

**DUAL CITIZENSHIP - A CRITICAL ANALYSIS OF
THE CURRENT AND FUTURE LEGISLATIVE
PROVISIONS IN ZAMBIA**

BY

SUWILANJI NG'AMBI

918949/11/1

**A dissertation submitted to the School of Law at the University of Zambia in partial
fulfilment for the award of the Degree of Bachelor of Laws (LLB)**

University of Zambia

School of Law

P. O. Box 32379

Lusaka

April 2011

DECLARATION

I, **Suwilangi Ng'ambi** of computer number 918949/11/1 Do hereby declare that the contents of this Dissertation are entirely my own findings and I further declare that this work is a product of my own ingenuity and is not a production of any other work produced and submitted by any other person to the University of Zambia or to any other institution. In this regard, I have not in any respect used any person's work without acknowledging the same to be so.

I therefore bear the absolute responsibility for the contents, errors, defects and any omissions herein.

Date 20-04-11.....

Signature .....

THE UNIVERSITY OF ZAMBIA

SCHOOL OF LAW

I recommend that this Obligatory Essay prepared under my supervision

BY

SUWILANJI NG'AMBI

918949/11/1

Entitled

**DUAL CITIZENSHIP - A CRITICAL ANALYSIS OF
THE CURRENT AND FUTURE LEGISLATIVE
PROVISIONS IN ZAMBIA**

**Be accepted for examination. I have checked it carefully and I am satisfied that it fulfils
the requirements relating to the format as laid down in the regulations governing
Obligatory Essays.**

Supervisor.....*C. Chitupila*.....

Date.....*20.04.11*.....

MISS C CHITUPILA

ABSTRACT

Dual citizenship has in the past been considered a problem by several if not all nations around the world. The apparent distaste for its adoption in Zambia can be seen in the current constitution as stated by the articles that provide for the loss or renunciation of one's Zambian citizenship once the citizenship of another country has been acquired. In addition to this, various debates have taken place over the years through which the issues of dual nationality have been raised and greatly argued against.

Very little literature has been written with respect to dual nationality in Zambia let alone the benefits this position is likely to bring to Zambia or its economy; therefore this essay will to a minimal extent provide some insight on the issues at hand.

This essay will endeavour to give an understanding to the term dual nationality based on the provisions of current legislation as well as possible future legislation for example, the Mung'omba draft constitution. In addition, an analysis of the positions of two states that have moved toward the acceptance of dual nationality will provide an abstract view of the issues at hand with respect of dual nationality and its acceptance and hopefully create provision for its tolerance within Zambia.

Furthermore, it is important to consider the views of individuals advocating for dual nationality and whether the law should be amended in order to harmonize the views of those for its acceptance and those against this position. These issues form the basis of this study.

DEDICATION

This essay is dedicated to all those that supported me and encouraged me spiritually and emotionally during the entire duration of this course.

I am richly blessed to have such a wonderful support system. GOD BLESS

ACKNOWLEDGEMENTS

I would like to thank my Supervisor Miss C Chitupila who has graciously condoned my chapter submissions and for helping me make this paper a success.

To my brother Wane Ng'ambi and his wife Shinda Ng'ambi, I thank you for your support and continuous laughter, because as you laughed I remembered that I needed to laugh too.

To my entire family, thank you so much for encouraging me to keep my head up and stay strong.

Not forgetting my special friends, Joe Luo, Jemimah Chulu & Taonga Chirwa, you surely made this period easier, I am truly grateful.

To my late mother, Joyce Ng'ambi, thank you for making me who I am today.

God bless you all.

LIST OF CASES

HONG KONG

INOUYE KANOVA V. THE KING CASE NO 39 (1947) 31 HONG KONG LR 66

UNITED KINGDOM

HERRIOT V. CITY OF SEATTLE, 81 WASH. 2D 48.

ZAMBIA

CHRISTINE MULUNDIKA AND SEVEN OTHERS V. THE PEOPLE (1995) ZR (SC)

SEANYANA STATE ADVOCATE MUNDUNGANI ISDORE C.P V. CHIEF IMMIGRATION OFFICERS & MINISTER OF HOME AFFAIRS & ATTORNEY- GENERAL, (1991) S.J (H.C)

STATUTES

SOUTH AFRICA

South African Citizenship Act, 1949

South African Citizenship Act 88 of 1995

South African Amendment Act17 2004

UNITED KINGDOM

British Nationality Act 1948

Naturalisation Act 1870

ZAMBIA

Citizenship act of 2000(Act 591 laws of Zambia)

Citizenship Regulation 2001

National Constitutional Conference Act no.19 2007 laws of Zambia

Constitution of Zambia, chapter 1 laws of Zambia

Citizenship Act of Zambia, chapter 124 laws of Zambia

INTERNATIONAL INSTRUMENTS

The Hague Convention- Convention on certain questions relating to conflicting nationality laws, 1930

Universal Declaration of Human Rights, 1948

European Convention on Citizenship, 1997

TABLE OF CONTENTS

CONTENT	PAGE No.
DECLARATION	ii
ABSTRACT	iv
DEDICATION	v
ACKNOWLEDGEMENTS	vi
ACRONYMS	vii
LIST OF CASES	viii
STATUTES	ix
INTERNATIONAL INSTRUMENTS.....	x
CHAPTER 1	1
General Introduction	1
1.1 Introduction.....	1
1.2 Statement of the Problem.....	1
1.3 Purpose of study.....	2
1.4 Methodology	3
1.5 Purpose of the legislation.....	3
1.6 Futuristic position of Zambia law	4
1.7 International legislation.....	5
1.8 Conclusion	6
CHAPTER 2	8
The laws on dual citizenship in Zambia	8
2.1 Introduction.....	8
2.2 Individual right to citizenship	8
2.3 Current laws on dual citizenship.....	11
2.4 Possibility of Zambia Revising the law on dual Citizenship	12
2.5 Conclusion	15
CHAPTER 3	16
Citizenship laws in the United Kingdom and South Africa.....	16
3.1 Introduction.....	16
3.2 History of United Kingdom's (UK) Dual Nationality laws	16
3.3 Master Nationality Rule	18
3.4 Laws on Dual Nationality in South Africa (SA).....	19

3.5	SACA of 1995 - Dual Citizenship Policy	20
3.6	Conclusion	23
CHAPTER 4		25
Dual citizenship issues clarified.....		25
4.1	Introduction	25
4.2	Arguments for Dual nationality.....	25
4.3	Arguments against Dual nationality	30
4.4	Conclusion.....	34
CHAPTER 5		36
General Conclusion and Recommendations		36
5.1	Conclusion	36
5.2	Recommendations.....	37
5.2.1	Ensure the implementation of entry restrictions.....	38
5.2.2	Disseminate information to individuals.	39
5.2.3	Improve the country's incentives.	40
5.2.4	Create and maintain regulatory monitoring mechanisms.....	40
BIBLIOGRAPHY		42

CHAPTER 1

General Introduction

1.1 Introduction

Many people across the globe have dual citizenship by birth, while others acquire it by choice. In the first instance, any consequence of the duality comes as a part of one's inheritance.¹ In the second, one has to choose if the cost of seeking dual citizenship will provide additional life benefits or simply create a dual nuisance.²

This essay aims at exploring the arguments in South Africa and United Kingdom as well as addressing the Zambian legal position as to whether such a concept really exists.

This article firstly addresses the position of what dual citizenship is, who a Zambian citizen is and how the status of dual citizenship applies to the Zambian citizen. It further investigates the current and anticipated position of the law on dual citizenship.

A comparative analysis between the positions held in Zambia, South Africa and the United Kingdom will create a broader view of the concept of duality and establish possible avenues of economic benefit to Zambia as a nation and its citizens.

Lastly, this article makes a clear account in its conclusion, on the basis of information that will be discussed, whether dual citizenship is a reality under the Constitution and whether there are any potential economic benefits to be derived from the status.

1.2 Statement of the Problem

The current Zambian constitution contains provisions for dual citizenship and at the same time contains limitations on the maintenance of this citizenship. In addition, the constitution has either failed or neglected to provide a definition of the term dual citizenship there by creating a gap in our understanding of this form of citizenship.

According to the European convention, dual citizenship is defined as the belonging of the same person to two states at the same time. This definition places no limitations or

¹ Paul Mulenga, 'Dual citizenship' Corpus E-journal, 1(July 2010): p1-2.

² Paul Mulenga, 'Dual citizenship': p1-2.

restrictions to dual citizenship.³ The questions that seem to arise from Zambia's current position on duality and in light of the definition provided above are;

- i) If the constitution places limitations on the acquisition of dual status, does it actually provide for duality; and
- ii) Does the partial approach towards duality actually create the status of dual citizenship as per definition?

It appears that little literature has been written on the possible importance of adoption of dual citizenship in Zambia. Of that existing literature, few attempts have been made to test the relevance and effectiveness of such a status in Zambia. It is for these reasons that this essay intends to contribute to this area of knowledge.

This contribution will be made through comparative studies of citizenship and dual citizenship regulations in the United Kingdom, South Africa and Zambia. Given that this essay is a comparative analysis, it will be confined to the laws that govern the above status.

As the law stands, one's right to citizenship in Zambia remains unprotected. As a result, this research will attempt to show whether the provisions for dual citizenship contained in the present and forthcoming Zambian Constitution have effectively created the status of dual citizenship and thereby provide a form of citizenship protection.

1.3 Purpose of study

Dual citizenship is a growing phenomenon in today's increasingly global economy. While many countries have previously been opposed to dual citizenship status, dual citizenship has grown more common in the last thirty years.⁴ The sequence has been from strong disfavour to toleration. Some states, UK as an example have moved to embrace the status.⁵

This article makes a strong case for recognising a right to acquire or maintain dual citizenship where an individual is otherwise eligible for the status.⁶

It further focuses on the laws directed at reducing the incidence of dual citizenship in order to establish if they may unjustifiably burden individual citizen's rights.

³ The European Convention on Citizenship, 1997 Art 2.

⁴ Neo Simutanyi, 'The case for dual citizenship,' <http://www.zambian-economist.com>, 26 June 2008. [Accessed on 21 October 2010].

