshon, Stanely. *Dual Citizenship And American Democracy: Patriotism, National Attachment, And National Identity*, p.116.

<sup>91</sup> Garner, Bryan A. *Black’s Law Dictionary*, 7<sup>th</sup> Ed: pp.557-558.

<sup>92</sup> [1989] 1 S.C.R.143.

<sup>93</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003, [www.corteidh.or.cr/docs/opiniones/seriea\\_18\\_ing.pdf](http://www.corteidh.or.cr/docs/opiniones/seriea_18_ing.pdf). (Accessed on 22<sup>nd</sup> February 2017).

<sup>94</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003.

<sup>95</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003 . . .

The principle of non-discrimination and the right to equal protection of the law, which are the essence of human rights, are norms of *ius cogens*. Norms of *jus cogens* [Meaning compelling law] are enforceable *erga omnes* [the obligations of a state towards the international community as a whole], because they contain elemental values and concerns of mankind based on universal consensus, owing to the special nature of the prerogative they protect.

Any restriction of the enjoyment of the fundamental rights derived from the principles of equality before the law and non-discrimination violates the obligation *erga omnes* to respect the attributes inherent in the dignity of the human being, and the principal attribute is equality of rights.<sup>96</sup>Courts in Zambia have also highlighted the importance of these principles noted in the case of *Roy Clarke v Attorney General*,<sup>97</sup> as follows:

The concept of equality before the law and equal protection of the law, non-discrimination and guarantee of the dignity and worth of the human person seem to have gone beyond providing the fundamental basis for effective actualization of the rule of law to become part of it.

### **2.3 An interrogation of how nationalism impacts on the rights of dual citizens and the justifications for discriminating**

It is noteworthy that the law as set out under the Constitution,<sup>98</sup> provides that, “a citizen shall be entitled to rights, privileges and benefits of citizenship as provided for in the Constitution or as prescribed.” However this despite, the same Constitution on the other hand disqualifies a dual citizen, from nomination for election as Republican President and Vice President,<sup>99</sup> election as Speaker of the National Assembly<sup>100</sup> and service as member of the Defense Force and National Security Services.<sup>101</sup> As can be seen from past recommendations<sup>102</sup> made during the constitutional making process, the prohibition of dual citizenship was premised on fears against conflict of allegiance. However, the change in

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<sup>96</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003.

<sup>97</sup> HP 003 (April, 2004).

<sup>98</sup> Article 42(a), of the Constitution.

<sup>99</sup> Articles 100(2) (b), and 110(2), of the Constitution.

<sup>100</sup> Article 82(2), of the Constitution. .

<sup>101</sup> Article 194(a), of the Constitution.

<sup>102</sup> The Report of the Mungomba Constitution Review Commission, p.102.

this initial position to subsequently permit dual citizenship appears to have resulted in the restrictive couching of citizenship rights for dual citizens in terms of political participation<sup>103</sup> among others<sup>104</sup>, on the basis of fears of conflicted allegiances. This along with the aforementioned enactments under the Constitution establishes the existence of nationalism in Zambia, as well as its application.

The notion of nationalism is among the tenets of the communitarian theory on the basis that nationalism raises questions about the notion of dual identity. Nationalism stresses desirability of single identity, which is often defined in terms of common origin, ethnicity, or cultural ties, as a precondition for loyalty. The strongest opposition to ‘Dual Citizenship’ can be deduced from Communitarian thinking. Regarding military service – the Communitarians’ position that individuals/males should be so loyal to a national polity that they are willing to fight and die for it – seems to lead straightforwardly to a rejection of ‘Dual Citizenship’. This is because membership in two polities undermines the loyalty to one specific polity.<sup>105</sup> Uncompromised loyalty might also be asked for when people take public offices.<sup>106</sup> That being politically active in two countries is problematic due to limited time and attention for each constituency, but especially because it leads to conflict of interest.

As highlighted above, ‘Dual Citizenship’ in Zambia is a type of citizenship that is marked by various limitations which are premised on concerns such as national security among others. The current situation can potentially become a source of discrimination among the citizens of Zambia. This in turn begs the question whether the impact of notion of nationalism on the rights of dual citizens in Zambia has any justifications in light of the principle of equality and non-discrimination. It is noteworthy that as regards the meaning attached to the words limitation and justification, the case of *Legal Resource Chambers v Zambia*,<sup>107</sup> had the following to say:

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<sup>103</sup> Report of the Mung’omba Constitution Review Commission, p.303 and p.430

<sup>104</sup> Report of the Mung’omba Constitution Review Commission, p113.

<sup>105</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>106</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>107</sup> (2001) AHRLR 84 (ACHPR 2001). <http://www.chr.up.ac.za/index.php/browse-by-subject/541-zambia-legal->

Limitations' refer to what may be referred to as the statute of limitations which gives a lower threshold of enjoyment of the right. Such limitations are allowed by law or provided for in the Constitution itself. In the African Charter these would typically be referred to as the claw-back' clauses. Justification' however applies in those cases where justification is sought to set perimeters on the enjoyment of a right. In other words, there has to be a two-stage process. First, the recognition of the right and the fact that such a right has been violated, but that, secondly, such a violation is justifiable in law.

As noted already in this study, the right to have 'Dual Citizenship' has since been recognized under the Zambian Constitution. However, due to the specific issues highlighted above, most of which are premised on notions of nationalism in the sense of conflicted allegiances, this study finds that the enjoyment of this right has been limited, thus demonstrating how nationalism impacts on the rights of dual citizens in Zambia. Further, arguments justifying this limitation have been advanced both in Zambia and internationally by other jurisdictions with similar restrictions. The justifications advanced are considered below under two main categories, that is, the nationalistic justification and the legality justification.

**(i) The nationalistic justification:**

Schlenker<sup>108</sup> notes that in spite of the recent increase in 'Dual Citizenship', there are widespread fears that this dual status undermines loyalty towards the state, understood as identification with and political participation in the country of residence. Based on the notion of nationalism, it has been argued that loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>109</sup> Further that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>110</sup> It has been further argued that a community based on a shared history and a common culture is seen as a

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[resources-foundation-v-zambia-2001-ahrir-84-achpr-2001.html](#). (Accessed on 18<sup>th</sup> October 2017).

<sup>108</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

p.1.

<sup>109</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>110</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

precondition to uphold solidarity and social rights for the members of that specific community. In exchange, it demands and stimulates citizens' identification with and their loyalty to their nation.<sup>111</sup> In Zambia, the Mung'omba Constitution Review Commission,<sup>112</sup> was of the view that:

The rationale for prohibition of 'Dual Citizenship' may be that it could lead to conflict of allegiance. Although the prohibition is justified, it is the Commission's view that this should not be absolute. In this age of globalisation, the world has become one village and for economic reasons many citizens of Zambia have migrated to other countries and acquired citizenship of those countries. It is desirable that Zambians who have acquired foreign citizenship should be encouraged to maintain ties with Zambia by permitting 'Dual Citizenship'. One advantage of this would be that these citizens could bring investment into the country. The Commission is, however, of the view that 'Dual Citizenship' should only be allowed in respect of persons who have acquired Zambian citizenship by birth or descent.

Regarding the specific public offices, the Commission recommended that: In addition to the existing disqualifications in respect of candidature for the presidency, there should be added in the Constitution another ground, that a person shall not be eligible to contest presidential elections if he or she has 'Dual Citizenship'.<sup>113</sup> For speaker and Deputy Speaker of the national assembly: that the candidate must be a Zambian citizen by birth or descent and not have 'Dual Citizenship'.<sup>114</sup> For members of the defence and security forces, that: Defence and Security Chiefs should be Zambian citizens by birth or descent and not have 'Dual Citizenship', while other defence personnel should be Zambian citizens and not have 'Dual Citizenship'.<sup>115</sup> These recommendations were in effect proposals to limit the enjoyment of particular citizenship rights for those that would acquire dual citizenship whilst seeking office in the specified positions. Subsequently, the Technical Committee on Drafting the Zambian Constitution,<sup>116</sup> gave as a rationale for proposing the introduction of 'Dual Citizenship', that:

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<sup>111</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, 780.

<sup>112</sup> The Report of the Mungomba Constitution Review Commission, p.102.

<sup>113</sup> Report of the Mung'omba Constitution Review Commission, p.303.

<sup>114</sup> Report of the Mung'omba Constitution Review Commission, p.430.

<sup>115</sup> Report of the Mung'omba Constitution Review Commission, p.610.

<sup>116</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution p.20.

Citizenship is a fundamental right which should be protected and not denied simply because one has acquired foreign citizenship. A further rationale was on the basis of the principle that there shall be continuity in the enjoyment of the citizenship by Zambians even if circumstances entailed that they assume another country's citizenship by virtue of being resident in a foreign country for a number of years. That citizenship is a fundamental right which should be protected and not denied simply because such citizens have acquired foreign citizenship.<sup>117</sup>

In upholding the Commissions recommended limitations, the Technical Committee on Drafting the Zambian Constitution, gave the following rationales: for the national President which also applies to the Vice president:<sup>118</sup> “it is necessary for the constitution to clearly stipulate the criteria for nomination of persons aspiring for presidential office, in view of the importance of the office”. Regarding the Speaker and Deputy Speaker of the national assembly: that “there is need to provide for the qualifications, election and tenure of office of the Speaker and Deputy speakers”.<sup>119</sup> For members of the Defence and National Security Agencies: that “there is need to clearly state the nature and objectives of the Defence Force, including their funding, in order to ensure national security and stability”.<sup>120</sup> It is however noteworthy that the Committee's draft report, on the provisions relating to Defence Force and National Security Agencies does not, make mention of the requirement of ‘Dual Citizenship’. It however rather emphasises that the members shall be Zambian citizens and the Defence force and Agencies shall be nationalistic, among other attributes.<sup>121</sup>

A perusal of the rationales provided for under the report of the Committee cited above does not provide much information on the justification for the limitations. Nevertheless, as cited above, the Commission, in recommending for the introduction of ‘Dual Citizenship’, clearly expressed the fears associated with ‘Dual Citizenship’. In particular, the issue of conflicted allegiances or loyalties. Looking at the loyalty argument, the term loyalty when

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<sup>117</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution, p.20.

<sup>118</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution p.96.

<sup>119</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution p.150.

