

## Opportunities and Challenges of Dual Citizenship in Kenya: Towards a Dual Approach to Dual Citizenship

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### Abstract

Globalization is presenting major challenges in many counties by reducing the role of borders in defining state sovereignty. Many of the challenges posed can as well be converted to opportunities, depending on how a nation responds. A number of nations have enacted legislation that are tolerant to dual and multiple citizenship in order to create stronger ties to emigrated nationals for economic reasons. Other nations have embraced the concept to integrate immigrants into the nation's social, political and economic fabric of the society. This paper discusses the challenges and opportunities of dual citizenship in Kenya. It is noted that though Kenya is primarily a migrant "sender," it is also a significant "receiver" state. Consequently, a dual approach to dual citizenship that engages its national in the Diaspora (*emigrant approach*), as well as integrating immigrants into the social, political, and economic fabric of the society (*immigrant approach*), is proposed.

**Keywords:** Dual Citizenship, Kenyan Diaspora, Dual Approach to Dual Citizenship, Remittance

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### Introduction

The growing acceptance and tolerance of dual and multiple citizenship in the world over the last decade may be a mixed bag with both positive and negative results. Besides being used by states to promote their national interests abroad, others have argued that it can pose a serious threat to classical territorial sovereignty as well as being a security risk (Pogonyi, 2011). There are, however, other specific motives for individuals to seek dual citizenship. For instance, Amoah (2010) has argued that African-Americans tend to seek dual citizenship in Africa in an effort to bring economic growth to their home countries. The same applies to the relations between African emigrants and their home-states, where some states have gone to the extent of providing emigrants the opportunity to vote from overseas and the right to run for public office from foreign locations (Iheduru, 2011). Other examples, such as the case articulated in Wahl (2011), represent exploitation of talent in sports as in the case of U.S. national soccer team with players from foreign countries or the Kenyan long-distance runners seeking citizenship in other countries.

Citizenship generally defines those who are and are not members of a common society, while dual citizenship is a status in which an individual is recognized as a citizen of two countries for a concurrent period. Such a person is subject to all the rights and duties associated with being a citizen of each country. Dual citizenship is distinguished from other forms of citizenship such as the multiple citizenship and supra national citizenship. Multiple citizenship arises where one is a citizen of three or more countries. It occurs where no strict requirements for renunciation of original citizenship upon acquisition of other citizenships is required. Supra national citizenship is where citizenship of a member state entitles one to enjoy certain rights in a regional bloc constituting a number of Member States such as East African Community (EAC) and European Union (EU). One may enjoy certain economic rights and limited civil and political rights. Citizens may be entitled to the right

to work freely across borders, but may be restricted from voting or vying for elections in another member country. While citizenship can be seen as an extension of individual rights, some of the major arguments against allowing dual citizenship rest on the challenge of fulfilling duties such as military and diplomatic services, taxation requirements, and active political participation in both countries (Sejersen, 2008). The concept of citizenship as a status (either a citizen or not) has recently received substantial focus as a result of globalization (Sejersen, 2008). With increased physical and electronic means of communication, national boundaries are struggling to maintain their essential functions that define exclusion and inclusion (Newman, 2001).

Meaningful interrogation of the efficacy of dual citizenship ought to occur in connection not only with citizens' participation, but also as the construction of citizens' identities (Ronkainen, 2011). Greater scrutiny of this phenomenon is deemed necessary as more states become more tolerant of dual citizenship, primarily to realize the economic benefits. With economic benefits notwithstanding, there is bound to be domestic apprehension and hostility, such as the one witnessed in India in 1991, which forced India to create a compromise Overseas Citizenship category (Xavier, 2011).

Kenya successfully promulgated a new constitution in August 2010 to replace the one which was negotiated between the British major political parties of the time at the Second Lancaster House Conference in 1962 and promulgated in 1963. One of the key features of the Constitution of Kenya, 2010 is the provision for dual citizenship. Various implementation aspects of this provision have been discussed and a number of relevant bills presented in parliament. While dual citizenship in the 2010 Constitution is a reality, effective implementation to maximize national and individual benefits remains to be seen.