⁵ British Nationality Act, 1948.

⁶ Seanyana State advocate mundungani isdore C.P vs. chief immigration officer & minister of home affairs and AG 1991 ZR.

1.4 Methodology

The methodology will essentially consist of an examination of published and unpublished materials. The primary sources of information will include cases, articles, legislation, paper presentations, journals and reports.

1.5 Purpose of the legislation

The Constitution of the Republic of Zambia⁷ provides the basis of this research. The current position under Zambian law is that, a person ceases to be a Zambian citizen if that person acquires the citizenship of another country other than Zambia by an involuntary act other than marriage and does any act indicating that person's intention to adopt or make use of any other citizenship.⁸ Further, a person who is a citizen of Zambia by registration and holds the citizenship of another country loses Zambian citizenship after three months of becoming a citizen of Zambia unless such person has renounced the citizenship of that other country, taken oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by an act of parliament.⁹

It is clear therefore that Zambia's position is currently one of partial acceptance and therefore leaves room for one to establish that the laws of Zambia do not advocate for dual citizenship in general. In order to appreciate the depth of this research, one must first understand who a citizen is and the rights and obligations placed on citizens. Furthermore, it is important to establish what the provisions are for the acquisition and loss of that citizenship.

Accordingly, the Citizenship of Zambia Act provides substantial information towards this research in that, it contains the necessary provisions with reference to citizenship in Zambia. The Citizenship of Zambia Act states a "citizen" means a citizen of Zambia." This definition provides no direction as to the true import of this expression.¹⁰

Furthermore, the Interpretation and General provisions Act provides no further direction. The Republican Constitution does provide some insight in so far as the acquisition of this status is concerned. It makes provisions for acquisition of citizenship by persons who are 21 and have

⁷ Constitution of Zambia, Chapter. 1 of the laws of Zambia.

⁸ Constitution of Zambia, Chapter. 1, Art.9.

⁹ Constitution of Zambia, Chapter. 1, Art.9.

¹⁰ Citizenship of Zambia Act, Cap 124.

resided in Zambia for a minimum of 10 years, immediately preceding that person's application for registration.

The Oxford Concise English Dictionary of Current English further shed some light on the status of a citizen, defining it as a member of a state or commonwealth either native or naturalised.

A citizen is further defined as "a member of a political community who, in their associated capacity have established and submitted themselves to the domain of a government for the promotion of their general welfare and the protection of their individual as well as collective rights."¹¹ The case of **Seanyana State Advocate Mundungani Isdore C.P v. Chief immigration Officers & minister of Home affairs & Attorney- General**¹² provides an illustration of the position the courts of Zambia have taken towards the protection of a person's right to citizenship and therefore creates precedence in the law in favour of adoption of dual citizenship.

1.6 Futuristic position of Zambia law

Zambia recognises the need to change the current restrictive position of the law on this matter. This desire has crystallised into a provision in the Draft Constitution ("the **Draft**") likely to be enacted in future and currently under discussion.

Presently, the clause on dual citizenship has been agreed upon and is there is a possibility of it becoming a part of the forthcoming Constitution. The position of the Draft on this question is that a "citizen by birth should not lose that citizenship by acquiring the citizenship of another country. It further announces that a person who, before the commencement of this constitution acquired the citizenship of another country and as a result ceased to be a Zambian is entitled upon application to regain citizenship."

The draft creates a marked distinction from the current status quo and makes it clear that dual citizenship is likely to be acceptable and therefore will provide the possible future position of duality in Zambia.

Information with reference to the recommendations made by the Constitution review commission in favour of the adoption of dual citizenship in the Zambian constitution is of importance. The Draft further explains the reasons for the recommendations in favour of

¹¹ Herriot v. City of Seattle, 81 Wash .2d 48.

¹² Seanyana State Advocate Mundungani Isdore C.P v. Chief immigration Officer s &minister of Home affairs & Attorney- General, (1991) Z.R.

duality and also provides observations to the current constitution provisions and therefore will provide this research with the necessary information to establish the genesis of dual citizenship.

The draft to a great extent caters for the views of views of the many Zambians in the Diaspora. There are views of the Zambian people that welcome the Mung'omba recommendation for dual citizenship in effect create an understanding of the very much needed change of position and also the need for the constitution to cater for the many Zambians that have moved in search of economic opportunity, but at the same time are encouraged to maintain close ties with Zambia and are possibly in search of investment opportunities in their motherland.

1.7 International legislation

It is necessary to outline the basis upon which the change for dual citizenship is called upon. There appears to be a belief that dual citizenship cannot be tolerated in Zambia for the many reasons set out in the preceding chapters. A comparative analysis has been made between the positions in South Africa, the United Kingdom and Zambia with regard to the laws on dual citizenship. It is of essence that in order to understand the ways in which to proceed as a country with respect to the acceptance of dual nationality we understand the manner in which other states have reconciled these seemingly irreconcilable issues.

British Nationality Act 1948¹³ is the law of the United Kingdom concerning citizenship and other categories of British nationality. Since the above mentioned act of 1948, there is generally no restriction in the United Kingdom on a British national holding the citizenship of another country. An illustration of the manner in which the courts in the United Kingdom interpret and define dual citizenship has been seen in the case of **Inouye Kanoa vs The king**,¹⁴ in which the courts resolved the issues of allegiance with respect to an individual of dual nationality. It is important to understand some of the rights and economic implications that are at play with the acceptance of that status of dual citizenship.

For the purpose of understanding UK's position, the European conventions definition of dual citizenship and explain the rights, obligations and limitations that come with the status of a dual national.

¹³ British Nationality Act, 1948.

¹⁴ Inouye Kanoa vs The king case No 39; 31 Hong Kong LR 66.

The benefit if international conventions is that they provide an in depth analysis of the international concept of dual citizenship and creates an understanding of the need that globalisation has placed on developing states to accommodate duality and therefore provide for centrality but maintain autonomy among all nations.

There has been great change in the law in the United Kingdom and Zambia stands to learn a great deal through understanding the changes that have occurred and the reasons behind the changes during this transitional process.

With respect to South African citizenship, the South African Citizenship Act (1949 &1995) & Amendment Act 2004 acts provide some insight on the manner in which South Africa has since historical times adapted to the change from single citizenship to that of duality.

The 1995 Act provides for retention of South African citizenship prior to the acquisition of a foreign citizenship.

The Act contains a provision that, upon attaining dual citizenship, all South African citizens aged 18years or older must apply and be granted permission to retain their South African citizenship prior to the acquisition of a foreign citizenship.¹⁵

Between the periods of 1995 -2004, South African law has changed drastically with regard to the status of dual citizenship.

It is necessary to understand the laws behind South Africa's adoption of dual citizenship and the arguments for and against its adoptions. These legislations provide information to that effect and as an African country that that has maintained a high global standing it is important for in that it provides a sense to which Zambian law can relate.

1.8 Conclusion

The laws on citizenship are necessary to every state and it is important for the benefit of all individuals that these laws are regulated in a manner that benefit and include all. The laws of Zambia are currently restrictive on the possession of dual citizenship and as a result create a form of inequality among citizens by virtue of the fact that, those that chose to acquire the citizenship of another country are at risk of being deprived of the citizenship of their home country. However, it seems the current provisions of the constitution pay very little attention to the right to citizenship of those Zambians that have acquired the citizenship of another state. It can be said that the issue of dual nationality is indeed a complex one to which a bit

¹⁵ South African Citizenship Act s6.

more thought should be given as opposed to the seemingly simplistic manner in which the matter is addressed.

In essence the current provisions are simply not beneficial to all Zambians and there is a great need to facilitate the progression of the laws to a position that all Zambians are considered, that being those with single or dual nationality.

As the topic of dual citizenship has progressed over time, it is safe to say that relevant experience has been amassed by other states that would provide a basis for the transition of Zambian law. There is no longer a lacuna as to the manner in which to tackle the incidentals that may arise as a result of adopting dual citizenship within the countries laws and therefore, there appears to be no reason as to why a constantly developing country such as Zambia should fail to adapt to the growing trend that can hardly be considered a treat. Zambia does not stand to lose but in fact gain from the experiences of other states in this regard.

CHAPTER 2

The laws on dual citizenship in Zambia

2.1 Introduction

The topic of dual citizenship is such a sensitive issue in almost every country that it creates a lot of emotion with citizens whose rights may have been affected in one way or another by the legislative provisions on citizens as opposed to the politicians who create these laws. While politicians feel they are the custodians of the citizen's interests, citizens on the other hand, feel they are the casualties of decisions or indecisions made by politicians regarding this topic.¹⁶

It would be correct to say that emotions may be raised by the topic because, on the face of it, the topic seems fairly straight forward. In reality, one of the reasons why the topic of dual citizenship is contentious is because most countries have a restrictive approach towards dual citizenship. Numerous debates in many countries are on who a citizen is, and when one would lose their status as a citizen or maintain a status of dual citizenship.¹⁷ This chapter will be addressing the Zambian position on dual citizenship.

It will investigate the position of the current law and projected position on this topic.

2.2 Individual right to citizenship

Citizenship is one of the most important statuses in law because it confers rights and privileges which non citizens do not enjoy. In as much as dual citizenship confers rights of individuals, it further places obligations on citizens and as such the laws on citizenship should be as exhaustive as human foresight allows.¹⁸

The Zambian constitution provides for the acquisition of citizenship by birth or descent, neutralisation or registration and marriage.¹⁹

According to the Constitution and the Citizenship of Zambia act, cap 124, an individual born in Zambia can be considered as a citizen by birth where as an individual born in Zambia but

¹⁶ Paul Mulenga, 'Dual citizenship': p1-2.

¹⁷ Paul Mulenga, 'Dual Citizenship': p1-2.

¹⁸ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2, <http://www.ncczambia.org> [Accessed on 12 November 2010].