<sup>120</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution p.248.

<sup>121</sup> First Draft Report of the Technical Committee on Drafting the Zambian Constitution pp.247-8.

regarded psychologically, is basically an attachment to a sense of identification with, and feelings toward a person, place, or thing. In this sense it is attachment towards a nation. This study adopts the understanding of loyalty as advanced by Schlenker,<sup>122</sup> in the sense of it being understood as identification with and political participation in the country of residence. This study argues that justification based on the argument of loyalty or allegiance remains questionable. This is on the basis that, of the studies conducted on the subject world over, there has been no consensus on the conclusion that loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>123</sup> Further that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>124</sup> A synopsis of some of these studies reveals the position postulated by this study.

Following a study conducted by a Harvard student Kambiz Ghanea Bassiri,<sup>125</sup> it was found that immigrants are extremely ambivalent about the United States. The study found that a significant number of immigrants, do not have strong ties or loyalty to the United States. Further, that another sample felt more allegiance to a foreign country than to the United States. Also in the United States' context, Cain and Doherty,<sup>126</sup> found that dual citizens are significantly less likely to vote in comparison with American mono citizens. In addition, Station,<sup>127</sup> also reports that not only are dual nationals associated with a lower level of civic duty, they are less likely to think of themselves as “American” and to consider the United States to be their homeland. As noted by Schlenker,<sup>128</sup> the limitation of both

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<sup>122</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*.

p1.

<sup>123</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.781.

<sup>124</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.780.

<sup>125</sup> Renshon A. Stanley, *Dual Citizenship And American Democracy: Patriotism, National Attachment, and National Identity*, p.118.

<sup>126</sup> Cain, B.E. and B.J. Doherty (2006), ‘The impact of dual nationality on political participation’, in L. Taeku,

S.K. Ramakrishnan and R. Ricardo (eds), *Transforming Politics, Transforming America: The Political and Civic Incorporation of Immigrants in the United States*, pp. 89–105.

<sup>127</sup> Staton K Jeffrey, Jackson A Robert, Canache Damarys, *Dual Nationality Among Latinos: What Are the Implications for Political Connectedness?* pp. 470 – 482.

<sup>128</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*.

studies conducted by Staton and Cain and Doherty is that, they use data on first-generation Latin Americans. Interestingly, the disconnecting effect of ‘Dual Citizenship’ did not hold beyond the first generation. In this regard it is arguable that the sample was limited.

In contrast to the above studies, Ramakrishnan,<sup>129</sup> found that dual nationality increases the likelihood of voting among immigrants (except for Cubans) in the United States. Evidence from Canada also revealed that ‘Dual Citizenship’ does not diminish civic participation and the sense of belonging to Canada.<sup>130</sup> Also, analysing Turkish and Surinamese immigrants in the Netherlands, Mügge,<sup>131</sup> even concludes that ‘migrants with dual nationality are more likely to participate in the host country’s political life than those who only have Dutch nationality. Further, based on data from a 2013 survey of dual citizens in Switzerland with very different migration backgrounds, Schlenker,<sup>132</sup> argues that dual citizens are more loyal in many respects than foreign residents. Further that however, there are no significant differences between dual citizens and mono citizens in their level of identification with Switzerland and political participation there. Additionally, that dual citizens are even more likely than mono citizens to participate in serving its interests. Furthermore, there is no trade-off between these forms of loyalty to the country of residence and identification and political participation in the country of descent. Thus ‘Dual Citizenship’ does not seem to diminish loyalty to the country of residence and countries therefore do not stand to lose anything by allowing it.<sup>133</sup>

In any event, it is arguable that mono citizens are within themselves “loyal citizens”. Looking at the composition of the citizen population of countries such as the United States , very few are actually the original indigenous Americans, that is, the Indians. In this

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p.5.

<sup>129</sup> Ramakrishnan, S.K. *Democracy in Immigrant America: Changing Demographics and Political Participation*, pp.93–94.

<sup>130</sup> Wong, L., ‘Transnationalism, active citizenship, and belonging in Canada’, p.87.

<sup>131</sup> Mügge, L, ‘Dual nationality and transnational politics’, p.15.

<sup>132</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*.

p1.

<sup>133</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*.

p.1.

regard, the status of citizenship itself does not guarantee “undivided loyalty” in the former immigrants. Accordingly, this study is more inclined to lend credence to the view that whether one chooses to carry out one’s commitments as citizen, or the citizenship responsibilities of another country, is a matter of personal moral reflection and choice.

Further on the concerns regarding multiple loyalties, Maruzumi,<sup>134</sup> argues that whereas in the past, the world consisted of discrete "national" interests, today, those interests have, in many cases, been replaced by "global" interests. This is true in the areas of politics, trade, finance, industry, culture, and the environment. In such an environment, the conflict of loyalty previously faced by dual nationals is less of a problem to the individual and to the nations concerned. In recent years, many of the other difficulties created by dual nationality, such as conflicting military obligations' or passport and visa problems have been addressed by bilateral or multilateral agreements and by the coordination of state practice. For example, the 1997 European Convention on Nationality,<sup>135</sup> provides that a dual national should only be required to fulfil his military obligations in relation to his "country of habitual residence". Blatter,<sup>136</sup> further argues that formal citizenship no longer seems to be an important criterion for judging the loyalty of people in times of military conflict. Countries with professional armies, like the United States, accept dual nationals and even non-citizens in their military forces.<sup>137</sup>

Furthermore, most countries are only a little bit more restrictive when it comes to officer positions. For instance Legomsky,<sup>138</sup> found only one state in Mexico, explicitly disqualifying dual nationals from military service. ‘Dual Citizenship’ is a challenge for those countries which do not have a professional army and conscript their male citizens. As

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<sup>134</sup> Murazumi Mie. Japan's Laws on Dual Nationality in the Context of a Globalized World. *Pacific Rim Law & Policy Journal*, Vol. 9 No. 2 (2000) P433-434. . (Accessed on 18<sup>th</sup> October 2017).

<sup>135</sup> Council of Europe, European Convention on Nationality, art. 21, E.T.S. 166-1997. <https://rm.coe.int/168007f2c8>. (Accessed on 18<sup>th</sup> October 2017).

<sup>136</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>137</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>138</sup> Legomsky, S, (2003). Dual nationality and military service: strategy number two. In: D.A. Martin and K. Hailbronner, eds. *Rights and duties of dual nationals: evolution and prospects*. The Hague: Kluwer Law

International, 86-87:as cited by Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780 <http://dx.doi.org/10.1080/13621025.2011.600090> (Accessed on 11<sup>th</sup> November 2016).

regards other limitations on taking up other public offices, Spiro,<sup>139</sup> proposes that dual nationals might be barred from very sensitive positions or they might declare a conflict-of-interest in specific situations (like in international negotiations with the country of the second nationality) and stay absent from these specific tasks. In this regard, the issue of conflicts of interests can be solved with much more limited restrictions. Blatter,<sup>140</sup> further confirms that, following a survey conducted regarding restrictions on dual citizens when it comes to taking offices or in respect to political participation in both countries at the same time, most countries in the sample were found to be more tolerant. Only in Australia, Columbia and South Korea were dual citizens are not allowed to take political offices. Finland, Japan and Mexico were found to apply such a restriction only for higher-level political offices. All other countries allowed dual citizens to be political representatives and/or executives at all levels (However, for Israel and Sweden results were inconsistent). As can be discerned from the studies<sup>141</sup> reported in this investigation, whilst it is indisputable that security concerns are valid, this study is of the position that it is not necessary to couch the right to ‘Dual Citizenship’, in a restrictive manner as to outrightly exclude dual citizens from eligibility as members of the Defence Force and National Security Agencies. Bilateral treaties can resolve such concerns whilst at the same time, affording dual citizens the same opportunities as mono citizens depending on their country of habitual residence. In addition, an exception of the limitation to join the defence force and national security agencies could be placed in favour of those that join as professionals.

As regards the nationalistic argument based on national identity, it has been observed,<sup>142</sup> that citizenship identities and solidarities are routinely treated as tantamount to national

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<sup>139</sup> Spiro, P.J., 1997. Dual nationality and the meaning of citizenship. *Emory law journal*, 46 (4), pp.1481–1483: as cited in Joachim Blatter (2011) *Dual Citizenship and theories of democracy*, *Citizenship Studies*, 15:6-7, p.781..<http://dx.doi.org/10.1080/13621025.2011.600090> (Accessed on 11<sup>th</sup> November 2016).

<sup>140</sup> Blatter K. Joachim , Erdmann Stefanie and Schwanke Katja . *Acceptance of Dual Citizenship: Empirical Data and Political Contexts*, Working Paper Series. *Glocal Governance and Democracy*” Institute of Political Science, University of Lucerne, February(2009) p. 25165  
<https://doi.org/10.5281/zenodo.48763>.

(Accessed on 11<sup>th</sup> November 2016).

<sup>141</sup> Blatter K. Joachim, Erdmann Stefanie and Schwanke Katja . *Acceptance of Dual Citizenship: Empirical Data and Political Contexts*, Working Paper Series. *Glocal Governance and Democracy*” Institute of Political Science, p. 25165.

<sup>142</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p480.

identities and solidarities. More often than not, work on the subject is reduced to the study of what we now call patriotism, a term denoting identification with and loyalty to one's country and compatriots. Bosniak,<sup>143</sup> argues that some scholars concerned with citizenship have begun to question the presumption that national identity fundamentally characterizes people's sense of citizenship in liberal democratic nation-states. They point out that people often maintain greater allegiances to and identifications with particular cultural and social groups within the nation than they do with the nation at large. Some further charge that the very notion of a common national identity is a figment, one dependent upon the suppression and marginalization of social and cultural difference.

This study is more inclined to support Bosniak's view on the notion of national identity as regards 'Dual Citizenship'. The assumption is that because a group of people have a common cultural and social background, they are more likely to identify with such groups and thus remain loyal. From the analysis of the nationalistic argument above, discrimination is plausible looking at the limitations placed under the Zambian Constitution on the enjoyment of the full political rights of citizenship such as taking up of public office; and the right to equal opportunity to enlist in the defence forces and national security agencies. From the constitution provisions highlighted as well as the recommendations made during the constitution making processes cited, those that hold 'Dual Citizenship' seem to be perceived to lack the necessary national loyalty that is demanded of citizenship as is seen from the limitations as compared to mono citizens. However, as noted, there has been no consensus on the conclusion that loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>144</sup> At the end of this Chapter, the study will conclusively reveal whether or not these limitations are justified.