The dilemma of maintaining state sovereignty is evidenced in Kenya in three ways. First is the large number of nationals who have migrated to other countries, especially in the western hemisphere. Most of these nationals have sought citizenship in their domicile countries. Though there are no accurate statistics on the number of Kenyan citizens in the Diaspora, there is anecdotal evidence that this section of the population is rapidly growing, with those in the US alone estimated to be over 100,000 (US Census Bureau, 2010). Other regions with equally large numbers include Canada, Europe, Australia, and Southern African countries such as South Africa and Namibia. Second is an even faster growing section of the population from the offspring of the Kenyans abroad. That form of birth citizenship granted based on parentage (referred to as *jus sanguinis*, the rule of the blood in contrast to *jus soli*, right of the soil) is also a growing form of citizenship, based on descent/blood relationships (Spiro, 2008) which can apply to the Kenyan situation. Thirdly, due to political instability in the Horn of Africa, particularly in Somalia and Southern Sudan, Kenya has experienced a significant in-flow of foreign nationals from these regions. This emerging section of the population is evidenced by some places in Kenya, such as Eastleigh in Nairobi being referred to as "Little Mogadishu" (Cagayare, 2013). Thus, in order to conceptualize a workable dual citizenship policy, Kenya needs to consider not only their nationals in the Diaspora, but also the offspring of these nationals, as well as other nationals who have migrated into the Kenya.

The provision of dual citizenship in the Constitution of Kenya, 2010 seems to have been motivated by potential economic benefits given the larger number of Kenyan emigrants in North America, Europe, Australia, and other African countries. The somewhat weak Kenya economy stands to gain if Kenyans in the Diaspora were engaged and encouraged to invest back home from their earnings abroad. The country already benefits substantially from remittances from the Kenyan Diaspora, which in 2017 and 2018 was in excess of US\$ 1.57 and US\$ 2.23 billion respectively, a jump of 42.5 percent (Central Bank of Kenya, 2019). With these benefits notwithstanding, the question which remains is whether there are serious backlashes at the individual as well as at the

national level associated with such dual and multiple citizenship. A thorough cost-benefit analysis in the context of the Constitution of Kenya, 2010 of this phenomenon is deemed necessary as the country continues to refine laws and policies related to dual citizenship.

### **Purpose of the Present Study**

The purpose of this study is to interrogate the efficacy operation of dual citizenship as provided in Kenya's constitution. Despite growing acceptance and tolerance of dual and multiple citizenship in the globalized society over the last decade, it may be a mixed bag, with both positive and negative consequences. Besides being used by states to promote their national interests abroad, and for individuals seeking freedom of movement, cultural and economic capital, as well as migrants clinging to the "myth of return," the phenomenon continues to face implementation challenges at two fronts. First, it can be viewed as a threat to classical territorial sovereignty as well as being a security risk. Secondly, the motives and expectations of the states in allowing dual citizenship does not often match the expectations of individuals seeking dual citizenship. Such a mismatch of expectations may result in dual citizenship policies that violate the norms of democratic equality by enfranchising non-resident citizens. Often, dual citizenship policies are put in place for economic factors while at the same time, there is a fear of diasporic interference in domestic politics.

The provision of dual citizenship in the Kenya's constitution may face similar challenges. The paper seeks to analyze dual citizenship policies of three countries that may shed some light on the Kenyan context. The case of Italy that emphasizes political participation of Italians abroad (*emigrant approach*), Sweden that accommodates foreign residents (*immigrant approach*), and the India's compromise model of Overseas Citizens of India (OCI) are discussed. These three case studies are used to highlight strengths, weaknesses, opportunities, and challenges of each approach to identify a hybrid model that may provide effective dual citizenship policies for the stability and prosperity of Kenya.

### **Kenya's Constitution**

Article 16 of the Constitution of Kenya, 2010 that permits dual citizenship in Kenya states that "A citizen by birth does not lose citizenship by acquiring citizenship of another country." Further it states that procedure and substantive law that regulate and facilitate the issue of dual citizenship will be provided by Legislation (Article 18). Pursuant to Article 18, the Kenya Citizenship and Immigration Act of 2011 (KCIA) has been enacted to implement further the provisions of the Constitution regarding the issue of citizenship. The Kenya Citizens and Foreign Nationals Management Service Act (No.31 of 2011) sets out the institutional and enforcement mechanisms in regard to application for citizenship and work permits. The act establishes a Tribunal for resolution of disputes with the right of appeal to the High Court.