¹⁹ Constitution of Zambia, Chapter. 1, Art5.

whose father is not of Zambian origin will be considered as a citizen by descent of the country of his father's origin.²⁰

With respect to citizenship by registration, the Citizenship of Zambia act states that any person whom the provisions of article 6 of the Constitution shall apply may make an application to the board for registration as a citizen in such a manner as may be prescribed.²¹

In line with the above statement, the constitution provides in section 6(1) that, any person who has attained the age of 21 and has been resident in Zambia for a continuous period of not less than 10 years may apply for registration, which once approved becomes a citizen of Zambia by registration.²²

The laws on dual citizenship are generally restrictive in most countries including Zambia. This creates the impression of deprivation of citizenship in situations where such citizenship is acquired in a manner other than by birth or decent or renunciation of that acquired citizenship. To put this more simply, an individual who acquires the citizenship of another country stands to lose their Zambian citizenship and as such be deprived of their right to that citizenship. An example of this is where individuals have moved to other countries in search of better living conditions and opportunities and have since become citizens of those countries. This is just one of the simplest and most common situations through which a person gains dual nationality and as the law would provide is bound to lose their Zambian citizenship.

The Constitution provides guidance to the administration of the rights that are accorded to citizens, and through the Parliament act, act No.19 of 2007, the National conference Commission Act (the NCC act) was established. Act No.19 of 2007 gives power to the NCC to debate, recommend and adopt recommendations from draft constitutions and reports²³. The relevance of the NCC is that it birthed the Constitutional Review Commission (the CRC). In the past the CRC recommendations were adopted by parliament through the white paper. It provided Zambia with a unique opportunity to provide a constitution that shall incorporate people's views, demands and inspirations.²⁴

²⁰ Constitution of Zambia, Chapter. 1.

²¹ Citizenship of Zambia Act, Chapter 124, s16.

²² Constitution of Zambia, Chapter. 1, Art 6(1)(a) (b).

²³ NCC, <http://www.ncczambia.org/act.php>. [Accessed on 03 March 2011].

²⁴ NCC, <http://www.ncczambia.org/act.php>. [Accessed on 03 March 2011].

The CRC has and continues to be of great importance in the change in legislation with respect to rights and citizenship. The Mwanakatwe commission received submissions that focused on the 1991 constitutional provisions.²⁵ One such provision was that which permitted foreign women who had been married to men for at least three years prior to 24th July 1988 to acquire Zambian citizenship on account of marriage although the same did not apply to men in similar positions²⁶. These recommendations led to the amendment of the constitution there by no longer placing marriage as a ground for the acquisition of Zambia citizenship.²⁷

Another submission to the CRC was that citizenship should be a right that should be made available to everyone who has been eligible to acquire Zambian citizenship under the constitution of Zambia²⁸.

The right to citizenship is enshrined in the constitution and represents a part of the fundamental rights of an individual and therefore, it would be appropriate for it to be accorded due consideration.

According to the constitution, persons who are citizens of Zambia at the time of commencement of the constitution continue to be Zambian citizens.²⁹

The constitution further provides for citizenship by birth or descent through which a person automatically acquires Zambian citizenship at birth whether born in or outside Zambia if at the time one of the person's parents is a Zambian citizen.

In addition to the provisions of the constitution of Zambia, the Citizenship Act provides for various methods of acquisition of Zambian citizenship but no mention is made of the acquisition of dual citizenship.

And as Lusaka lawyer Dr Roger Chongwe has correctly observed, dual citizenship is a human rights issue and therefore if we claim to respect human rights as a country we cannot

²⁵ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

²⁶ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

²⁷ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

²⁸ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

²⁹ Constitution of Zambia, Chapter. 1, Art5.

stand in its way by denying people the right to live meaningfully in other countries without losing their Zambian citizenship.³⁰

Despite the current position on duality in Zambian law and the restrictive approach towards such status, it would be bias not to consider provisions in the law that do even in the slightest make note of this position.

By virtue of sec 7(a) of the constitution, an act of parliament may make provision for categories of citizenship not provided for in the constitution.

An example of this is under section 13 of Citizenship Act, through which the President has absolute discretion to cause any person to be registered as a citizen.

In as much as this legislation does not provide for duality, it does create the possibility for it in that, in some very strict circumstances one may, by virtue of the section above, acquire the citizenship of Zambia whilst maintaining that of another state.

One cannot deny the fact that, the constitution of Zambia to a great extent contains provisions that protect the rights of the general Zambian citizen whether by birth, descent or naturalisation. However, these provisions of the constitution do not cover the rights of those Zambian citizens that have for one reason or other migrated to different nations and acquired citizenship there.

The issue that is raised with respect to citizenship in Zambia is that an individual's right to citizenship by virtue of that person's right to dual citizenship is one that to a larger extent has been overlooked and greatly neglected. There seems to be very little if at all any consideration given to the fact that a person's right to maintain Zambian citizenship while concurrently possessing the nationality of another state, that being dual citizenship, does in fact form part of one's right citizenship. The mere fact that one has taken on the citizenship of another state does not change the fact that that person is biologically a Zambian citizen.

2.3 Current laws on dual citizenship

Dual citizenship, as the term suggests, is a status by which a person is concurrently regarded as a citizen under the laws of more than one country. The understanding by the average man or woman in Zambia, and unfortunately so, even among some legal practitioners, is that such

³⁰ Roger Chongwe, 'Dual citizenship,' <http://diasporacconnect.com>. [Accessed on 1 November 2010].

a status does not exist, or at least is not permissible under Zambian law. However, this is not entirely true.³¹

Under Zambian law, a person ceases to be Zambian citizen if that person acquires the citizenship of another country by a voluntary act, other than marriage or does any act indicating that person's intention to adopt or make use of any other citizenship.³²

Further, a person who becomes a citizen of Zambia by registration and immediately after becoming a citizen of Zambia, is also a citizen of another country; shall cease to be a citizen of Zambia at the expiration of three months after such person becomes a citizen of Zambia unless such person has renounced the citizenship of that other country, taken oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by or under an Act of Parliament³³.

It is clear that in general, Zambian laws do not provide for dual citizenship. However, one may acquire this status in two circumstances.

Firstly, if one acquires citizenship of another country through marriage which implies that X may still maintain Zambian citizenship despite acquiring citizenship of a country other than Zambia in circumstances of marriage.³⁴

Secondly, an impression is created, that one may not lose this status if the act of acquiring another citizenship is involuntary although the Constitution and The Citizenship of Zambia Act provide no definition of what amounts to an involuntary act, and therefore leaves this question to speculation. As a result, it would be acceptable in theory, for a person born of Zambian citizens, in a country in which citizenship is granted by birth, to reclaim Zambian citizenship because he or she involuntarily acquired the citizenship of that other country.

The effect of this interpretation of the law is to present a grey area that creates the possibility of circumstances in which dual citizenship may be acquired.

2.4 Possibility of Zambia Revising the law on dual Citizenship

Zambia recognizes the need to change the current restrictive position of the law on this matter. Evidence of this can be seen in provisions contained in the Draft Constitution likely

³¹ Paul Mulenga, 'Dual citizenship': p1-2.

³² Constitution of Zambia, Chapter.1, Art.9 (1)(a)(b).

³³ Constitution of Zambia, Chapter.1, Art.9 (2)(a)(b).

³⁴ Constitution of Zambia, Chapter.1, Art.9 (1)(a).

to be enacted in future. The suggested provision stipulates that “a citizen by birth should not lose that citizenship by acquiring the citizenship of another country.”³⁵ The draft further states that “a person who, before the enforcement of this constitution, acquired the citizenship of another country and as a result ceased to be a Zambian is entitled upon application to regain citizenship.”³⁶

The history surrounding the above provisions can be found in the submissions of the Zambian people including those living abroad, to the Mung’omba Constitution Review Commission. About eighty nine percent of the submissions regarding this issue were in favour of dual citizenship.³⁷

Several of these submissions were in favour of the repeal of article 9(1) (b) of the constitution, which provides that a person shall lose citizenship if that person acquires citizenship of another country by a voluntary act other than marriage and shows an intention to adopt or make use of that other citizenship.

It can be noted that this clause lacks clarity and with a deeper analysis of this provision, it would be correct to say that a person could in actual fact maintain dual nationality if they did not acquire the citizenship of another country by a voluntary act for example, United States green card lottery or if having acquired the citizenship of another country, that individual lacks the intention to adopt or use that citizenship.

Another argument advanced by those who called for the Constitution to permit dual citizenship was that Zambian citizens who have acquired citizenship of other countries should be encouraged to maintain ties with Zambia³⁸ as this would encourage the promotion of investment for the benefit of the country.

The Commission also noted that prohibition of dual citizenship was based on the rationale that it could lead to conflict of interest and questions of allegiance and patriotism. The Commission also noted that this is justified but should not be absolute. As such the

³⁵ Mung’omba Constitution Review Commission, ‘Draft Constitution,’ Art 26(1).

³⁶ Mung’omba Constitution Review Commission, ‘Draft Constitution,’ Art 26(1).

³⁷ Mung’omba Constitution Review Commission, ‘Draft Constitution’.

³⁸ Mung’omba Constitution Review Commission, ‘final report of the constitution review commission’ chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

Commission recommended that it should only be allowed in respect of persons who have acquired Zambian citizenship by birth or descent.³⁹

Recommendations of the CRC are not the only views expressed in favour of the provision of dual citizenship within our constitution.

Views of several Zambians living in the diaspora have been expressed throughout the media. Dual citizenship is becoming common in our interconnected global economy and has an advantage of broadening a country's economic base by promoting trade and investment between and among dual citizens in their respective countries.⁴⁰

Former commissioner in the Mung'omba CRC, Bishop John Mambo commended the NCC for including dual citizenship in the draft constitution as he felt it was right to help Zambia reap benefits from its citizens in the diaspora, as they have the capacity to contribute to foreign investment into the country⁴¹. He further stated that it would create development in various fields as a result of skills harnessed from other parts of the world.

In as much as recommendations have been made in favour of the adoption of dual citizenship in Zambia, arguments have equally be raised against it adoption.