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<sup>143</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p481.

<sup>144</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

**(ii) The legality justification:**

The Constitution,<sup>145</sup> provides that a citizen shall be entitled to rights and benefits of citizenship as provided for in the Constitution or as prescribed. Even so, the Constitution limits the rights of citizenship regarding political participation in taking up public office; and the right to equal opportunity to enlist in the defense force and national security agencies. In interrogating this justification, among the fundamental issues to consider is:

- a. Firstly, whether there is discrimination in the treatment of citizens under the  
Zambian Constitution.

According to the case of *Wandsworth London British Council v Michalak*,<sup>146</sup> “for there to be discrimination, persons must be similarly circumstanced but given different treatment”. The question that begs is whether dual citizens and mono citizens are similarly circumstanced. Under the Constitution,<sup>147</sup> the word “citizen” means a citizen of Zambia. The Constitution further provides that a citizen shall not lose citizenship by acquiring the citizenship of another country. Additionally, the Citizenship Act,<sup>148</sup> defines a dual citizen as “a citizen who has acquired the citizenship of another country”. Accordingly, it becomes apparent that citizenship in Zambia is inclusive of both mono and ‘Dual Citizenship’ as there are no distinctions provided in the definition of a citizen. Regarding the implication of citizenship, it has been argued that in the law, the concept of citizenship is used to refer to the rights necessary to achieve “full and equal membership”.<sup>149</sup> It is on this premise that this study argues that dual citizens and mono citizens are similarly circumstances and as outlined above, the Constitution discriminates in its treatment of Zambian citizens, particularly regarding the highlighted restrictions on the rights of dual citizens.

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<sup>145</sup> Article 42, of the Constitution.

<sup>146</sup> (2002) 4 ALL E.R. 1136.

<sup>147</sup> Article 266, of the Constitution.

<sup>148</sup> Section 2, of the Citizenship Act.

<sup>149</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.464.

b. Secondly, whether this discrimination is justifiable.

In addressing this question, it is noteworthy that recognizing equality before the law, prohibits all discriminatory treatment.<sup>150</sup> Article 23(3),<sup>151</sup> defines the expression “discriminatory” to mean:

Affording different treatment to different persons attributable, wholly or mainly to their respective descriptions by race, tribe, sex, place of origin, marital status, political opinions colour or creed whereby persons of one such description are subjected to disabilities or restrictions to which persons of another such description are not made subject or are accorded privileges or advantages which are not accorded to persons of another such description.

Nonetheless, one may argue that this type of discrimination is justifiable based on article 23 (1) of the Constitution,<sup>152</sup> which provides that “Subject to clauses (4), (5) and (7) no law shall make any provision that is discriminatory either of itself or in its effect”. This article should be understood with article 23(5),<sup>153</sup> which provides that:

Nothing contained in any law shall be held to be inconsistent with or in contravention of clause (1) to the extent that it is shown that it makes reasonable provision with respect to qualifications for service as a public officer or as a member of a disciplined force or for the service of a local government authority or a body corporate established directly by any law.

Clearly, the article cited above excuses discrimination if the relevant law makes reasonable provision with respect to qualifications for service as a public officer or member of a disciplined force. From article 23, one would argue that the limitations highlighted are justifiable because they are permissible by the Constitution. This notwithstanding, this study argues that the limitations set out under the Constitution, relating to dual citizens are contrary to the principles of equality and non-discrimination. The Inter-American Court of

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<sup>150</sup> Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. Advisory Opinion

OC-4/84 of January 19, 1984. Series A No. 4, para. 54. [hrlibrary.umn.edu/iachr/b\\_11\\_4d.htm](http://hrlibrary.umn.edu/iachr/b_11_4d.htm). (Accessed on

18<sup>th</sup> October 2017).

<sup>151</sup> Chapter 1 of the Laws of Zambia.

<sup>152</sup> Chapter 1 of the Laws of Zambia.

<sup>153</sup> Chapter 1 of the Laws of Zambia.

Human Rights<sup>154</sup> has indicated that discriminatory practices can be contested, even when they are legal.

As already noted above, the principle of equality before the law applies to the enjoyment of civil, political, economic and social rights, without any distinction.<sup>155</sup> Non-discrimination, in international human rights law, enshrines equality between persons and imposes certain prohibitions on States. Aside from domestic legislation, various international instruments such as the UDHR,<sup>156</sup> ICCPR,<sup>157</sup> and the African Charter on Human and Peoples Rights (“ACHPR”),<sup>158</sup> provide for the principles of equality and non-discrimination, and also the right to participate in one’s government. However, some international treaty bodies lack jurisdiction in interpreting and applying domestic law. Instead such bodies may examine a state's compliance with the treaty.

This was held in *Legal Resources Foundation v Zambia*,<sup>159</sup> in which Zambia was taken before the African Commission on Human and Peoples' Rights for alleged violation of articles 2, 3 and 19 of the ACHPR, in that the Constitution (Amendment) Act, of 1996<sup>160</sup> was discriminatory.<sup>161</sup> That Zambia had effected an amendment to the effect that anyone who wishes to contest the Office of President of Zambia had to prove that both parents were Zambian citizens by birth or descent. It was argued that the effect of this amendment was to prohibit a Zambian citizen, former president Kenneth David Kaunda from contesting the elections having been duly nominated by a legitimate political party. It was further argued that the amendment had the effect of disenfranchising 35 per cent of the electorate of Zambia from standing for the highest office in the land, in future elections. The African Commission on Human and Peoples' Rights noted that:

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<sup>154</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003.

<sup>155</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003.

<sup>156</sup> Article 7 of the UDHR.

<sup>157</sup> Article 26 and 25(a) of the ICCPR.

<sup>158</sup> Articles 2, 3 and 13 of the African Charter on Human and Peoples Rights Adopted in Nairobi June 27, 1981. Entered into Force October 21, 1986.

<sup>159</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>160</sup> Particularly articles 34(3) (b), of the Constitution (Amendment) Act, No. 18 of 1996.

<sup>161</sup> (2001) AHRLR 84 (ACHPR 2001).

The Commission was not seeking to do what even Zambian courts could not do, but rather to examine the compatibility of domestic law and practice with the Charter. International treaty law prohibits states from relying on their national law as justification for their non-compliance with international obligations.

Accordingly, on the basis of this case, this study supports the argument that the fact that discrimination is expressly provided for by law, does not make the discrimination fair. In finding Zambia to have violated the equality and non-discrimination principle, it was noted that:

The Charter abhors discrimination on the basis of any of the grounds set out, among them language ... national and social origin ... birth or other status.' The right to equality is very important. It means that citizens should expect to be treated fairly and justly within the legal system and be assured of equal treatment before the law and equal enjoyment of the rights available to all other citizens. The right to equality is important for a second reason. Equality or lack of it affects the capacity of a person to enjoy many other rights.

c. Thirdly, ascertaining what circumstances discrimination is permissible.

The European Court of Human Rights,<sup>162</sup> following “the principles which may be extracted from the legal practice of a large number of democratic States,” has held that a difference in treatment is only discriminatory when “it has no objective and reasonable justification. Likewise, the Inter-American Court<sup>163</sup> has established that:

No discrimination exists if the difference in treatment has a legitimate purpose and if it does not lead to situations which are contrary to justice, to reason or to the nature of things. It follows that there would be no discrimination in differences in treatment of individuals by a state when the classifications selected are based on substantial factual differences and there exists a reasonable relationship of proportionality between these differences and the aims of the legal rule under review.

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<sup>162</sup> Cf. Eur. Court H.R., Case of Willis v. The United Kingdom, Judgement of 11 June 2002, para. 39; [http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20\\_health\\_.pdf](http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-20Willis%20v%20UK%20_health_.pdf). (Accessed on 18<sup>th</sup> October 2017).

<sup>163</sup> Proposed Amendments to the Naturalization Provisions of the Constitution of Costa Rica. para. 57.

As already argued, the status of citizenship in Zambia is enjoyed by both mono and dual citizens. However, whether the expressed concerns of divided loyalty or allegiance concerns are legitimate is another issue to be considered. This study argues that justification based on the argument of loyalty or allegiance due to differences in social origins remains questionable. This is on the basis that, the studies reviewed on the subject<sup>164</sup> do not show consensus on the conclusion that loyalty to a specific political community/state is the central precondition for office holders and cannot be compromised.<sup>165</sup> In addition, the said studies do not show consensus that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>166</sup> A summation of some of these studies reveals the position postulated by this study. Therefore, lack of conclusive data on allegations of divided allegiances seems to lend more credence to the argument that couching the limitations in such restrictive terms is not reasonably justifiable. In addition, the case of *Harksen v Lane NO & Others*,<sup>167</sup> is instructive on the type of treatment that can be deemed discriminatory. The Court held in this case that the determining factor in establishing whether discrimination is unfair is the impact of such discrimination on the victims. In the case of *Legal Resources Foundation v Zambia*,<sup>168</sup> it was noted that:

The right to equality is important for a second reason. Equality or lack of it affects the capacity of a person to enjoy many other rights. For example, [a person who is disadvantaged because] of his place of birth or social origin suffers indignity as a human being and an equal and proud citizen. He may vote for others but has limitations when it comes to standing for office. In other words, the country may be deprived of the leadership and resourcefulness such a person may bring to national life.

From this case, the basis for the limitations must not be such as to cause one to suffer indignity as a human being, and an equal and proud citizen. Discrimination in this case is

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<sup>164</sup> Under 1.2, Chapter 1 of this study.

<sup>165</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.781.

<sup>166</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.780.

<sup>167</sup> 1998 (1) SA 300 (CC).