Section 8 of the KCIA provides that a dual citizen shall enjoy rights entitled to citizens, including the right to a passport and other travel documents. Section 8 (7) requires a dual citizen to owe allegiance to Kenya and shall be subject to Kenyan laws. Section 10 of the KCIA provides the process through which Kenyan citizens by birth may regain Kenyan citizenship through application to the Cabinet Secretary.

For those who lost citizenship before the Constitution of Kenya, 2010 was effected, Section 10 of KCIA provides a method through which Kenyan citizens who had already lost their citizenship through the acquisition of foreign citizenship can regain their citizenship. This is through application to the concerned Cabinet Secretary (or Minister for the period between the enactment of the Constitution and the first General Elections). In as much as the Constitution of Kenya, 2010 is clear, some dual citizens who lost citizenship before the Constitution was effected

have been denied citizenship upon application under section 10 of the KCIA due to bureaucracy at the Immigration offices (EWA & 2 others V Director of Immigration and Registration of Persons and Another [2018]). There is still need for critical interpretation of the scope and content of dual citizenship under the Constitution. The landmark ruling in *Ali Hassan Abdirahman v Mahamud Muhummed Sirat and 2 others (2010) eKLR* established that under the old constitution acquisition of foreign citizenship did not lead to an automatic loss of Kenyan citizenship in the absence of renunciation by that Kenyan citizen and in cases where the recipient country permitted dual citizenship.

In general, therefore, the Constitution of Kenya, 2010 contains sufficient provisions for Kenyan-born nationals who reside in various countries to acquire dual citizenship. There is no doubt, however, that the spirit of the constitution neither provides for the offspring of these Kenyan national nor nationals of other countries who have immigrated and reside in Kenya.

### Evolution of the concept

Acceptance of dual citizenship in most countries is an apparent turnaround from the situation in mid-19th to mid-20th century when dual citizenship was deemed an evil that had to be stopped (Blatter et al., 2009). For instance, the 1941 Act on Acquisition and Loss of Finnish Nationality was mainly aimed at prohibiting dual citizenship and statelessness in Finland.

Before the advent of globalization, dual and multiple citizenship was generally considered a forbidden fruit, with Theodore Roosevelt terming it a “self-evident absurdity” (Spiro, 2008). As Spiro (2008) also noted, George Bancroft’s comparing dual citizenship with polygamy in 1849 represented perhaps one of the strongest condemnations of dual citizenship. Globalization, due to increased physical and electronic means of communication as well as international migration, has transformed the conceptualization on the phenomenon from that of hostility to tolerance and, in some cases, encouragement. There is some anecdotal evidence that some countries that do not officially acknowledge dual citizenship permit the practice by turning a blind eye. Such a “don’t ask don’t tell” approach was cited in Sweden and Australia except for cases where individuals involved held public offices (Gustafson, 2002).

Official recognition of dual citizenship started to rise in the Americas in the 1970s and 1980s, led by countries with immigrants to the US. The trend took off in Europe in the 1990s and Asia in the last couple of years (Sejersen, 2008). In Africa, it arguably started in 2002 in Ghana with the enactment of the Dual Citizenship Regulation Act in July 3, 2002. Some countries recognize dual citizenship of treaty nations (ex-colonies of Spain in South America and Spain) while others do not have such differentiated policy. United Nations currently recognizes 246 countries (according to ISO 3166), 144 of these countries (almost 60%) recognize dual citizenship in some form (Blatter et al., 2009).

### Legal framework

Prior to the passing of the Constitution of Kenya, 2010, dual citizenship was prohibited under our laws. Section 97 of the Constitution of Kenya, 1963, stated that a person applying for Kenyan citizenship had to renounce citizenship of another country, take an oath of allegiance and make a declaration of continuing residence if one obtained citizenship by virtue of S 87(2).

However, in *Ali Hassan Abdirahman v Mahamud Muhummed Sirat and 2 others (2010) eKLR*, the court held that a Kenyan citizen by birth does not lose citizenship by merely acquiring the citizenship of another country. He can only lose upon renouncing his Kenyan citizenship. The burden of proof lies with persons purporting that the respondent had dual citizenship. It also has to be proved that the foreign country in which the subsequent citizenship has been acquired does

not allow dual citizenship. The same determination was held in *Miguna Miguna v Fred Matiang'i, Cabinet Secretary Ministry of Interior and Coordination of National Government & Others, 2018*.