Henry Kyambalesa states that from an economic perspective, there are obligations and not only benefits associated with being a dual citizen in that an individual of dual nationality would be legally required to obey laws of both states. One such example would be paying taxes.⁴²

Those in opposition of duality have opposed it on grounds of being unpatriotic and that it creates an impression of misplaced or conflicting loyalties. It can be safely stated that it is in the best interests of Zambia. Political loyalty is not the same as nostalgia and the desire to make things better in the land of one's birth, two emotions that we should not discourage. There is a clear precedent that affection for and even service to one's homeland is not incompatible with dual citizenship.⁴³

³⁹ Mung'omba Constitution Review Commission, 'final report of the constitution review commission' chapter 2. <http://www.ncczambia.org> [Accessed on 12 November 2010].

⁴⁰ The Editor, 'Dual citizenship,' Post news paper, 16 May, 2009.

⁴¹ <http://www.Lusakatimes.com>, 15 June 2009. [Accessed on 21 October 2010].

⁴² Henry Kyambalesa, 'The case for dual citizenship,' <http://www.zambian-economist.com>, 18 June 2008. [Accessed on 21 October 2010].

⁴³ Roger Chongwe, 'Dual citizenship,' <http://diasporaconnect.com> .4 May 08 [Accessed on 1 November 2010].

2.5 Conclusion

This article has outlined the current position of Zambian law and has correctly stated that even though the concept of dual citizenship exists in limited and unclear circumstances it is not encouraged in Zambia. Furthermore, the draft constitution and Mung'omba Constitution Review Commission have enjoyed heavy consultation. The position in future is likely to be a manifest embrace of dual citizenship as opposed to the current conservative position and though this may be the case, it is still unclear as to whether or not the partial acceptance of dual citizenship with the requirement to renounce any other citizenship once acquired in Zambia fully achieves the desired outcome of unrestricted maintenance of two or more citizenships by an individual as provided for by the definitions within this chapter.

CHAPTER 3

Citizenship laws in the United Kingdom and South Africa

3.1 Introduction

The issues concerning dual nationality are almost if not completely nonexistent in most parts of the western world. United Kingdom is one such country that has adopted an open approach towards dual nationality since pre historic times.

The rights to citizenship originate from the provisions⁴⁴ of international acts which are mentioned on constitutional and legal levels in a majority of countries.

Generally, the right to have double or multiple-citizenship has existed for more than two thousand years and has progressed to conventional and legislative adoption. It appears that, historically, the concept of duality has developed along with the right to citizenship and as such the regulation of the issues of dual citizenship as well as multiple-citizenship can be traced as far back as the Bankropt treaties.⁴⁵

The process of granting citizenship and the attitude towards the issues of dual citizenship in ancient Greece resemble the current legislation of several countries, including countries seeking to hold national uniformity.⁴⁶

The International Convention and European Union legislative regulations provide a reference point which allows member states: in this case, United Kingdom to regulate by legislative means the rights and obligations of dual citizens.⁴⁷

3.2 History of United Kingdom's (UK) Dual Nationality laws

In order to understand and clarify what has constituted British citizenship, it is important to understand the history behind the subject.

Current literature states the arguments against dual nationality go as far back as 1870. The Naturalisation Act of 1870, formally provided for the loss of British subject hood if a British subject voluntarily became a citizen of another state by naturalisation.⁴⁸

⁴⁴ Universal Declaration of Human Rights, (1948) Art15, European Convention on Citizenship, (1997) Art4.

⁴⁵ Narine Solomnyan, 'Dual Citizenship: Alternative Arrangements, Economic implications and Social Dimensions' 17-18 June 2006. [Accessed on 23 September 2010].

⁴⁶ Narine Solomnyan, Dual Citizenship: [Accessed on 23 September 2010].

⁴⁷ Narine Solomnyan, Dual Citizenship: [Accessed on 23 September 2010].

According to the above act, a woman was deprived of her nationality if she married an alien, although it must be noted that provision prescribed for her to retain it if she so wished, provided she made a declaration and took an oath of allegiance.

The British law effectively reaffirmed the possibility of dual nationality and thus was repeated in the British nationality and the status on Aliens act 1914.

It must be noted that the significance of the British Nationality Act of 1948, is that it created a provision for citizens of independent colonies that had lost the status of citizen of the UK and its colonies and had become a citizen of a newly independent country, to claim their right to enter and reside in the UK and also granted a right for these individuals to acquire citizenship of the UK and colonies who were excluded from immigration controls.⁴⁹

Subject to the provisions of the above act, section 6 subsection (3), a citizen of any country mentioned in subsection (3) of section one of the above Act or a citizen of Eire, being a person of full age and capacity, shall be entitled, on making application therefore to the Secretary of State in the prescribed manner, to be registered as a citizen of the United Kingdom and Colonies if he satisfies the Secretary of State.⁵⁰

Several arguments against acceptance of dual nationality have been raised. One such argument is that of loss of allegiance or a lack thereof and hence the great relevance of the provisions of the act of 1948.

It went further to prescribe the loss of British nationality only where a citizen naturalised in another country makes a formal renunciation to the secretary of state who dully registers it.⁵¹

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;

⁴⁸ D.Kalekin-Fishman,P.Pitken, 'Multiple citizenship as a challenge to European Nation states,' Bergan Books (2007) : p41.

⁴⁹ D.Kalekin-Fishman,P.Pitken, 'Multiple citizenship as a challenge to European Nation-states': p41.

⁵⁰ British Nationality Act 1948, s6(1).

⁵¹ D.Kalekin-Fishman,P.Pitken, 'Multiple citizenship as a challenge to European Nation-states': p41.

and, upon the registration, that person shall cease to be a citizen of the United Kingdom and Colonies.⁵²

The position held in the UK is further demonstrated in the case of **Inouye Kanao vs The King**, through which the argument raised against the acceptance of dual nationality, that it creates issues of dual allegiance was addressed. This position was clarified in the above case in which the presiding Judge explained the law regarding allegiance, pointing out quite rightly that a natural British born subject, who has not divested himself of his British nationality, owes such allegiance.

It was held that, “a person possessing double nationalities may be liable for treason against the state of which he is national even though his wrongful acts were committed on behalf of the other state of which he is a national.”⁵³

3.3 Master Nationality Rule

Another benefit of the British Nationality Act is that it removed restrictions on nationality. Dual nationality was not thought to be so undesirable, since most practical problems were avoided by what was known by the Master Nationality Rule.⁵⁴

Issues that resulted from dual nationality were mainly cases caused as a result of a conflict of laws rather than as a result of naturalisation. Therefore, to create laws that prohibit dual nationality to some extent appeared to be a failure to prescribe an adequate mechanism to govern those conflicting laws.

The UK government traditionally extends diplomatic protection to British nationals outside the UK. However article 4 of the Hague Convention on certain questions relating to the Conflict of Nationality Laws, 1930 provides that “a state may not afford diplomatic protection to one of its nationals against a state whose nationality such a person also possesses.”⁵⁵

The effect of this article and rule is that it provides for autonomy of nationality laws of both states to which a person is a national. Therefore, in a case where a person is a national of UK

⁵² British Nationality Act 1948, s 19(1)(a)&(b).

⁵³ Inouye Kanao vs The king case No 39; 31 Hong Kong LR 66.

⁵⁴ Dual nationality: Position of dual nationality, <http://www.ukba.homeoffice.gov.uk> [Accessed on 12 November 2010].

⁵⁵ Dual nationality: Position of dual nationality, <http://www.ukba.homeoffice.gov.uk> [Accessed on 12 November 2010].

and South Africa and such a person is in the territory of South Africa and such a person commits an offense, UK will have no right to claim this person as their national or intervene on that person's behalf. Another situation would arise where such person goes into the territory of a third state and hence such person may be treated as a national of either state. However, it would not matter which of the two states applied to that person unless the third state would need to adjudicate upon matters in relation to that person's status.⁵⁶

In light of the nationality laws in the UK and the issues that arise with respect to dual nationality, an important point to note is that, to a great extent the master nationality rule has provided for reconciliation between the various nationality laws that would eventually create a conflict for a dual national.

3.4 Laws on Dual Nationality in South Africa (SA)

An analysis of the researches of the constitutions and laws of several African countries shows that most have made the decision that dual citizenship should not be allowed.⁵⁷ However, in recent years many Africans whose roots lay both in an African and a European country have put pressure on their governments to change the law and enable citizens to maintain both nationalities.⁵⁸

Prior to the South African Citizenship Act (SACA) of 1949 and later the SACA1995, there were no South African citizens, only British subjects and Union Nationals. As a result, conditions of the SACA of 1949 instituted the status of SA citizenship, essentially substituting that status for that of Union nationality.⁵⁹ A British subject would henceforth be entered as a South African citizen or a citizen of another Common Wealth country or the Republic of Ireland.

As originally passed the SACA of 1949 contained a provision allowing citizens of other common wealth countries to register and thereby obtain SA citizenship.⁶⁰ For example, a Canadian citizen would become a South African Citizen by registration by fulfilling some residence or other conditions.

⁵⁶ Dual nationality: Position of dual nationality, <http://www.ukba.homeoffice.gov.uk> [Accessed on 12 November 2010].

⁵⁷ Narine Solomnyan, "Dual Citizenship: Alternative Arrangements, Economic implications and Social Dimensions" 17-18 June 2006. [Accessed on 23 September 2010].

⁵⁸ T. Alexander and Douglas Klusmeyer, *From Migrants to Citizens: Membership in a changing world*, Marshall and Bottomore, (1992): p223-238.

⁵⁹ South African Citizenship Act 1949, s38 "providing that as a matter of interpretation, that reference in other legislation to Union nationality should be taken as reference to south African citizenship."

⁶⁰ South African Citizenship Act, s8.