<sup>168</sup> (2001) AHRLR 84 (ACHPR 2001).

based on social origin, which should not be, unless there is a justifiable reason for it. A synopsis of whether or not these restrictions have a basis has revealed that there is no conclusive position that divided loyalty and national identity are warranted concerns against full participation by dual citizens. Further, the claim that the limitations are permissible by law does not in itself make it justifiable in a democratic society. Citizenship itself guarantees civil, political and social rights. Therefore, this study is more inclined to argue that limiting the rights of dual citizens regarding political participation in taking up public office; and the right to equal opportunity to enlist in the defense force and national security agencies proves unjustified as it places dual citizens in a less advantageous position in comparison to mono citizens. In Australia,<sup>169</sup> following several disqualifications of members of parliament on the basis of holding Dual Citizenship under sub-section 44(i) of the Australian Constitution during 2017, on 28 November 2017 Prime Minister asked the Commonwealth Parliament's Joint Standing Committee on Electoral Matters to conduct a new inquiry into the section, including the possibility of amendment. Among the terms of reference was whether the Parliament should seek to amend section 44(i) (for example, to provide that an Australian citizen born in Australia is not disqualified by reason of a foreign citizenship by descent unless they have acknowledged, accepted or acquiesced in it. This in itself shows a rather more progressive disposition towards restrictions on dual citizens than is the case in Zambia.

## **2.4 Conclusion**

In conclusion, this Chapter has demonstrated that citizenship is a status which guarantees rights and places duties upon an individual. However, with the development of 'Dual Citizenship', various countries have accepted this type of citizenship, with some placing restrictions on the nature of rights to be enjoyed by such citizens. This study has found that premised on notions of nationalism, the enjoyment of citizenship rights has been limited, thus demonstrating how nationalism impacts on the rights of dual citizens in Zambia. A synopsis of whether or not these restrictions have a basis has revealed that there is no

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[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Electoral\\_Matters/Inquiry\\_into\\_matters\\_relating\\_to\\_Section\\_44\\_of\\_the\\_Constitution/Terms\\_of\\_Reference](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Electoral_Matters/Inquiry_into_matters_relating_to_Section_44_of_the_Constitution/Terms_of_Reference) (Accessed on 30/12/2017).

conclusive position that divided loyalty and national identity are warranted concerns against full participation by dual citizens. Further, the claim that the limitations are permissible by law does not in itself make it justifiable in a democratic society. The Chapter has demonstrated that for differential treatment to be discriminatory it should lack objective and reasonable justification and both the nationalistic and legality arguments were found to lack objective justification for the differential treatment of dual citizens. The grounds upon which the limitations are based must not be such as to cause one to suffer indignity as a human being and an equal and proud citizen. As demonstrated by the Chapter, the principle of equality and non-discrimination must be upheld at all times. It is on this premise that this study bases the argument that the impact of nationalism on the rights of dual citizens in Zambia is not justified in light of the principle of equality and non-discrimination. In this regard, the principle of equality of all citizens before the law remains to a large extent, ineffective. The next Chapter will discuss the consequences if any, resulting from the impact of nationalism on the rights of dual citizens, for both the state and the citizen.

## CHAPTER THREE

### CONSEQUENCES OF THE IMPACT OF NATIONALISM ON THE RIGHTS OF DUAL CITIZENS, FOR THE STATE AND THE CITIZEN

#### 3.1 Introduction

Citizenship rights have been divided into three categories: civil, political and social rights and it has been argued that by guaranteeing these rights to all, the welfare state ensures that every member of society feels like a full member of society.<sup>1</sup> Further, that where any of these rights are withheld or violated, people will be marginalized and unable to participate.<sup>2</sup> Under the Constitution,<sup>3</sup> the Government of the republic of Zambia is required to create an economic environment which encourages individual initiative and self-reliance among the people, so as to promote investment, employment and wealth. The Government is further required to promote the economic empowerment of citizens so that they contribute to sustainable economic growth and social development.

Accordingly, citizenship is a status that has economic, social and political connotations attached to it. Further, in realizing these aspects of citizenship, the state needs to be involved in ensuring the actualization of all aspects of citizenship to avoid marginalization that results from the lack of participation by citizens. On this premise, this Chapter seeks to ascertain what consequences if any for both the citizen and the state, result from the impact of nationalism on the rights of dual citizens. In so doing, the Chapter focuses its analysis broadly on social, economic and political connotations of citizenship as they relate with the state.

#### 3.2 Consequences for the citizen

##### (i) Political consequences

The Republican theory on democracy and citizenship argues that it is the public or political domain that takes normative precedence.<sup>4</sup> That good citizens have to overcome narrow

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<sup>1</sup> Kymlicka Will and Norman Wayne . Return of the citizen: A survey of recent work on citizenship theory. Ethics 104 (2) (January 1994):354, DOI 10.1086/293605.

<sup>2</sup> Kymlicka Will and Norman Wayne . Return of the citizen: A survey of recent work on citizenship theory, p354.

<sup>3</sup> Article 10(1) and 10(2) of the Constitution.

<sup>4</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.777.

private interests and activities in order to live a good life.<sup>5</sup> Among the central elements of this philosophy are rights and opportunities for political participation, which have to be offered by the political system. In addition, civic virtue is considered as the complementary duty of the citizens. Further, the theory argues that ‘Dual Citizenship’ opens up more rights and opportunities for political participation since dual citizens have those rights and opportunities in two and not just in one country because of the ability to have a say in more than one country.<sup>6</sup> ‘Dual Citizenship’ makes it easier to live a meaningful and good life since dual citizens can contribute to the public good in a plurality of political communities.<sup>7</sup> Therefore, there should be no restrictions on voting or taking office for dual citizens – they should be allowed to participate as much as possible in both polities.<sup>8</sup> It is apparent from this theory that the phrase political participation includes both voting and taking up public office and where citizens are deprived of the right to express themselves politically in a country, such citizens have no say in determining who governs them and how they are governed.

However as noted, the law in Zambia, places no limitations on the voting rights of dual citizens. Nonetheless the same cannot be said about the right to take up public office. The consequence of this limitation is that the government’s accountability levels to dual citizens remains restricted. This is because dual citizens do not qualify to take over the public offices in the event of the Government’s failure to govern. This has the likely effect of placing dual citizens at the whim of Government. In addition, the deprivation of the right to take up public office has potential to cause voter apathy in dual citizens because they know they will never be eligible to be in a position to effect direct change in governance by taking up public office themselves. Voter apathy has a negative impact in the electoral processes of a democratic society. In any event, there is no agreed consensus on the position that dual citizens are less politically involved in the political affairs of a country than mono citizens. In supporting this position, Schlenker, concludes that the empirical evidence on the impact of ‘Dual Citizenship’ on identification and political

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<sup>5</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, pp.777-778.

<sup>6</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.776.

<sup>7</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.778.

<sup>8</sup> Joachim Blatter (2011) *Dual citizenship and theories of democracy*, p.778.

participation in the country of residence is inconclusive.<sup>9</sup> Contrary to findings of other studies on the subject, Schlenker, actually finds that there are no significant differences between dual citizens and mono citizens in their level of identification with Switzerland and political participation there. That they are even more likely than mono citizens to participate in serving its interests.<sup>10</sup>

## **(ii) Social consequences**

National identity is one's identity or sense of belonging to one state or to one nation.<sup>11</sup> Through socialization, a system of beliefs, values, assumptions and expectations is transmitted to group members.<sup>12</sup> As earlier noted, Bosniak,<sup>13</sup> argues that:

Some scholars concerned with citizenship have begun to question the presumption that national identity fundamentally characterizes people's sense of citizenship in liberal democratic nation-states". They point out that people often maintain greater allegiances to and identifications with particular cultural and social groups within the nation than they do with the nation at large. Some further charge that the very notion of a common national identity is a chimera, one dependent upon the suppression and marginalization of social and cultural difference.

This study finds as a consequence, that the assumptions surrounding the notion of national identity are potentially a source of marginalization and discrimination for instance in accessing employment in government. This is on the basis that those that have 'Dual Citizenship' are treated differently on grounds that they are affiliated with other cultural and social groups which are not necessarily, of Zambian origin. Related to the notion of national identity is that of loyalty. Some scholars have argued regarding 'Dual Citizenship', that being a member of two communities at the same time is endangering

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<sup>9</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*. p.6.

<sup>10</sup> Schlenker Andrea, *Divided loyalty? Identification and political participation of dual citizens in Switzerland*. p.1.

<sup>11</sup> Ashmore, Richard; Jussim, Lee; Wilder, David (2001). *Social Identity, Intergroup Conflict, and Conflict Reduction*. USA: Oxford, Oxford University Press. pp. 74–75.

<sup>12</sup> Smith, Anthony (1991). *National Identity*. University of Nevada Press. pp. 8–15.

<sup>13</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.481.

loyalty to a specific community and its political institutions – it dissipates patriotism.<sup>14</sup> However, Schlenker,<sup>15</sup> finds no trade-off between these forms of loyalty to the country of residence and identification and political participation in the country of descent. And thus concludes that ‘Dual Citizenship’ does not seem to diminish loyalty to the country of residence and countries therefore do not stand to lose anything by allowing it. In this regard, it is apparent that the limitations placed by the Constitution on dual citizens have the consequence of unjustifiably marginalizing dual citizens in terms of accessing various rights of citizenship such as the right to equal opportunity to join the defence force and national service agencies. Dual citizens are in turn viewed as less patriotic citizens which makes them ‘secondary citizens’ in society. Such inequality leads to the formation of a group of second class citizens, excluded from the liberal democratic institutions through which flow the demands and policies that determine the distribution of resources. The consequence of this is that Second class citizens who find it hard to express their interests and demands through the traditional institutions of liberal democracy may resort to forms of political participation outside the institutional channels, and sometimes this kind of participation is adverse to democratic principles and practices.<sup>16</sup>

### **(iii) Economic consequences**

Among the observations made by the Mung’omba Constitution Review Commission<sup>17</sup> on advantages of ‘Dual Citizenship’ was that dual citizens could bring investment into the country. This clearly shows that this perspective was more focused on the perceived benefits for the state, rather than that of the individual citizen. This view also presupposes a situation where the dual citizen is not resident in Zambia but is able to externalise funds from the country of residence. However, from a citizen’s perspective, this study argues that the converse can happen. A dual citizen resident in Zambia may thus seek to be employed

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<sup>14</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

<sup>15</sup> Schlenker Andrea, Divided loyalty? Identification and political participation of dual citizens in Switzerland.

p.1.

<sup>16</sup> De La Paz, Gabriel.”Citizenship identity and social inequality.” Instituto Federal Electoral San Diego (2012).

p.5. [www.civced.org/pdfs/delapazGeabriel.pdf](http://www.civced.org/pdfs/delapazGeabriel.pdf) (Accessed on 21<sup>st</sup> March 2017).