### Regaining citizenship

Two examples,

1. **Finland example:** Meanwhile, in Finland, the Nationality Act 2003 established that Finnish citizenship was built on the basis of *jus sanguinis*. However, *jus soli* was in limited application mainly to prevent statelessness. The Nationality Act of 2003 also fully legalized dual citizenship in Finland: (a) No loss of Finnish citizenship upon acquisition of foreign citizenship. (b) No renunciation of previous citizenship upon becoming a naturalized Finnish citizen. (c) The Act gave former citizens who had lost their Finnish citizenship by acquiring foreign citizenship a right to apply to get back their citizenship. This is in large mirrored in Article 16 of the 2010 Constitution and KCIA S.8 (1) that provide that a citizen by birth shall not lose citizenship by acquiring citizenship of another country. KCIA S (1) also provides for the reacquisition of citizenship in Kenya by citizens by birth, just like is the case in Finland.
2. **US example:** The judicial attitude in the US has evolved from extreme reluctance to embracing the idea of dual citizenship as reflected in the judgment in *Afroyim v Rusk* (1967). Countries that traditionally accept *jus soli* like the US seem more likely to accept or at least tolerate dual citizenship. In common law *jus soli* has only two exceptions: children born to (a) Foreign diplomats. (b) Hostile forces in occupation. Thus, even children born in US territory to foreign parents are American citizens by birth as long as they do not fall in the two categories. In 1898 the Supreme Court held that Kim Ark Wong was an American citizen by birth despite being born to parents who 'were subjects of the Chinese Emperor,' citing the Citizenship Clause in the 14th Amendment. Forty-one years later, in *Pekings v Elg* (1939), the Supreme Court held that Elg's parents act of gaining naturalized citizenship for her in Sweden (she had been born in US to Swedish parents, who took her with them to Sweden when she was a baby) could not prevent her from reclaiming US citizenship provided she did that within reasonable time of reaching adulthood. In 1952, the Supreme Court in *Kawakita v US*, ruled that Mr. Kawakita was guilty of treason for mistreating US prisoners of war in Japan. He tried to argue that when he registered as a Japanese, he lost his US citizenship, but the Supreme Court ruled that he had dual nationality by birth. It stated that when he registered as a Japanese citizen, he was simply reaffirming this fact and not gaining Japanese citizenship or renouncing American citizenship. The Policy of state Department, however, seems to be influenced by the ruling in *Action and Deltamar v Rich* (1991), where the Second Circuit Appeals Court stated that there must be proof of specific intent to relinquish US citizenship before an act of foreign naturalization can result in expatriation of an American Citizen. The court held that the defendant, Mr. Rich was an American in spite of his naturalization as he had continued to use an American passport and publicized himself in a commercial register as an American National.

### Opportunities and challenges

#### Opportunities

Dual citizenship seems to be inspired by the notion that it is beneficial to both country and the individual. In the Kenyan context, a number of opportunities can be identified.

1. **Economic contribution:** Kenyans in the Diaspora (KIDS) are said to contribute substantially every year through remittances, which accounts for over 25% of Kenya's annual budget. Proponents for dual citizenship argue that this amount can only increase with the legalization and full implementation of dual citizenship. Estimates for 2019 stood at US\$2.7 Billion up from

US\$2.23 Billion in 2018 (Central Bank of Kenya, 2019). By virtue of the economic contribution, it has been argued that KIDS should be granted political rights. The Constitution seems to qualify this especially on the issue of vying for elective office where residency requirements are set. In other words, political rights are subject to residency requirements. There is no express prohibition on the enfranchisement of KIDS. Closely linked to the issue of remittances are opportunities for investment. The Kenya economy could get a boost if KIDS invested back home through earnings abroad, hence creating more employment opportunities.