The act differed substantially from earlier legislation providing a definition of Union Nationals by providing that a married woman did not derive her citizenship from that of her husband.⁶¹

This registration provision was later abolished soon after SA declared itself as a republic in 1961.⁶²

The enactment of the SACA of 1995 formally provided a single statutory instrument governing the citizenship rights across the republic. It further regulated the maintenance of a person's citizenship or nationality if that person was to obtain the citizenship of another country and become a dual citizenship.⁶³

The main changes to be noted as a result of the 1995 Act are: (i) the policy tolerance with respect to dual citizenship; (ii) the adjustments to the naturalisation policy; and (iii) the amendment of the declaration of allegiance.⁶⁴

To a great extent the purpose of the 1995 Act was to create a single citizenship regime and repeal the various regimes governing citizenship and hence the provisions of constitution of the republic of SA, Act 108 of 1996 of which s3 on citizenship currently provides:

- (i) there is a common South African citizenship;
- (ii) all citizens are (a) equally entitled to the duties and responsibilities of citizenship (b) equally subject to the duties and responsibilities of citizenship;
- (iii) national legislation must provide for the acquisition, loss and restoration of citizenship.

3.5 SACA of 1995 - Dual Citizenship Policy

Traditionally dual citizenship was not so widely tolerated in SA. In terms of pre-1995 legislation, provisions dictated that SA citizens naturalizing elsewhere were liable to losing their citizenship by ministerial order.⁶⁵

These laws further provided that the minister had the power to deprive a dual citizen of his citizenship if he or she used the citizenship of another country. The most dramatic provision

⁶¹ South African Citizenship Act 1949, s 12-14.

⁶² Commonwealth Relations Act 1962, s19.

⁶³ South African Citizenship Act 1995, s 6(2).

⁶⁴ T.Alexander and Douglas Klusmeyer, *From Migrants to Citizens*: p236.

⁶⁵ T.Alexander and Douglas Klusmeyer, *From Migrants to Citizens*: p235.

was that a minister had the power to deprive dual citizens “if he was satisfied that it was in the public interest that such citizens shall cease to be a South African Citizen.”⁶⁶

In terms of the 1995 legislation, provision was made for automatic loss of citizenship subject to an application to the Minister of Home affairs for exemption from deprivation prior to the acquisition of the other citizenship.⁶⁷ This provision provided an option for South African citizens to maintain their citizenship at the point of acquisition of another nationality.

Most of the debates that seemed to have developed over dual citizenship were centred on the issue of deprivation of citizenship because as it were, under pre-1995 laws, some of the provisions for loss of citizenship applied to both dual nationals as well as other South African citizens.⁶⁸

In light of the South African legislation referred to in this chapter, it can be concluded that the laws on citizenship and dual citizenship in SA have evolved as has demonstrated by the continual change in position from the laws of 1949 down to those of 2004, which now contain provisions which clearly illustrate SA acceptance of dual nationality.

More recently, the South African Citizenship Amendment Act of 2004 (Act 17 of 2004), which came into effect on 15 September 2004, contained provisions which now make it an offence for a major (aged eighteen (18) years or older) South African citizen to enter or depart the Republic of South Africa whilst making use of the passport of another country.⁶⁹

Furthermore, it is an offence for such a citizen, whilst in the Republic of South Africa, to use his or her foreign citizenship or nationality to gain an advantage or to avoid a responsibility or
duty⁷⁰.

In essence the 2004 Amendment to the legislation provides that a South African dual citizen can use his or her foreign passport, citizenship or nationality freely outside South Africa. However, in South Africa, he or she may not use his or her foreign citizenship to gain an advantage or to avoid a responsibility or duty, which he or she as a South African citizen would otherwise have or have not been entitled or subjected to.

⁶⁶ South African Citizenship Act 1949, s19.

⁶⁷ South African Citizenship Act 1995, s6.

⁶⁸ T.Alexander and Douglas Klusmeyer, *From Migrants to Citizens*: p236.

⁶⁹ South African Citizenship Act 1995, s26B as amended by the South African Citizenship Amendment Act 2004.

⁷⁰ Bua News, 'Dual citizenship issues clarified,' 15 Nov2004, [http:// www.southafrica.info](http://www.southafrica.info) [Accessed on 12 Nov 2010]

Given the recent developments around the issue of the Citizenship Amendment Act and in response to media enquiries on the matter, the Department of Home Affairs on the 15th of November 2004 set out to the public a clear and comprehensive picture of the situation in this regard stating, “the Government recently repealed section 9 of the South African Citizenship Act of 1995, which regulated the use of the citizenship or nationality of another country by a major South African who has dual citizenship.”⁷¹

In essence, the Act repealed the provision which allowed the Minister of Home Affairs to deprive a citizen of his or her citizenship for having used the citizenship of a foreign country. Consequently, the previous requirement for exemptions or letters of permission from the Minister to make use of a foreign passport has now been terminated. The issue of deprivation of citizenship was inconsistent with the Constitutional right to citizenship.⁷²

Essentially the new act provide that a SA citizen who had dual nationality could use their other passport freely outside SA but placed a limitation making it an offence for such citizen to use their foreign passport to enter or leave SA or use their foreign citizenship or nationality within SA to gain advantage or avoid responsibility.⁷³

It should be mentioned that South African citizens by birth who ceased to be South African citizens by virtue of section 10 of SACA of 1995 never lose their right to Permanent Residence in South Africa. Should they permanently return to South Africa, they will be able to apply for the resumption of their South African citizenship from within the Country.⁷⁴

The SACA of 1995 also provided for a person who had lost his SA citizenship as a result of formally acquiring the citizenship of another country, by virtue of the repealed SACA of 1949, to apply for the exemption from loss of their SA citizenship⁷⁵. Therefore, a person who, for example acquired the citizenship of a foreign country on 1 December 1992, would have automatically lost his or her SA citizenship in terms of s15(1)(a); however that person may apply for the retrospective exemption from loss of citizenship. Upon approval, such a person would be deemed to have maintained their SA citizenship whilst he or she has acquired foreign citizenship.

⁷¹ Bua News, ‘Dual citizenship issues clarified,’ 15 Nov 2004, <http://www.southafrica.info> [Accessed on 12 Nov 2010].

⁷² Notice To dual Citizens, 11 November 2004, <http://www.seudafrica.org> [Accessed on 12 November 2010].

⁷³ Notice To dual Citizens, 11 November 2004, <http://www.seudafrica.org> [Accessed on 12 November 2010].

⁷⁴ SACA1995, s13(2).

⁷⁵ SACA1995, s26(4).

The current position of SA's legislation, where, dual citizenship be allowed irrespective of whether the other country allowed it or not provides an anomaly. A Swazi national could also be a South African citizen even when Swazi law does not allow dual citizenship.

All if not most of SA's neighbours do not allow dual citizenship and this appears to create a point for dual citizens to live outside SA but probably still claim pension and other government grants from SA by virtue of the fact that they are still citizens and as such this stands to create a form of conflict.

The above statement stands as one of the arguments against dual citizenship as it could be seen to affect SA's economy in that, this positions places a double responsibility on the SA government to provide for those citizens that are their own as well as those of other states who by virtue of their dual status qualify for these benefits. Whether or not the effect it would place on the economy would be negative or positive in nature would be one to debate.

It is relevant to note the need to future legislation to state that if dual citizenship was not reciprocal, the original citizenship would have to be renounced⁷⁶.

3.6 Conclusion

The laws of both the UK and SA provide for the acquisition of the nationality of another country, and it is most important to notice the gradual move from absolute denial to complete acceptance of dual nationality that has transpired over a period of time.

Although both governments note the argument for and against the adoption of dual nationality, there appears to be no intention to create legislation that would be against dual nationality. In effect more laws are being enforced to regulate issues of conflicting national laws thereby creating a continuing acceptance for duality.

In sum, the most important factors explaining the increasing tolerance toward dual citizenship appear to be first the changing relations between individual nation states and altered relations between states and citizens.

⁷⁶ Bua News, 'Dual citizenship issues clarified,' 15 Nov2004, <http://www.southafrica.info> [Accessed on 12 November 2010].

The issues of allegiance and lack of known loyalties can no longer be considered as matters that arise as a result of dual nationality as citizenship is transitional in our internationalized world.

In the words of Home Affairs Minister Dr Buthelezi “the majority of South African citizens who hold the nationality of another nation are as loyal and respectful to the Republic and its Constitution as those South African citizens who hold no other citizenship.

CHAPTER 4

Dual citizenship issues clarified

4.1 Introduction

The previous chapters have analysed the laws on dual nationality in the UK, SA and Zambia, thus providing an understanding of UK's adoption of the status by virtue of its existing ties with the European Union and its governing laws on nationality and the right of citizens and also SA's gradual progression into the acceptance of dual nationality from a position of complete intolerance of the status.

The purpose of this analysis is to establish the different approaches that states have taken with regard to dual nationality and its progression. UK providing the approach of more or less the European Union or western culture whilst SA being a fully developed African state and therefore creating a precedent for other African states.

Each country has different requirements for citizenship, as well as different policies regarding dual citizenship.

It must be noted that these laws sometimes leave gaps where the acquisition of other citizenships would not render the original citizenship invalid, thereby creating a possible situation for an individual to hold two or more nationalities.

Zambia would be on strong footing to emulate the laws of other states in this regard, as it is no longer considered as unchartered territory.

4.2 Arguments for Dual nationality

We must first of all acknowledge the fact that dual nationality is inevitable as individuals continue to migrate across the globe in search of a better life style and better opportunities, for example employment, healthcare or education. As one state cannot dictate the nationality requirements of another and as there is no international arena for seeking agreement on nationality common definitions, dual nationality will, even holding all else constant drift upwards along with increased mobility.⁷⁷

⁷⁷ R. Hansen and Patrick Weil; 'Dual Nationality, Social Rights & federal Citizenship in US and Europe: The Reinvention of Citizenship, Bergan Books, 2002: p7.

The resistance of this status was gradually eroding and this can actually be traced as far back as the 1930 Hague Convention.

In parallel, enhanced political and economic cooperation between democratic states, the creation of the European Union, the end of the Cold War, and especially the decreasing probability of interstate wars between democracies has meant that nation states are becoming less and less concerned about their citizens' loyalty.⁷⁸

Dual nationality, in as much as Zambian laws may seemingly be in opposition, does have its advantages.