<sup>17</sup> The Report of the Mung’omba Constitution Review Commission, p.102.

by the State through taking up various public office, as well as in the Defence force and national security agencies. The economic consequence of the constitution limitations in such case would be to deprive dual citizens from equality of opportunity for employment as compared to mono citizens.

### **3.3 Consequences for the State**

Despite Zambia being a sovereign nation, it remains answerable to international bodies to which it is party in the way it couches its domestic law. As already argued, such international bodies may examine a state's compliance with the relevant international instrument. In the case of *Legal Resources Foundation v Zambia*,<sup>18</sup> Zambia was taken before the African Commission on Human and Peoples' Rights on allegations of having violated articles 2, 3 and 19 of the African Charter on Human and Peoples Rights. The finding was that the Constitution of Zambia (Amendment) Act, No. 18 of 1996 was discriminatory. That Zambia had effected an amendment to the effect that anyone who wishes to contest the office of President of Zambia had to prove that both parents were Zambian citizens by birth or descent<sup>19</sup>. It was noted that the effect of this amendment was to prohibit a Zambian citizen, former president Dr Kenneth David Kaunda, from contesting the elections having been duly nominated by a legitimate political party. Further, that the amendment had the effect of disenfranchising 35 per cent of the electorate of Zambia from standing for the highest office in the land, in future elections.

From a liberalist perspective, this study advances the view the apparent discrimination from the Constitution provisions highlighted are contrary to international principles of equality and non-discrimination as they lack a reasonable or objective basis. As a consequence of this, Zambia remains exposed to findings of non-compliance with international law to which it is party, in the event that it is complained against. Furthermore, the consequences of the limitations as impacted on the state can also be categorized as: political, social and economic.

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<sup>18</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>19</sup> Article 34(3), the Constitution of Zambia (Amendment) Act of No. 18 of 1996.

**(i) Political consequences**

Citizenship, in its sense as political activity, most commonly denotes active engagement in the life of the political community. This political understanding of citizenship derives from the ancient Greeks. According to Aristotle,<sup>20</sup> the citizen is "one who participates in the rights of judging and governing;" he is a man who both rules and is ruled. Citizenship participation can be formally defined as a process in which individuals take part in the institutions, programs and environments which affect them.<sup>21</sup> As noted in this study, the political rights of dual citizens are limited by the Constitution in the sense that they are disqualified from taking up various public offices. The consequence of this is that the level of civic engagement of dual citizens in political processes of the state is curtailed. According to Brehm and Rahn,<sup>22</sup> citizenship engagement leads to increased levels of trust in institutions. This prevents anarchy in a state and turn gives the government legitimacy to govern because then, citizens recognize the both the law and government as such. According to Tyler:<sup>23</sup>

In trying to understand why people follow the law, for example, we should not assume that behaviour responds primarily to reward and punishment (as do traditional theories of deterrence). Instead we should recognize that behaviour is affected by the legitimacy of legal authorities and the morality of the law.

Accordingly, the absence of civic engagement through participation in public affairs other than just voting has potential to lead to anarchy and non-recognition of both the law and the government of the day. Further, the inequality presented by the Constitution on the political rights of dual citizens has the effect of potentially reducing the government's sense of duty to remain accountable to dual citizens. This would be mainly due to the

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<sup>20</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.471.

<sup>21</sup> Stevenson, Clifford; Dixon, John; Hopkins, Nick and Luyt, Russell (2015). The Social Psychology of Citizenship, Participation and Social Exclusion: Introduction to the Special Thematic Section. *Journal of Social and Political Psychology*, 3(2) p.6. <https://jspp.psychopen.eu/article/view/579>. (Accessed on 8<sup>th</sup> October 2017).

<sup>22</sup> Brehm J, Rahn W. (1997) " Individual –level evidence for the causes and consequences of social capital." *American Journal of Political Science*. Vol 41:p.999. <http://www.jstor.org/stable/2111684>. (Accessed 22<sup>nd</sup> March 2017).

<sup>23</sup> Tyler R. Tom (2006). *Why people obey the law*. Princeton, Princeton university press, p.168.

restricted civic influence of dual citizens. Apart from limiting the extent to which the Government remains accountable to dual citizens, the case of *Legal Resources Foundation v Zambia*,<sup>24</sup> had this to say on the consequences of inequality and discrimination:

Equality or lack of it affects the capacity of a person to enjoy many other rights. For example, [a person who is disadvantaged because] of his place of birth or social origin suffers indignity as a human being and an equal and proud citizen. He may vote for others but has limitations when it comes to standing for office. In other words, the country may be deprived of the leadership and resourcefulness such a person may bring to national life.

From this case, it is evident that due to this inequality, society would be deprived of leadership and resourcefulness that may potentially lie within dual citizens. In this regard, these consequences remain inimical to a democratic society, which is contrary to Zambia's commitment in upholding the principles of democracy and good governance.<sup>25</sup>

## **(ii) Social consequences**

According to Higgens-Wharf,<sup>26</sup> perceptions of holding social rights nurture one's sense of personal empowerment and respect, as well as one's responsibility to collectively engage in the life of the community. Participation in community life thus requires a sense of full citizenship, of being accorded the rights that define one's equal status in, and relationship to, the state. It is clear from Higgens-Wharf's argument that the consequences of discrimination in terms of social rights deprives a society from the benefits of having members who are personally empowered and collectively engaged in the life of the community. Lalloo,<sup>27</sup> also argues that:

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<sup>24</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>25</sup> The Preamble of the Constitution.

<sup>26</sup> Higgens-Wharf, J. "Citizenship and empowerment: a remedy for citizenship participation in health reform", community development journal, volume 34 No.4: p.287. <https://doi.org/10.1093/cdj/34.4.287>. (Accessed on 22<sup>nd</sup> March 2017).

<sup>27</sup> Lalloo, K. 'Citizenship and place: spatial definitions of oppression and agency in South Africa', Africa Today Volume 45 No.3-4: p.439. <https://www.jstor.org/stable/4187238>. (Accessed on 22<sup>nd</sup> March 2017).

Citizenship has integrative and allocative functions. That is, citizenship can mitigate inequalities through allocations of socio-economic resources, thereby securing social solidarity within communities that are divided by class ethnicity, gender or age and so on. And expanding citizen participation (inclusion) allows groups access to scarce resources, while retaining their diversity within common national culture, a common set of identity, and a common value system. Conversely, excluding groups from participation denies or restricts their access to resources and hence can reduce the possibility of a common national culture, identity and value system, while increasing the likelihood of conflict and fragmentation.

From Lalloo's argument, it is apparent that where the status of citizenship is in itself discriminatory, the consequences are such that its integrative and allocative functions will not be effectively discharged. Accordingly, in a society like Zambia's where citizens such as dual citizens are excluded in terms of equality of opportunity, this reduces the possibility of a common national culture, identity and value system, while increasing the likelihood of conflict and fragmentation. It is important to note that this study advances the argument that contrary to the communitarian perspective on 'Dual Citizenship', it is actually the marginalization of dual nationals that has potential to cause divided loyalties as opposed to the status of being a dual citizen.

### **(iii) Economic consequences**

Existing evidence suggests a co-relationship between citizenship participation processes and levels of tax compliance. A cross national analysis by Torgler and schneider,<sup>28</sup> reveals that citizens are more willing to pay taxes when they perceive that their preferences are properly taken into account by public institutions. 'Dual Citizenship' as is provided for under the Constitution deprives citizens from participation in political processes by disqualifying them from eligibility for public offices highlighted. It also disqualifies one from eligibility for enlistment in the defence force and national service agencies. This form of discrimination has potential to cause feelings of non-inclusion in dual citizens and as

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<sup>28</sup> Torgler, B. and F Schneider (2009) "the impact of tax morale and institutional quality on the shadow economy". *Journal of economic psychology*, 30(2) pp.228. <https://doi.org/10.1016/j.joep.2008.08.004>. (Accessed on 22<sup>nd</sup> March 2017).

such, operate as justification for abrogating duties such as paying tax. The ultimate consequence of this on the state is that the state would not be able to realise the perceived benefits of 'Dual Citizenship', among which is revenue generated from tax collection. Further, the perceived benefits for the state from investments by dual citizens may not be realised to the extent expected because of the inequalities imposed on dual citizens, which restrict them from enjoying citizenship rights in full. The idea of being a dual citizen as provided for under the Constitution may not prove attractive to citizens due to the inequalities it presents.

### **3.4 Conclusion**

In conclusion, this study has found that consequences do exist from the impact of nationalism on the right to 'Dual Citizenship' in Zambia. The said consequences impact on both the state and the citizen politically, socially and economically. For the citizen, the political consequences of this limitation are that the deprivation of the right to take up public office has potential to cause voter apathy in dual citizens. This also ultimately lowers the government's accountability levels to dual citizens. Socially, the limitation exposes dual citizens to marginalization and discrimination on the basis of social origin. This ultimately affects dual citizens economically by depriving them the equality of opportunity for employment as compared to mono citizens.

For the state, aside from exposure to potential findings of non-compliance with international law to which it is party, the political consequences of the limitations for Zambia are that the government's sense of duty to remain accountable to dual citizens remains diminished due to the restricted civic influence of dual citizens. In addition, the limitations have potential to lead to anarchy and non-recognition of both the law and the government of the day by dual citizens. Furthermore, the country may be deprived of the leadership and resourcefulness dual citizens may bring to national life. Socially, the limitations have the effect reducing the possibility of a common national culture, identity and value system, while increasing the likelihood of conflict and fragmentation. Economically, due to feelings of social exclusion, the limitations have potential to operate as justification for dual citizens abrogating duties such as paying tax. Further, the perceived

benefits for the state from investments by dual citizens may not be realisable to the extent expected because of the inequalities imposed on dual citizens. Accordingly, when aligned with the tenets of a democratic society, the consequences of the limitations under the constitution prove to be undesirable. The next Chapter, will consist of an assessment of whether there can be any lessons to be learnt from other jurisdictions, on how best Zambia can mitigate the effects of the limitations posed on the rights of dual citizens.