2. **Taxation:** Countries usually use a combination of 3 factors when determining whether a citizen is subject to taxation: (a) Residency: a country may tax the income of anybody who resides in the country regardless of whether that income was earned in the country or broad. (b) Source: a country may tax any income generated in the country whether the earner is a citizen resident or non-resident. (c) Citizenship: a country may tax the worldwide tax of their citizens regardless of their source of income or their residency for the relevant tax period. Application of the “citizenship” criterion which does not factor in source of income or residency, would contribute greatly to the tax kitty. However, enforcement remains a significant challenge to tax authorities as there is no direct taxation at the point of receipt of remittances in Kenya.
3. **Better Living Standards:** The world is increasingly recognized as a global village. Kenyans acquiring citizenship of other countries are enabled to enjoy certain benefits right to work, earn and enjoy “better living standards.” For example, a British passport would enable one the right of abode in the UK and the right to live and work anywhere in the European Union.

### Challenges

Despite many opportunities that come with dual citizenship, both at the national and individual levels, there are a number of challenges:

1. **Full political acceptance:** In *Bishop Donald Kisaka Mwawasi v Attorney General and Two Others (2014)*, the court of appeal analyzed and made a determination on the issue whether a person with dual citizenship was eligible to run for elective post as a member of parliament. The court held that whereas a dual citizen is eligible to seek nomination for election as a member of parliament or member of county government and also eligible to hold any state office, the dual citizen is disqualified upon election or appointment to a state office from assuming office before voluntarily and officially renouncing his other citizenship unless he has no ability under the laws of the other country to renounce citizenship of the other country.

In a similar case of *Mwende Maluki Mwinzi v Cabinet Secretary Ministry of Foreign Affairs and 2 others (2019) eKLR*, Mwende Maluki Mwinzi was appointed by the President of the Republic of Kenya to be the next ambassador of Kenya to the Republic of Korea. In accordance with the law, she was subjected to vetting by the National Assembly Departmental Committee, which approved her nomination subject to her renouncing her citizenship to the United States of America before taking up the appointment. The background of Mwinzi’s citizenship is that she was born in the USA and became an American Citizen by Birth. Her father being a Kenyan Citizen, she later acquired a certificate of birth of Kenya occurring abroad pursuant to provisions of Article 16 of the Constitution. In their recommendation, the National Assembly relied on Article 78 of the constitution as read with article 260 of the Constitution, which restricted state officers from acquiring dual citizenship. The Leadership and Integrity Act of 2012 as enacted in accordance with Article 80 of the Constitution, provides under section 31 (2) that subject to Article 78(3) a person who holds dual citizenship shall, upon election or

appointment to a state office, not take office before officially renouncing their citizenship in accordance with KCIA.

2. **Oath of allegiance:** Immigrants to the US take a solemn oath to absolutely and entirely renounce all previous political allegiances. In the case of a Kenyan by birth acquiring US citizenship, the Kenyan renounces all allegiances connected to the country of birth. Therefore, the question is, how can the concept of dual citizenship be reconciled with oaths of allegiance? Does renunciation effectively strip an applicant of his original citizenship? Whereas the Constitution provides that one does not lose citizenship having acquired citizenship of another country, the adjustment or solution to the potential conflict between dual citizenship and the oath of allegiance is not provided in the constitution. Further, the ruling in *Sirat* similarly is not clear whether, taking an oath of allegiance of a foreign country amounts to renunciation of Kenyan citizenship.
3. **Identity and cohesiveness:** Dual citizenship poses a challenge to national identity and cohesiveness along the following arguments. A Kenyan-American is less likely to identify with Kenya than a Kenyan who does not hold any other citizenship. Secondly, dual citizens are likely to hold foreign influences and foreign preferences. “Instructed voting” may also arise where large immigrant communities vote to advance the interests of the country of origin.
4. **Travelling challenges:** What are the implications of holding two passports? Which passport would a Kenyan-American be traveling on, and why? Are there times it would be preferable to travel using one and not the other? Does it lead to a case of jurisdictional shopping? What are the advantages or disadvantages? E.g., circumvent security checks, clearance at airports.
5. **Brain and talent drain:** It would be interesting to note the impact of dual citizenship on brain drain, especially to Kenya. A significant number of Kenyan professionals have acquired citizenship of other countries to fill gaps, primarily in medical services and education in exchange for lucrative perks compared to packages offered in Kenya. Now that dual citizenship is provided for in Kenyan law, what is the effect on brain and talent drain?
6. **Dual allegiance:** It is possible to owe allegiance to more than one constitution. The question arises of what happens when the persons making government policies or laws are dual citizens. Won't their allegiance to the other constitution affect their decision making? For instance, isn't a Member of Parliament who is a dual citizen of say Kenya and Britain likely to vote for a trade deal with UK rather than for example Lesotho or Nepal? In the case of Kenya, Articles 78(1), (2), 99(2) (c) and 193(2) (c) of the 2010 constitution seek to minimize the influence of people likely to have dual allegiance in vital organs of the state except for the Judiciary and Commissions. Article 78 (1) and (2) prohibit dual citizens from appointment or election to state offices and employment in the defense forces. Articles 99 (2) (c) and 193 (2) (c) put restrictions on citizens who have newly regained their citizenship from contesting for elective offices for at least 10 years. Article 82 (1) (e) of the Constitution gives citizens (including dual citizens residing outside Kenya) the right to vote. Such Kenyans, unless barred in their other country to vote are likely to have ‘double voting rights.’ Questions will arise as to whether it is fair for these Kenyans to be allowed to vote for politicians advocating for certain policies to which the non-resident dual citizen will not be subject. Historically, one also recalls that after the Pearl Harbor bombing, Japanese-Americans in the US were interned in concentration camps. This was presumably because they were sympathetic to the Japanese (rather than American) cause during the Second World War. What will happen if Kenya goes to war with a country having a large population of emigrant Kenyans who are dual citizens? In all practicability, the issue of perceived (or real) foreign allegiance cannot be just wished away, especially when it comes to issues to do with national security as seen in this unfortunate incident. If Kenyan courts adapt a