Besides the fact that it accords the dual citizen the advantages of being able to travel between both countries of nationality without having to experience the tedious process of visa applications, it provides an open market for two way investment.⁷⁹

If presented with an opportunity to invest in land structures in both countries of nationality it can easily be stated that both states would be at an advantage. For example, the laws in Zambia that govern the purchase of land require the purchaser to pay tax through which the government would benefit and likewise the same purchaser would be required to abide by whatever the laws of the country of their second nationality provide for with respect to land.

Furthermore, it provides financial advantages, for example a person with a dual passport can travel through both countries without dealing with the tedious and costly process of visa applications. This advantage is of utmost importance for business heads or people wishing to make investments in property development programs.⁸⁰

This advantage could be seen to go against the states laws on the payment of airport taxes by non citizens. The government has declared through tax legislation that non citizens are required to pay airport tax, a way in which revenue is brought into the country. However by allowing a dual national to use their Zambian citizenship when coming into Zambia could in itself be a form of tax evasion and therefore deprive the country of a source of revenue. Furthermore, where an individual leaves a country under a citizenship of that country and

⁷⁸ T. Faist, 'Dual citizenship in an age of Mobility,' (2008): p8.

⁷⁹ The Editor, 'Dual citizenship,' May 2009, <http://maravi.blogspot.com/2009/05/dual-citizenship.html> [Accessed on 1 November 2010].

⁸⁰ K.Pandey, 'Pros and Cons of dual citizenship,' <http://www.buzzle.com/articles/pros-cons-of-dual-citizenship.html>. [Accessed on 9 September 2010].

enters the next country under another citizenship enables that individual to deprive both countries of their revenue.

Another advantage is that it provides an asset to businesses that wish to venture globally. In a situation where a South African company wished to venture in to Zambia, a dual national in the employ of the company with the relevant experience and knowledge of Zambian law would be an asset to the company in that, this dual national would provide the necessary information to enable the company make a smooth transition into Zambia. As opposed to engaging a Zambian based law firm to provide this information, which would entail the payment of legal fees, the company would already have this information. In addition, a bilingual dual national would prove as an asset to a company intending to spread into the international arena. It provides a prospect of a cultural exchange of ideas, through which states stand to benefit from other cultures by tapping into the mainstream development through individuals.

Dual nationality further provides an open international market through which citizens of various countries compete globally. It should also be seen as a value generator in that it provides an opportunity to import western liberal democratic values from highly developed countries.⁸¹

One statement made that was seen to favour the acceptance of dual citizenship was that of Zambia's World Bank representative, Kapil Kapoor who stated that Indians living in the Diaspora were making a significant contribution to India's economy.⁸² The Acceptance of dual citizenship was used as an incentive to the Diaspora to remit money back to their home countries. He further stated that the amount of money the country benefited from citizens in the Diaspora amounted to twice the amount of money that donors provide developing countries.⁸³

Another example of the benefits that dual nationality has brought to a countries economy can be seen in Ghana. The state was seen to have benefited massively from its citizens based in

⁸¹Henry Kyambalesa, 'The issue on dual citizenship,' 15 Feb 2009: <http://www.ncczambia.org/forum>[Accessed on 21 February 2010].

⁸²The Editor, 'Can dual citizenship benefit Zambia,' Times of Zambia. <http://www.lusakatimes.com>, 13February 2009. [Accessed on 28 December 2010].

⁸³ The Editor, 'Can dual citizenship benefit Zambia,' Times of Zambia. <http://www.lusakatimes.com>, 13February 2009. [Accessed on 28 December 2010].

the Diaspora after introduction of dual nationality in 2003.⁸⁴ It is said to have received \$6 billion in remittances from the Diaspora in 2006 as opposed to \$400million in 2002 a year before dual citizenship was introduced.⁸⁵

The provisions contained in the Zambian constitution are restrictive of the possession of dual nationalities.⁸⁶ Though this is the case it would be absolutely harmless to alter this position by adopting the proposed articles of the Mung'omba Constitution Review Commission on dual citizenship.⁸⁷

However, such a provision as the proposed Art 26 would require a clause added to it. Like all other countries that seem to have adopted dual citizenship have added to their proviso:

“No citizen of Zambia shall qualify to be elected to or appointed as a holder of any of the following offices if he or she holds the citizenship of any other country in addition to the citizenship of Zambia: Republican President, Republican Vice President, Member of Parliament, Chief Justice, Justice of the Supreme Court, Minister, Deputy Minister, Governor, Mayor, Ambassador or High Commissioner, Secretary of the Cabinet, Chief of defense staff or any security service, Commissioner of value added tax service, Director General of the prison service Chief Fire officer, Chief director in a ministry, Director of a Government Agency, The rank of a colonel in the army or its equivalent in the other security services or any other public offices that parliament may by legislative instrument prescribe.”⁸⁸

This could provide a somewhat possible answer to the issues that arise with regard to concerns of national security.

One person who made a comment on the National Constitutional Conference article on ‘the Issue of Dual Citizenship’ written by Henry Kyambalesa on 15-02-2009 stated, “although it is true to say that remittances can be sent and investments made in Zambia whether dual nationality is permitted or not, it is also true to say that permitting dual nationality would encourage more remittances and interest in investing in Zambia by setting up incentives to maximize even more that what is currently being done. Furthermore, benefits of dual nationality for the nation far outweigh the benefits to single individuals and indeed any of the commonly cited risks as proven by countries which have adopted dual nationality.”⁸⁹

⁸⁴ The Editor, ‘Can dual citizenship benefit Zambia,’ Times of Zambia, <http://www.lusakatimes.com>, 13February 2009. [Accessed on 28 December 2010].

⁸⁵ The Editor, ‘Can dual citizenship benefit Zambia,’ Times of Zambia <http://www.lusakatimes.com>, 13February 2009. [Accessed on 28 December 2010].

⁸⁶ Constitution of Zambia, Chapter 1, s7-s9.

⁸⁷ Mung'omba Constitution Review Commission, ‘final report of the constitution review commission’ chapter 2, <http://www.ncczambia.org> [Accessed on 12 November 2010].

⁸⁸ Henry kyambalesa, ‘The issue of Dual Citizenship,’ <http://www.ncczambia.org/forum> [Accessed on 18 February 2011].

⁸⁹ NCC, <http://www.ncczambia.org/forum> [Accessed on 18 February 2011].

Another comment by C Chileshe on the same article stated his views in which he outlined the following:

- i. In calling for dual nationality, the Zambian abroad is seeking little more than to retain their Zambian citizenship, not to acquire a new privilege.
- ii. It makes for poor judgment if geographical location becomes the basis for assessing an individual's commitment to the values or cores of the nation.
- iii. The granting of citizenship to foreign nationals is subject to rules, regulations and processes over which each nation has total control and entitlement to build in as many safe guards as required to all but guarantee the threat to national security is eliminated.⁹⁰

The provisions of the current laws mean that if people have to renounce their citizenship it may lead them not to invest as they are no longer Zambian as opposed to allowing them to keep their citizenship and maintain close ties and therefore keep investing in the country. It is safe to presume that there is a correlation between the ability of nationals abroad to remit money and their ability to acquire citizenship where they have chosen to settle.⁹¹

Certain provision in the current laws such as article 7 provides for only specific circumstances in which parliament may make provisions that would deprive a citizen of their Zambian citizenship and one such circumstance is where a person is a citizen of a country other than Zambia.⁹²

This position generally provides for ones right to nationality and by virtue of the fact that he or she posses the nationality of another country and there by places themselves in a position to be deprived of his/her Zambian citizenship would eliminate any claim of deprivation under art 15 of the declaration of human rights.

It seems important for note that provisions of this nature would be considered as 'push factors' of professional flight. These as well as the growing need to establish better standards of living create a position where citizens are willing to denounce their Zambian citizenship rather than let go of hope for a better life.

⁹⁰ Henry Kyambalesa, 'The issue of Dual Citizenship,' <http://www.ncczambia.org/forum>. [Accessed on 18 February 2011].

⁹¹ South African Migration Project, 'Dual citizenship,' Post News Paper, 21 October 2005 <http://www.queensu.ca/samp/migrationnews/article.php>. [Accessed on 16 November 2010].

⁹² Constitution of Zambia, Chapter 1, Art 7(b)(i).

It is of great importance to note, that the prohibition of duality is detrimental to the goal of encouraging loyalty. It should be said quite rightly that a positive integration policy should be seen to favour dual nationality.

4.3 Arguments against Dual nationality

A number of arguments have been raised against dual nationality, but it must be noted dual nationality is a fact and that the number of people with dual nationality is increasing constantly whether or not it is accorded the necessary recognition within a states domestic laws or not.⁹³

One of the main arguments in SA for example, over the acceptance of dual nationality as once stated by a senator of the Liberal Democratic Party (DP), was generally that the legislation did not address the question of dual citizenship because it did not distinguish between citizenship and nationality.⁹⁴

Another issue is that of loyalty. Opinions against the acceptance of dual nationality have raised this as an issue of great importance. In simpler terms one would stress that; one cannot serve two masters at the same time.⁹⁵

It appears that this argument lacks substance. A question that one must ask in light of this argument is: how does one measure loyalty? Where does loyalty begin or end? It is not possible to foresee the actions of individuals based on the fact that they are only Zambian citizens. Therefore, it would not be absolutely practical to state that by holding only Zambian nationality an individual is automatically loyal to Zambia. This is an issue that must be looked at objectively. It seems fairly safe to say that in light of several political mishaps over the centuries in several states around the globe, dual nationality creates just as much of misplaced loyalties as a citizen of a single nationality.

Furthermore it can be argued that the definition of loyalty should not been taken in the strictest sense. The very core of European integration is based on implicit recognition of multiple loyalties- from the states of one's citizenship to the institution of the EU and to its citizens of other member states.⁹⁶ Following the introduction of European citizenship in 1992,

⁹³ T.Alexander and Douglas Klusmeyer, 'From Migrants to Citizens: Membership in a changing world': p152.

⁹⁴ T.Alexander and Douglas Klusmeyer, 'From Migrants to Citizens: p238.

⁹⁵ Henry Kyambalesa, 'The case for Dual citizenship,' <http://www.zambian-economist.com>, 18 June 2008. [Accessed on 21 October 2010].