## CHAPTER FOUR

### LESSONS TO BE LEARNT FOR ZAMBIA ON RIGHTS OF DUAL CITIZENS

#### 4.1 Introduction

In the preceding chapters, efforts were undertaken in examining the extent to which nationalism impacts on the rights of dual citizens in Zambia, and whether there are any justifications for this in light of the principle of equality and non-discrimination. Further, attempts were made in ascertaining the consequences which could result from this impact for both the state and the citizen. This Chapter, seeks to establish whether there can be lessons to be learnt from other jurisdictions, on how the ‘Dual Citizenship’ status has been dealt with, particularly on eligibility to take up public office, and army recruitment.

It should be noted that for comparative purposes, this study analyses ‘Dual Citizenship’ under the laws of the Republic of Nigeria, as well as the United Kingdom on the basis that like Zambia, the two jurisdictions form part of the countries that are members of the Commonwealth of Nations. As members of his group of nations, comparison between the members becomes reasonable seeing as the members all subscribe to similar principles, among which is non-discrimination.<sup>1</sup> Another justification rationalizing in the choice of countries for comparative purposes lies in the fact that like Zambia, both countries as will be seen in this chapter, expressly provide for ‘Dual Citizenship’ and not merely tolerate. This is distinguishable from jurisdictions such as the United States where it has been noted that “the legislative branch has never enacted any law which would give the practiced tolerance a clear-cut legal base”.<sup>2</sup>

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<sup>1</sup> Principle number 14 of the Singapore Declaration of Commonwealth Principles Issued at the Heads of Government Meeting in Singapore on 22<sup>nd</sup> January, 1971  
<http://thecommonwealth.org/sites/default/files/history-items/documents/Singapore%20Declaration.pdf>  
(Accessed on 9<sup>th</sup> April 2019).

<sup>2</sup> Spiro, 1997 as cited in Blatter K. Joachim. Erdmann Stefanie and Schwanke Katja . Acceptance of Dual Citizenship: Empirical Data and Political Contexts, Working Paper Series.Glocal Governance and Democracy”, Institute of Political Science, p. 11165.

## 4.2. Lessons from the case of the United Kingdom

- i. On eligibility for public/elective office

Since the British Nationality Act, of 1948, there is in general no restriction in the United Kingdom law on a British national holding citizenship of other countries. Under the heading “renunciation of citizenship by reason of ‘Dual Citizenship’, the British Nationality Act, of 1948<sup>3</sup> provided as follows:

19. (1) If any citizen of the United Kingdom and Colonies of full age and capacity who is also-
  - (a) a citizen of any country mentioned in subsection (3), of section one of this Act or of Eire ; or
  - (b) a national of a foreign country, makes a declaration in the prescribed manner of renunciation of citizenship of the United Kingdom and Colonies, the Secretary of State shall cause the declaration to be registered; and, upon the registration, that person shall cease to be a citizen of the United Kingdom and Colonies:

From the section above, it is clear that ‘Dual Citizenship’ was allowed in the United Kingdom as the section recognised the possibility of citizens of the United Kingdom holding other foreign citizenships. Further, the section had no requirement to renounce any foreign citizenship. A later Act, the British Nationality Act, of 1981,<sup>4</sup> which repealed the 1948 Act, provides as follows under “resumption”:

13. (1) Subject to subsection (2), a person who has ceased to be a British citizen as a result of a declaration of renunciation shall be entitled, on an application for his registration as a British citizen, to be registered as such a citizen if—
  - (a) he is of full capacity; and
  - (b) his renunciation of British citizenship was necessary to enable him to retain or acquire some other citizenship or nationality.
- (2) A person shall not be entitled to registration under subsection (1) on more than one occasion.
- (3) If a person of full capacity who has ceased to be a British citizen as a

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<sup>3</sup> Section 19, of the British Nationality Act of 1948, Chapter 56.

<sup>4</sup> Section 13, of the British Nationality Act of 1981, Chapter 61.

result of a declaration of renunciation (for whatever reason made) makes an application for his registration as such a citizen, the Secretary of State may, if he thinks fit, cause him to be registered as such a citizen.

This section further demonstrates that where a British citizen acquired foreign citizenship which does not permit dual nationality status and thus required such a citizen to renounce the British citizenship, such a citizen's national status would not be affected under the United Kingdom's law. Accordingly, it is noteworthy that the United Kingdom, like Zambia, permits 'Dual Citizenship'. Despite the comparison sought to be made in this study between Zambia and the United Kingdom's regulations on the treatment of dual citizens, the two countries have different systems of Government. The United Kingdom follows the Westminster system where executive power is diffused among various persons. The Queen, is both the temporal and spiritual head of State. The supreme executive authority is vested in her and the administration of the State is conducted in her name. However, in practice the supreme executive authority is wielded by the Cabinet, a Committee headed by the Prime Minister. The Prime minister is the head of Government. On the other hand, Zambia follows the presidential system where executive power is vested in the President<sup>5</sup>, who is both head of state and Government.<sup>6</sup> This study adopts the view that despite the notable difference, both the President and Prime minister yield considerable executive power and as such, the two positions are correspondingly sensitive. Like a president, the Prime Minister equally commands a formidable range of political and governmental powers.

A synopsis of the United Kingdom legislation reveals that there are no explicit legal restrictions or requirements in relation to the nationality of the Prime Minister. In practice, however, the Prime Minister will normally be a Member of Parliament, and, as such, would need to be a British citizen, a citizen of the Republic of Ireland or a citizen of a Commonwealth country who is not subject to immigration control (*i.e.*, either with leave to enter or remain in the United Kingdom, or not requiring leave to enter or remain in the UK,

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<sup>5</sup> Article 91(2), of the Constitution.

<sup>6</sup> Article 91(1), of the Constitution.

which essentially serves as a minimum residence period requirement).<sup>7</sup> However, the United Kingdom stands alone in effectively permitting non-nationals (relevant Irish and Commonwealth citizens) to occupy the office of Head of Government (that is, by virtue of their eligibility to become Members of Parliament in the first place).<sup>8</sup> Particularly, nationality qualifications for Members of the United Kingdom Parliament according to the Act of Settlement,<sup>9</sup> are as follows:

That in case the crown and imperial dignity of this realm shall hereafter come to any person not being a native of this kingdom of England, this nation be not obliged to engage in any war for the defence of any dominions or territories which do not belong to the crown of England without the consent of Parliament. That after the said limitation shall take effect as aforesaid, no person born out of the kingdoms of England, Scotland or Ireland or the dominions thereunto belonging, although he be naturalised or made a denizen (except such as are born of English parents), shall be capable to be of the privy council or a member of either House or Parliament or to enjoy any office or place of trust either civil or military or to have any grant of lands, tenements or hereditaments from the Crown to himself or to any other or others in trust for him.

From this section, it is clear that at the time, one could qualify to hold a position of trust such as being a member of Parliament only if they were citizens of the United Kingdom by birth or descent. However, this position was amended by the Electoral administration Act,<sup>10</sup> which provides, that:

- 18.(1) In section 3, of the Act of Settlement (1700 c. 2), the words from “That after the said limitation shall take effect” to “in trust for him.”(Which impose certain disqualifications) do not apply (so far as they relate to membership of the House of Commons) to a person who is—
- (a) a qualifying Commonwealth citizen, or

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<sup>7</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European Union and of European Union citizens residing in third countries. (2013) <http://www.europarl.europa.eu/studies> (accessed on 7th June 2017) pp. 74-75.

<sup>8</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European Union and of European Union citizens residing in third countries. p.75.

<sup>9</sup> Section 3, of the Act of Settlement, 1700.

<sup>10</sup> Section 18, of the Electoral Administration Act 2006, Chapter 22.

- (b) a citizen of the Republic of Ireland.
- (2) For the purposes of subsection (1), a person is a qualifying Commonwealth citizen if he is a Commonwealth citizen who either—
  - (a) is not a person who requires leave under the Immigration Act, 1971(c. 77) to enter or remain in the United Kingdom, or
  - (b) is such a person, but for the time being has (or is, by virtue of any enactment, to be treated as having) indefinite leave to remain within the meaning of that Act.
- (3) But a person, is not a qualifying Commonwealth citizen by virtue of subsection (2)(a), if he does not require leave to enter or remain in the United Kingdom by virtue only of section 8, of the Immigration Act, 1971 (exceptions to requirement for leave in special cases).

The British nationality Act,<sup>11</sup> lists countries whose citizens are considered commonwealth citizens. Among these are Zambia, Zimbabwe, Ghana, Canada, and many others. From the legislation highlighted above, it is clear that the United Kingdom, unlike Zambia, places no distinction in the nature of British citizenship that qualifies for the position of Prime Minister. The important requirement is that one should be a citizen of the United Kingdom. Further, the legislation demonstrates that the United Kingdom extends its liberal approach to non-British citizens, that is, Irish and Commonwealth citizens, subject to notable requirements.

ii. Eligibility for army recruitment

Regarding nationality requirements for army recruitment, the United Kingdom, in 2013 was found<sup>12</sup> to be unique, in that Irish citizens and Commonwealth citizens are explicitly eligible to join its armed forces. However, for officer level posts (including the rank of general) Commonwealth citizens were required to have resided in the United Kingdom for at least five years prior to entering officer training (although exceptions could be made). As at May 2016, even the residency requirement on Commonwealth citizens which required five years' United Kingdom residency was reviewed, and the residency requirements

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<sup>11</sup> Schedule 3, to the British nationality Act, 1981.

<sup>12</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European Union and of European Union citizens residing in third countries p.79.

waived to allow for 200 Commonwealth citizens per annum to be recruited to fill a limited number of roles in the regular armed forces, which required specialist skills.<sup>13</sup> In his statement revising the residency requirement for commonwealth citizens, the United Kingdom’s Minister of state<sup>14</sup> for the Armed Forces stated as that “there is a long tradition of Commonwealth citizens serving in the British armed forces, and we continue to value their service which provides an important contribution in defending the United Kingdom at home and abroad”. The United Kingdom’s position as regards nationality requirements for public office and army recruitment is a true demonstration of what it entails to uphold the principle of non –discrimination and equality even beyond citizenship. This validates that non-discrimination forms the basis of its policies in this regard.