⁹⁶ R. Hansen and Patrick Weil; 'Dual Nationality, Social Rights & federal Citizenship in US and Europe: p7.

all citizens of the member states are considered dual nationals. As stated by Oliver Beaud, federations once recognised in law-and today imply in theory-a duality of commitment: to the federation itself and to its constituent units and thus give much credence to the exclusive loyalty thesis.⁹⁷

This very provision within the EU makes the argument against dual citizenship a very difficult one to support.

Another argument against duality is that it creates international instability which creates a substantive problem, but one that is lessening as states have over the year's abandoned military service. Further, with regard to military service, these disputes can be resolved by bilateral negotiations which permit the dual national to choose the state one prefers to serve in.

Dual citizenship allows a citizen to have two passports, and in the event of conflict creates a misunderstanding as to who has the right to protect the individual.⁹⁸

In as much as this argument could be substantiated, it is one that can very simply be dissolved. Under Article 4 of The Hague Convention, The master nationality rule would clarify this issue. Article 4 state, "A state may not afford diplomatic protection to one of its nationals against a state whose nationality such person also possess."⁹⁹

Dual nationality supposedly provides a threat to national security, a treat which becomes greater when one holds a position in high office.

But the problem behind this argument is that is it is simply a myth. Regardless on ones' nationality whether dual or single, chances of a potential security threat still exist. A threat to national security still exists independently to dual citizenship.¹⁰⁰ Any citizen whether a dual national or not can use a privileged position in one state to pass sensitive information to another country with or without the latter's citizenship.

Bar- Yaacov's view is that allegiance in relation to nationality brings together issues he regards as practical and emotional.¹⁰¹ "States conceive nationality as a status involving the

⁹⁷ R. Hansen and Patrick Weil; 'Dual Nationality, Social Rights & federal Citizenship in US and Europe: p7.

⁹⁸ T.Alexander and Douglas Klusmeyer, 'From Migrants to Citizens: p235-240.

⁹⁹ The Hague Convention (convention on certain questions relating to conflicting nationality laws)1930, Art 4.

¹⁰⁰ R. Hansen and Patrick Weil; Dual Nationality, Social Rights & federal Citizenship in US and Europe: p6-10.

¹⁰¹ T.Alexander and Douglas Klusmeyer, 'From Migrants to Citizens: p263.

identification of the individual with his state as well as active exercise of the responsibilities of citizenship. Thus nationality is considered to imply not only strictly define legal obligations, such as the performance of military service but also the loyalty and devotion of the individual.”

In light of the above statement and with respect to the implied obligations citizenship creates, it is difficult to imagine how an individual could possess the qualifications required for the maintenance of the nationality of two states.

An understanding of his argument creates the impression that, it is not absolutely impossible for individuals to identify emotions for more than one state but simply in legal terms there appears to be an overriding interest to giving effect to only one set of those feelings. More plainly put, there is a greater need to satisfy the obligations of one nationality over the other regardless of the affiliations to both.

Another issue of concern is that dual nationality violates principles of equality, in so far as it provides a dual national with a wider range of rights and opportunities as opposed individuals of single nationality.

Equality among citizens or individuals would mean that all citizens qualify for the same rights and privileges therefore, by allowing some individuals to have dual citizenship, places them in a position to enjoy benefits of both states. For example the ability to purchase land which, in some countries is only possible for citizens and thus creating inequality.

Of the arguments against dual citizenship this seems to be the most compelling. As the law stands, nationality appears to be based on the equality among citizens and it can be stated that if dual nationality violated this position, this would create a strong case against it.

Following Michael Walzer, dual nationality might be seen to violate simple but not complex equality.¹⁰² He accordingly provides that equality is not universal but, limited to particular spheres stating that “where citizen X may be chosen over citizen Y for political office, the two will be unequal in that political sphere but will not be unequal generally so long as X’s office does not provide any advantage over Y in any other sphere for example medical care and so on.”

¹⁰² R. Hansen and Patrick Weil; Dual Nationality, Social Rights & federal Citizenship in US and Europe: p8.

This applied to citizenship would be that with simple equality requires that all citizens are accorded same entitlements regardless of the nationality be it single or dual, where as complex equality requires that each citizen possess the same range of entitlements as all others holding the same citizenship.¹⁰³ An example of inequality on this basis would be seen as a Zambian Citizen (on the basis of that citizenship) claiming greater rights than other Zambian citizens in Zambia as opposed to a situation of a Zambian citizen claiming greater rights outside Zambia than other Zambian citizens on the basis of their South African citizenship.

Peter Spiro further provides a riposte against the concern of equality and states: “as life is full of multiple and overlapping inequalities for example, wealth, skill, parentage and so on, it is arbitrary and perhaps hypocritical to select inequality generated by dual nationality for particular opprobrium.”¹⁰⁴

In a course on *Les conflicts de nationalites* at the Hague Academy in 1938, Louis Lucas argued that as nationality obliges an individual to go as far as to sacrifice his or her life for the state and obliges the state to provide the individual with aid and protection, multiple or dual nationality is aberrant and illogical.¹⁰⁵

On the basis of these few counter arguments the case against dual nationality based on the fact that it does not provide for equality of individuals appears somewhat unsubstantiated and lacking in merit.

Furthermore, some theorists have been of the view that it would be difficult to maintain a status which is inherently incompatible with the obligations of a person in times of war in a time of peace.¹⁰⁶

In addition, dual citizenship is generally not something that can be applied for, it occurs automatically to some individuals for example birth or descent or marriage.

As provided for under Art 5 the 1996 constitution “a person born inside or outside Zambia after the commencement of this constitution shall become a Zambian citizen at the date of his birth if on that date at least one of his parents is a citizen of Zambia.”

¹⁰³ R. Hansen and Patrick Weil; *Dual Nationality, Social Rights & federal Citizenship in US and Europe*: p9.

¹⁰⁴ R. Hansen and Patrick Weil; *Dual Nationality, Social Rights & federal Citizenship in US and Europe*: p8.

¹⁰⁵ T.Alexander and Douglas Klusmeyer, *From Migrants to Citizens*: p263-265.

¹⁰⁶ T.Alexander and Douglas Klusmeyer, *From Migrants to Citizens*: p235-240.

In this light, dual citizenship though argued as such, can't necessarily be considered as a human right issue. To some extent the issue of deprivation of citizenship under the constitution borders on interfering with citizenship rights of an individual, the rights of people enshrined in the articles in the Universal Declaration of Human Right appear to be silent on the issue of dual citizenship.

However the Universal Declaration of Human Rights provides under Art 15 provides:

(1) everyone has the right to a nationality;

(2) No one shall be arbitrarily deprived of his nationality or denied his right to change his nationality.¹⁰⁷

Therefore, the argument of dual citizenship being a human rights issue is debatable.

4.4 Conclusion

As stated above, in line with the arguments against dual nationality, support for dual citizenship should not go uncontrolled, but the position should be that of no profound distinction between citizens and non- citizens.

Many countries over the years have argued against dual citizenship because for one reason or another they felt that it would lead to an increase in the number of immigrants, higher crime rates less employment opportunities and a socio- cultural imbalance in the society. But with the changing times it is of utmost importance that states should move towards the creation of legislation that in fact promotes dual citizenship. It is highly likely that this change in legislation would generally increase the competency levels of individuals and create a more integrated system across the globe.

While previous bilateral and multilateral forms of international cooperation aimed to avoid instances of dual nationality more and more states seem to be opting out of this interpretation and moving towards a more positive approach. As a result pressure on states to cooperate in avoiding dual nationality has decreased significantly while the leeway to pursue national interests through national citizenship expanded.¹⁰⁸

Furthermore, the growing importance of human rights norms has also worked in favour of the general move towards the acceptance of dual nationality as these norms have limited state discretion. It is seen that even as liberal state democracies adhere to the principle of avoiding

¹⁰⁷ Universal Declaration of Human Rights 1948, Art 15(1)-(2).

¹⁰⁸ T.Faist, 'Dual citizenship in an age of Mobility,' Bielefeld University, (2008): p8.

dual nationality, they are in the same instance compelled to grant even minimal exemption for example, on the basis of reciprocity within regional governance systems.¹⁰⁹

For as long as these changes continue to happen, dual citizenship is and will for some time to come be an ongoing debate, as people, states and law makers have different views on the benefits of these changes.

It is of a great importance for Zambia as a nation to recognize the benefits involved and move towards this positive integration system as it would open doors for free and liberal trade, thereby increasing job opportunities and helping the country to have a much more global impact.

¹⁰⁹ T.Faist, 'Dual citizenship in an age of Mobility,' (2008): p8.

CHAPTER 5

General Conclusion and Recommendations

5.1 Conclusion

In the previous chapters of this essay, it is apparent that the progression toward the acceptance of dual citizenship will face and is currently facing challenges.

The amount of criticism that the Mung'omba CRC has received with respect to the submissions on dual citizenship is a representation of this position.

Those in support and calling for dual citizenship are not in the least unpatriotic. It is important that the regulations on dual citizenship in Zambia take into consideration the desires of the Zambian people and make a move towards accepting the opinions expressed by those in favour of dual citizenship or at least create a middle ground for the opinions for and against dual citizenship to meet as opposed to simply turning a blind eye.

Our regulator system must be able to ensure the protection of citizens, whether dual or those of single state citizenship and on the other hand preserve the interest of the country as a whole.

It cannot be disputed that a successful regulatory policy benefits from both international and local experiences and efficient operation. It rests on the development of a regulatory governance structure that will encourage the betterment of Zambians as well as promote the development of the Zambian economy through its citizens both local and abroad.

It is however important to remember that Zambia is a part of the global village and cannot afford to remain behind and therefore, should consider dual nationality as apriority.

It may or may not be a conclusive issue, but dual citizenship may in fact provide a great possibility for an encouraged investment plan for those in the Diaspora. It is important that through enforcement of citizenship regulation, the Government does not in tern neglect those that have moved on to seek better opportunities in other nations for no fault of their own, but as a result of insufficient resources within Zambia.

In as much as the efforts to introduce dual citizenship in Zambia as an attempt to entice those in the Diaspora to reconnect with their home country, and maybe even return may seem futile, these efforts are not entirely a lost cause.

The government has on several occasions addressed those skilled workers that have emigrated and appealed to them to return in order enable progression locally.

It can be stated that, the introduction of dual nationality is a small step in the right direction toward establishing a more positive response of those in the Diaspora toward the possibility of returning to their mother land, and if not to return, then perhaps to establish a form of investment within Zambia.

In effect, the acceptance of dual nationality may exhibit positive benefits in the not so distant future for the country.

It is necessary to establish the fact that citizenship rights should be non-negotiable and should only be revoked under very exceptional circumstances as ones nationality forms their primary identity and as such, one should continue to hold it irrespective of their decision to acquire the citizenship of another country whether for economic or social reasons.

5.2 Recommendations

Dual citizenship is becoming more common in our increasingly interconnected global economy and as a result, many countries are beginning to acknowledge the advantages of dual citizenship and as such are liberalizing their citizenship laws to accommodate individuals in the Diaspora.¹¹⁰

Provisions of the current Zambian constitution restrict dual citizenship almost completely. Articles 7 to 9 of the Constitution of 1996 provide for the acquisition and loss of Zambian citizenship and make no mention of the possession of dual nationality except in the special circumstances such as a non Zambian marriage to a Zambian citizen.

It is important to consider the following conclusion: the legislative regulation of dual citizenship of Zambia must be resolved by taking in to consideration the growing international experience of the issue on the basis of relevant provisions and also considering the principle of effective citizenship as there appear to be several potentially conflicting

¹¹⁰ The Editor, 'Dual citizenship,' <http://www.diasporaconnect.com>. [Accessed on 12 November 2010].

interests. That is to say that, on the one hand you have the interest of the individual applying for dual citizenship and on the other hand the interests of the state that need to be preserved.

It would appear to be a waste of time to maintain a stance against dual citizenship because so many people today are dual citizens and at least over 40 countries around the world recognise dual citizenship and 9 of them being in Africa.¹¹¹ The inevitability of dual citizenship suggests that states should welcome dual citizenship as it seems that the agreements against it are weak. Policy makers should not only accept dual nationality but also support it. Despite the fact that the government may not know this and may not have the means to know and stop it, will not prevent this status from penetrating the Zambian system in that, as a result of other countries accepting dual citizenship and providing it to those that seek it within the regulations of those states, Zambian citizens who have acquired these second citizenships will not be in a hurry to renounce their Zambian citizenship as the laws of Zambia dully provide.

In as much as the regulations dictate that in such a case one must renounce their citizenship, what are the chances of the government knowing of an individual's actions and taking them to task for being in contravention of the law by failing to renounce such citizenship.

5.2.1 Ensure the implementation of entry restrictions.

Whether or not the government chooses to accept dual citizenship, there is a possibility of individuals with dual nationality entering the country without the regulators being aware of their possession of a foreign citizenship. The law must insure the individuals living abroad are monitored through whatever means the government may have at its disposal in order to prevent those with unknown dual citizenship having an unfair advantage and benefiting from both countries in any way that may be prejudicial to other Zambians with single citizenship.

SA has to some extent provided a starting point for this position in that, with the acceptance of dual nationality came a requirement for citizens to apply to maintain their nationality or citizenship and insure that upon entry into or exit from SA they use their SA passports. As a result the government has created a manner of monitoring those individuals that have dual citizenship and thus perhaps prevent manipulation of their immigration system.

¹¹¹ Neo Simutanyi, 'The case for dual citizenship,' <http://www.zambian-economist.com>, 26 June 2008. [Accessed on 21 October 2010].

In addition to entry restrictions, the issue of rules and regulations that govern the acceptance of one's application for nationality in this case dual nationality must be reviewed. One concern that falls against the acceptance of dual nationality is that of a threat to national security. In this regard, it is important for the government to implement regulations or restrictions that protect the state while at the same time protect the rights of individuals.

Every country has the full jurisdiction over the conditions it may set out and the requirements that an applicant would have to meet in order to be accepted as qualifying for dual nationality and in an even where the government feels there are threats to national security on the grounds of acceptance of a foreigner as a dual national, then perhaps it is time that the government looked into the processes involved as well as the rules and regulations that govern citizenship that perhaps may be inadequate, rather than consider the basic concept of dual nationality as unacceptable.

5.2.2 Disseminate information to individuals.

Any regulatory body must be able to demonstrate and deliver appropriate strategies and activities to prevent the contravention of the law. In pursuance of this effort, regulators should learn from best practice examples set out by other countries with respect to the acceptance of dual citizenship and conflicts that may arise as a result of taking on such a position.

In order for the transition to be successful, it is important to deal with the practical inadequacies in legislation for example, where legislation provides for the revocation of one's citizenship and as such renders an individual stateless. Instead, legislation should progress to create more effective provisions that cover the rights of all citizens whether local or abroad.

In this regard, citizens need to be aware of what the law is with respect to citizenship, that including dual citizenship. It be accepted or not, more information must be disseminated and more research made in order not to lose out on development and also to learn the manner in which other states have reconciled the issues in conflict.

5.2.3 Improve the country's incentives.

According to a report by the deputy chief passport officer Brenda Kabemba over 630 people renounced their Zambian citizenship in 2008. She stated that this appeared to be as a result of them acquiring the citizenship of other countries.¹¹²

There are generally many factors that have contributed to the exodus of skilled talent. Examples are scarcity of jobs, limited access to education, poor conditions of service and potential human rights abuses, these being just the few highlighted.¹¹³ There is surely a much needed proactive strategy for redressing the brain drain in Zambia. It is important that such a strategy focuses on preventing the departure of professionals and skilled man power rather than pursuing initiatives that dissipate resources on bolstering the return of long departed talent. And as such it goes without saying that in order to accommodate the current progression dual citizenship should be adopted.

On the other hand if the government could create a system that encouraged individuals to remain rooted in their country by improving the general facilities accorded to every Zambian citizen the need for dual citizenship could very well be eradicated. There is a need for local incentives for example, better education or more employment opportunities, healthcare facilities or even simply recreational facilities for the youth in order to encourage every citizen to establish a close rooted bond with their country. It is important for the government to recognise the need for these incentives in order to understand the reasons behind the great exodus of skilled labour that currently exists in Zambia.

The general need for the acceptance of dual citizenship is to accommodate and cater for those that have moved on in search these necessities that are lacking within the borders of the country and therefore the end justifies the means.

5.2.4 Create and maintain regulatory monitoring mechanisms.

It has been shown that the institutional frame work of any country has a role to play in the effective regulation of the state. The Courts in Zambia have a major role to play in order to ensure that they protect the rights of individuals whether as dual citizens or as single state

¹¹²The Editor, 'Can dual citizenship benefit Zambia,' Times of Zambia [.http://www.lusakatimes.com](http://www.lusakatimes.com), 13February 2009. [Accessed on 28 December 2010].

¹¹³ Henry Kyambalesa, 'The issue of Dual Citizenship,' <http://www.ncczambia.org/forum>. [Accessed on 18 February 2011].

citizens. It is necessary for the judiciary to be able to rule against the government where necessary and uphold justice and the rule of law.

The Universal declaration of Human Rights (UDHR) confers the right to citizenship and such right should be enforceable in the courts of law of any state.¹¹⁴ In line with the position that parliament may make any provision that would deprive an individual of their right to citizenship¹¹⁵, the court should in this regard intervene on the basis of Article 15 of the UDHR and protect the rights of citizens to have a right to a nationality and the right not to be arbitrarily deprived or denied this nationality.

The case of **Christine Mulundika & Others vs. The People**¹¹⁶, although not particularly linked to the issue of dual citizenship acts as a demonstration of the necessity of the judiciary to act independently from the other arms of the government and act in a manner that protects the rights of the ordinary man as was done. This way, impartiality is protected and protection of fundamental rights is upheld.

Zambia is a country capable of rising to great heights in the international arena and gaining global recognition as a result of the Zambian citizens making progress in the Diaspora. This will eventually lead to economic growth. The promotion of the acceptance of dual citizenship and its effective regulation is no simple task, but it can be done.

¹¹⁴ Universal Declaration of Human Rights 1948, Art 15(1) &(2).

¹¹⁵ Constitution of Zambia, Chapter. 1, Art 7(b)(i).

¹¹⁶ (1995)ZR (SC).

BIBLIOGRAPHY

BOOKS

Hansen, R, Weil, P. 'Dual Nationality, Social Rights and Federal Citizenship in the U.S and Europe: The Reinvention of Citizenship,' Bergan Books, 2002

Grifis, S. H. 'Dictionary of Legal Terms,' Cambridge University Press, 2005

Kalekin-Fishman, D, Pitkanen.P. 'Multiple citizenship as a challenge to European Nation-states,' vii- xiv. Sense Publishers 2007

Alexander, T.A, Klusmeyer, D.B. 'From Migrants to Citizens: Membership in a changing world,' Marshall and Bottomore, 1992

ARTICLES

Dr Roger Chongwe, 'Dual citizenship,' Zambia Diaspora connect, (4 May 2009)

Narine Solomonyan. 'The international experience of some issues of Dual citizenship,' AIPRG Conference, (17- 18 June 2006)

Paul Mulenga, 'Dual citizenship Corpus E-journal,' (1July 2010)

PAPERS

Mung'omba Constitution Review Commission, 'Final Report of the Constitution Review Commission,' Chapter 2- Citizenship, 29 December 2005

Thomas Faist, 'Dual Citizenship in an Age of Mobility,' Bielefeld University, 2008

PERIODICALS

The Editor, 'Can dual citizenship benefit Zambia,' 13February 2009, Times of Zambia

The Editor, 'Dual Citizenship,' 16 May 2009, Post Newspaper

'Dual Citizenship Issues Clarified,' 15 November 2004, Bau News South Africa

WEBSITES

www.home-affairs.gov.za

www.lusakatimes.com

www.ncczambia.org

www.southafrica.info

www.timeslive.co.za

www.seudafrika.org

www.zambian-economist.com

www.ukba.homeoffice.gov.uk