### **4.3 Lessons from the case of Nigeria**

The Nigerian Constitution<sup>15</sup> permits ‘Dual Citizenship’ on condition that one is nigerian by birth, or if not being nigerian by birth, retains citizenship or nationality of the country of which he or she is a citizen by birth. Further, regarding registration as a citizen of Nigeria or the grant of a certificate of naturalization to citizens of countries other than Nigeria, renunciation of citizenship of the other county will not be required of the applicant if he or she is a citizen by birth of that other country.<sup>16</sup> On qualification for office of the president, the Constitution of the Federal Republic of Nigeria provides under sections 137 and 28(1), that:

- 137 (1) A person shall not be qualified for election to the office of President if –
  - (a) subject to the provisions of section 28, of this Constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or, except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country; or.....
  
- 28 (1) Subject to the other provisions of this section, a person shall forfeit forthwith his nigerian citizenship if, not being a citizen of Nigeria by birth, he acquires or retains the citizenship or nationality of a country, other than Nigeria, of which he is not a citizen by birth.

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<sup>13</sup> Commonwealth Recruitment Written statement made by the Minister of state for the Armed Forces Penny Mordaunt, 12<sup>th</sup> May 2016. <https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2016-05-12/HCWS726/> (Accessed on 25<sup>th</sup> May 2017).

<sup>14</sup> Commonwealth recruitment written statement. 12<sup>th</sup> May 2016.

<sup>15</sup> Section 28(1), of the 1999 Constitution of the Federal Republic of Nigeria.

<sup>16</sup> Section 28(2), of the 1999 Constitution of the Federal Republic of Nigeria.

The import of the two sections cited above was clarified by Nigeria's Court of Appeal decision in the case of *Dr. Willie Ogebide v. Mr. Arigbe Osula*,<sup>17</sup> where the Court interpreted section 28(1) and 66(1), which gives the same prohibition as section 137, but in respect of those contesting election to the Senate or the House of Representatives. In that case, the Court held that:

What one can make of that section read with sections 25, 26 and 27, of the 1999 Constitution, is that a citizen of this country by birth never loses his citizenship even where he holds 'Dual Citizenship' of another country and cannot be disqualified from contesting election into the House of Representative for reasons only that he holds such 'Dual Citizenship'. The lower tribunal therefore misled itself in that regard and the answer to issue No. 4 is that section 66(1), of the 1999 Constitution, does not prohibit Nigerian citizens by birth from holding the citizenship of another country and from contesting election to being a member of the National Assembly.

Further, the Honourable Justice Walter Onnoghen,<sup>18</sup> in the same case opined as follows:

Reading sections 66(1) and 28, of the constitution of the Federal Republic of Nigeria, 1999 (hereinafter referred to as 1999 constitution) it is clear and I hereby hold that the acquisition of 'Dual Citizenship' by a Nigerian per say is not a ground for disqualification for election to the National Assembly particularly where the Nigerian citizen is a citizen by birth. That is the clear meaning of the provisions in sections 66(1) and 28, of the 1999 Constitution, when taken together. The only Nigerian citizen disqualified by the said sections is one who is a citizen of Nigeria by either registration or naturalization who subsequently acquires the citizenship of another country in addition to his Nigerian citizenship...

From the provisions above, it is apparent that 'Dual Citizenship' is permitted for Nigerian citizens by birth. Further, that 'Dual Citizenship' is no disqualification for public office such as the national assembly for a Nigerian citizen from birth. The notable distinction between Zambia and Nigeria in this regard, is that Zambia disqualifies all types of dual citizens from the office of Speaker of the National Assembly and Republican Vice President, irrespective of whether they are actually Zambian by birth. Nevertheless, as this

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<sup>17</sup> *Dr. Willie Ogebide v. Mr. Arigbe Osula* {2004} 12 NWLR Part 886 p. 127.

<sup>18</sup> *Dr. Willie Ogebide v. Mr. Arigbe Osula* p.138 paras C-E.

study is underpinned by the liberal theory which advocates equality, separating Zambian citizens by birth that hold 'Dual Citizenship' from those that acquire their Zambian citizenship by other means, would in itself be discriminatory. However, Nigeria can still be said to be more progressive in its policies as compared to Zambia in that, Nigeria does in fact allow dual citizens to hold public office, despite the limitation.

#### **4.4. Conclusion**

In conclusion, the Chapter has established that there are lessons to be learned for Zambia from the United Kingdom and the Republic of Nigeria. The United Kingdom was found to place no distinction in the nature of British citizenship that qualifies for the office of Prime Minister. The requirement is that one should be a citizen. The United Kingdom even extends its liberal approach to non-British citizens, that is Irish and Commonwealth citizens including eligibility to join British armed forces. Nigeria was also found to be progressive as 'Dual Citizenship' is no disqualification for high level public office for a Nigerian citizen by birth. Accordingly, this study cannot agree any less with the policy recommendations to the European Parliament's Committee on Constitutional Affairs,<sup>19</sup> made by the Policy Department C - Citizens' Rights and Constitutional Affairs which indicated that:

Reserving the offices of Head of State, Head of Government, minister in a national or regional level government, Member of Parliament, judge in a Constitutional Court or high ranking officer in a national army for citizens of the state does not raise any plausible concerns. By contrast, provisions that require that such office-holders must not be dual citizens, must have acquired the citizenship of the state at birth, rather than through naturalisation, or must have been born within the territory may be seen as discriminatory by creating unequal conditions for citizens' access to such offices...

Despite the fact that Zambia does not apply restrictions against dual citizens when it comes to eligibility for election as a Member of Parliament, appointment as member of Cabinet or

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<sup>19</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European Union and of European Union citizens residing in third countries pg. 95.

appointment as a Judge, the principle remains the same. Equality must be upheld despite the various types and modes of acquiring citizenship in Zambia as the status of citizenship signifies rights necessary to achieve "full and equal membership".<sup>20</sup>

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<sup>20</sup> Bosniak, Linda. (2000) "Citizenship Denationalized (The State of Citizenship Symposium). p.464.

## CHAPTER FIVE

### CONCLUSIONS AND RECOMMENDATIONS

#### 5.1 Introduction

The expected impact of this study is that it benefits not only the general citizenry, but the government as well. This is because it provides an informed position upon which calls for the necessary sensitization of the highlighted constitution limitations and subsequent amendments to the law, can be effected. This Chapter, draws conclusions from the findings on the research questions and objectives raised under the various chapters, and also makes recommendations in light of those conclusions.

#### 5.2 Summary

Most evidently in Zambia, the transnational nature of ‘Dual Citizenship’ affects the enjoyment of important rights which underlie the status of citizenship. Premised on nationalistic notions that ‘Dual Citizenship’ contradicts the classic notion of citizenship as single and exclusive affiliation to one state, Zambia’s legislation has specifically excluded citizens with ‘Dual Citizenship’ from eligibility for public office, such as the President and Vice President,<sup>1</sup> National Assembly Speaker,<sup>2</sup> and service under the Defense Force and National Security Services.<sup>3</sup> In interrogating the impact of nationalistic notions on the rights of dual citizens, Chapter Two, of this study found that nationalism narrows full and equal participation of citizenship rights by dual citizens. This is notwithstanding that the Constitution<sup>4</sup> of Zambia makes provision for the principles of non-discrimination and equality. The nationalistic and legality arguments typically advanced for the limitations in Zambia and other jurisdictions were interrogated under Chapter Two, of this study.

It was revealed that nationalistic arguments premised on notions of national identity and loyalty, which is understood as identification with and political participation in the country of residence, are unfounded. This is because the loyalty justification for the restrictions

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<sup>1</sup> Articles 100(2) (b), and 110(2), of the Constitution respectively.

<sup>2</sup> Article 82(2), of the Constitution.

<sup>3</sup> Article 194(a), of the Constitution.

<sup>4</sup> Article 9 (a) and (b) of the Constitution.

remains questionable, as reviewed studies showed no consensus on the conclusion that loyalty to a specific political community/state is the central precondition for holders of strategic public office and cannot be compromised.<sup>5</sup> Further that being a member of two communities at the same time is endangering loyalty to a specific community and its political institutions – it dissipates patriotism. In this regard, whilst security concerns are reasonable, couching dual citizens’ rights in such restrictive manner is unnecessary. It was further found,<sup>6</sup> that some scholars concerned with citizenship have begun to question the presumption that national identity fundamentally characterizes people's sense of citizenship in liberal democratic nation-states. That people often maintain greater allegiances to and identifications with particular cultural and social groups within the nation than they do with the nation at large. Further that the very notion of a common national identity is an illusion, one dependent upon the suppression and marginalization of social and cultural difference. Consequently, this study lends credence to the view that whether one chooses to carry out one’s commitments as citizen, or the citizenship responsibilities of another country, is a matter of personal moral reflection and choice

Chapter Two further analysed the legality argument, which fundamentally excuses discrimination if the relevant law makes reasonable provision with respect to qualifications for service as a public officer or member of a disciplined force.<sup>7</sup> It was found,<sup>8</sup> that discriminatory practices can be contested, even when they are legal for their unconstitutionality. That however, for a difference in treatment to be discriminatory, it has to have no objective and reasonable justification.<sup>9</sup> The study found a difference in the enjoyment of citizenship rights in Zambia despite the constitution failing to distinguish between dual and mono citizens in its definition of “citizen”. It was found that the lack of conclusive data from studies on allegations of divided allegiances made the restriction of dual citizens’ rights unreasonably justifiable treatment in a democratic society. It was further established that the determining factor in establishing whether discrimination is

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<sup>5</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.781.

<sup>6</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.481.

<sup>7</sup> Article 23(1) as read with article 23(5) of the Constitution.

<sup>8</sup> Inter-American Court of Human Rights, Advisory Opinion OC-18/03 of 17 September, 2003.

<sup>9</sup> Cf.. Eur. Court H.R., Case of Willis v. The United Kingdom, Judgement of 11 June 2002, para. 39; [http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-0Willis%20v%20UK%20\\_health\\_.pdf](http://www.equalrightstrust.org/ertdocumentbank/Microsoft%20Word%20-0Willis%20v%20UK%20_health_.pdf). (Accessed on 18<sup>th</sup> October 2017).

unfair is the impact of such discrimination on the victims.<sup>10</sup> That the basis for the limitations must not be such as to cause one to suffer indignity as a human being, and also as an equal and proud citizen. This is so because in as much as such a person may be able to vote for others, they would not be able to stand for elective office.<sup>11</sup> On this premise, limiting the rights of dual citizens regarding political participation in taking up public office; and the right to equal opportunity to enlist in the defense force and national security agencies proves unfair, as it places dual citizens in a less advantageous position in comparison to mono citizens.

As demonstrated by Chapter Three, there are consequences that result from the impact of nationalism on the rights of dual citizens, for both the state and the citizen. The Chapter, found that these limitations have political, social and economic consequences on the state and the citizen. As regards the citizen, it was found that the main political consequence of the restriction from eligibility to take up public office is that dual citizens are deprived of the right to express themselves politically in a country. This is so because such citizens have no say in determining who governs them and how they are governed. This finding was premised on both the Liberal and Republican theories of citizenship, which are complementary in that Political liberty is the necessary guarantee of individual liberty. That the two conceptions “go hand in hand” since “the security provided by the authorities cannot just be enjoyed; it must itself be secured, and sometimes against the authorities themselves. The passive enjoyment of citizenship requires, at least intermittently, the activist politics of citizens.<sup>12</sup> That consequently, in the absence of this, the government’s accountability levels to dual citizens remains restricted. It was further found that this situation has potential to cause voter apathy in dual citizens because of the knowledge that they will never be eligible to be in a position to effect direct change in governance by taking up public office themselves.

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<sup>10</sup> Harksen v Lane NO & Others 1998 (1) SA 300 (CC).

<sup>11</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>12</sup> Stanford Encyclopedia of Philosophy, *First published Fri Oct 13, 2006; substantive revision Mon Aug 1, 2011*, <http://plato.stanford.edu/entries/citizenship/>. (Accessed on 6<sup>th</sup> October 2016).

Socially, the Chapter, showed that the limitations placed by the Constitution on dual citizens have the consequence of unjustifiably marginalizing dual citizens in terms of accessing various rights of citizenship, such as the right to equal opportunity to join the defence force and national service agencies. This was premised on the finding,<sup>13</sup> that people often maintain greater allegiances to and identifications with particular cultural and social groups within the nation than they do with the nation at large. Further, that the very notion of a common national identity is an illusion, one dependent upon the suppression and marginalization of social and cultural difference. Such inequality, leads to the formation of a group of second class citizens, excluded from the liberal democratic institutions through which flow the demands and policies that determine the distribution of resources. The consequence of this is that second class citizens, who find it hard to express their interests and demands through the traditional institutions of liberal democracy, may resort to forms of political participation outside the institutional channels, and sometimes this kind of participation is adverse to democratic principles and practices.<sup>14</sup>

Regarding the economic consequences for the citizen, it was found that among the observations made by the Mung'omba Constitution Review Commission,<sup>15</sup> on advantages of dual citizenship was that dual citizens could bring investment into the country. This study finds this perspective to have been more focused on the perceived benefits for the state, rather than that of the individual citizen. This view also presupposes a situation where the dual citizen is not resident in Zambia, but is able to externalise funds from the country of residence. However, from a citizen's perspective, this study argues that the converse can happen. A dual citizen, resident in Zambia may not be employed by the State to hold public office, as well as in the Defence Force and National Security Agencies. The economic consequence of the constitution limitations in such case would be to deprive dual citizens equal employment opportunity as compared to mono citizens.

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<sup>13</sup> Bosniak, Linda (2000) "Citizenship Denationalized (The State of Citizenship Symposium), p.481.

<sup>14</sup> De La Paz, Gabriel. "Citizenship identity and social inequality." Instituto Federal Electoral San Diego (2012).

p.5. [www.civced.org/pdfs/delapazGeabriel.pdf](http://www.civced.org/pdfs/delapazGeabriel.pdf) (Accessed on 21<sup>st</sup> March 2017).

<sup>15</sup> Report of the Mung'omba Constitution Review Commission, p.102.

With regard to consequences that impact on the state, Chapter Three, found that the discrimination from the constitution provisions highlighted are contrary to international principles of equality and non-discrimination. As a consequence of this, Zambia remains exposed to findings of non-compliance, with international instruments to which it may be party. This was the case in *Legal Resources Foundation v Zambia*.<sup>16</sup> Politically, Chapter three, found that citizenship, in its sense as political activity, most commonly denotes active engagement in the life of the political community. Therefore, the consequence of excluding dual citizens, from this is that the level of civic engagement of dual citizens in political processes of the state is curtailed. Accordingly, the absence of civic engagement through participation in public affairs other than just voting has potential to lead to anarchy and non-recognition of both the law and the government of the day. This is because, as argued by Brehm and Rahn,<sup>17</sup> citizenship engagement leads to increased levels of trust in institutions.

Regarding the social consequences for the state, the study found<sup>18</sup> that perceptions of enjoying social-economic rights makes one have not only a sense of personal empowerment and respect, but also responsibility to collectively engage in the life of the community. Participation in community life thus requires a sense of full citizenship, of being accorded the rights that define one's equal status in, and relationship to, the state. On the consequences of inequality among individuals, the case of *Legal Resources Foundation v Zambia*,<sup>19</sup> stated that the country practicing discrimination may be deprived of the leadership and resourcefulness that a victim of inequality may bring to national life. This demonstrates that discrimination and inequality have political impact on both the state and the citizen. Economically, it was found that there is existing evidence which suggests a co-relationship between citizenship participation and levels of tax compliance. A cross national analysis by Torgler and Schneider,<sup>20</sup> revealed that citizens are more willing to pay

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<sup>16</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>17</sup> Brehm J, Rahn W. (1997) "Individual –level evidence for the causes and consequences of social capital." p.999.

<sup>18</sup> Higgins-Wharf, J. "Citizenship and empowerment: a remedy for citizenship participation in health Reform", p.287.

<sup>19</sup> (2001) AHRLR 84 (ACHPR 2001).

<sup>20</sup> Torgler, B. and F, Schneider. (2009). "The impact of tax morale and institutional quality on the shadow

taxes, when they perceive that their preferences are properly taken into account by public institutions. As already noted, the limitations in the constitutional provisions appear discriminatory, by excluding dual citizens from eligibility for army enlistment and various public offices. The ultimate consequence of this on the state is that the state would not be able to realise the perceived benefits of dual citizenship, among which is revenue generation from tax collection.

Regarding the question as to whether there are any lessons to be learnt by Zambia from other jurisdictions on the treatment of dual citizens and divided loyalties, Chapter Four, interrogated the law and practice of the United Kingdom and Nigeria. It was found that in Nigeria, dual citizenship is permitted for Nigerian citizens by birth. Further, that dual citizenship is no disqualification for public office for a Nigerian citizen by birth. However, regardless of the fact that Zambia disqualifies all types of dual citizens irrespective of whether they are actually Zambian by birth, Nigeria was found to be more progressive in its policies than Zambia. Nigeria does in fact allow dual citizens to hold high level public office, while Zambia does not. For the United Kingdom as regards eligibility for the position of prime Minister, it was found that the United Kingdom, unlike Zambia, places no distinction in the nature of British citizenship that qualifies for the position of Prime Minister. The requirement is that one should be a citizen of the United Kingdom. Further, the legislation demonstrates that the United Kingdom extends its liberal approach to non-British citizens, that is, Irish and Commonwealth citizens, subject to notable requirements. Further, regarding nationality requirements for army recruitment, the United Kingdom was found,<sup>21</sup> to be unique, in that Irish citizens and Commonwealth citizens are explicitly eligible to join its armed forces. The Chapter, further concluded by noting <sup>22</sup> that reserving

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economy". p.228.

<sup>21</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European Union and of European Union citizens residing in third countries p.79.

<sup>22</sup> Arrighi Jean Thomas, Boubock Rainer, Collyer Micheal, Moraru Madalina, Khadar Lamin, Shaw Jo. Directorate general for internal policies. Policy Department C: Citizens rights and constitutional affairs, European Parliament. Franchise and electoral participation of third country citizens residing in the European

the offices of Head of State, Head of Government, or high ranking officer in a national army, for citizens of the state, does not raise any plausible concerns. By contrast, provisions that require that such office-holders must not be dual citizens, must have acquired the citizenship of the state at birth, rather than through naturalisation, or must have been born within the territory may be seen as discriminatory by creating unequal conditions for citizens' access to such offices. Accordingly, Chapter Four, demonstrates a learning point for Zambia in that these two countries have in one way or another taken steps which are non-discriminatory between mono and dual citizens.

### **5.3 Recommendations**

Arising from the study, the following recommendations are made:

- i. Zambia could explore the possibility of executing bilateral or multilateral agreements confining dual citizens' military service to the country of habitual residence. This would resolve the problem of conflicting military obligations associated with dual citizens.<sup>23</sup>
- ii. It is further recommended that Zambia considers enlisting army personnel on a professional basis as opposed to merely imputing loyalty which is associated with the citizenship status. Furthermore, most countries are only a little bit more restrictive when it comes to officer positions<sup>24</sup>. This could present another option, that is, restricting dual citizens to certain officer positions as opposed to outrightly disqualifying them from eligibility.
- iii. As regards other limitations on taking up other public offices, this study recommends that dual nationals in very sensitive positions (requiring security clearance) may be required to declare a conflict-of-interest in specific situations (like in international negotiations with the country of the second nationality)

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Union and of European Union citizens residing in third countries p.95.

<sup>23</sup> Murazumi Mie. Japan's Laws on Dual Nationality in the Context of a Globalized World, pp.433-434.

<sup>24</sup> Joachim Blatter (2011) Dual citizenship and theories of democracy, p.780.

and stay absent from these specific tasks.<sup>25</sup> In this regard, the issue of conflicts of interests can be solved with much more limited restrictions.

#### **5.4 Conclusion**

This Chapter has summarised the findings of the study by outlining the results of each Chapter. Accordingly, conclusions have been drawn which on the overall, lead to calls for the legislative reform by amending the Constitution to the effect of eliminating the restrictions on dual citizens. As a recommendation, the rationale behind the reform must strike a balance between national security concerns and the need to uphold and respect the principles of equality and non-discrimination among the citizenry. This can be achieved by adopting recommendations 5.3 (i) through to (iii) above, as opposed to the restrictive manner in which dual citizens' rights are currently framed under the Constitution.

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<sup>25</sup> Spiro, P.J.1997. Dual nationality and the meaning of citizenship.pp.1481–1483.

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