similar position, there are likely to be challenges to classical doctrine of sovereignty. Difficulty may arise in reconciling requirements of pledging allegiance to two Constitutions which both require citizens to protect and defend its provisions. The preamble to the Constitution starts as ‘*We the people...*’ and we vote as ‘we the people’ that is why we accept election results even when they do not go our way. In the case of a dual citizen, would the Kenyan-American be two people (i.e., Kenyan and American)?

7. **Military service and national security:** The fact that Kenya does not have compulsory military service like Turkey or Greece minimizes the potential problems that would have arisen as a result of the legalization of dual citizenship. Article 78(2) of the Constitution prohibits dual citizens from working in the defense forces. Part 3b of the same article, however, qualifies the prohibition such that a citizen who becomes a citizen of a foreign state due to operation of the foreign state’s law (e.g., an American-born Kenyan who is a dual citizen by operation of the principle of *jus soli*; *Kawakita v US*) is still eligible to serve in the military. The issue of loyalty might arise in such a case. The US constitution also allows the Pentagon to summon any US citizen for military conscription, at least in theory. This might include such a Kenyan. Questions have also been raised about the effect of dual citizenship on national security and whether it makes espionage easier. In Germany serving in a foreign army leads to loss of citizenship unless one has a special permit. In Kenya, there is no such provision. This might have a negative effect on national security. Triadafilopoulos (2007, 37) argues that since 9/11, there has been a ‘*cynic embracement*’ (especially in the West) of citizenship and immigration, but this, he argues, does not necessarily lead to a rejection of dual citizenship, but instead, there are more stringent procedures for acquisition of citizenship enforced against immigrants. Dual citizens can easily be stripped of their citizenship if they are perceived as a security threat since they do not end up being stateless.
8. **Double taxation:** Dual citizens, especially those residing outside the country are subjected to double taxation, especially if their other country does not have a Double Taxation Agreement (DTA) with Kenya. As at 2008, only 8 countries had DTAs with Kenya which had been ratified and in force; namely, Zambia, Norway, Denmark, Sweden, United Kingdom, Germany, Canada and India.

#### **Emigrants versus immigrants**

The challenges and/or benefits of dual and multiple citizenship depends, to a certain extent, whether the issues dominating the nation are those of immigrants or emigrants. For instance, unlike India or Italy, the US has been more concerned with policies that govern immigrants from other parts of the world, especially Mexico with little concern about Americans who have emigrated elsewhere. Mexico, on the other hand, may be more concerned about engaging the Mexicans who relocated to other countries such as the US. For such “sending states,” dual citizenship is in their national interest and is not merely tolerated, but embraced and encouraged (Spiro, 2010). The “emigrant approach” to dual citizenship can be seen as focusing on creating stronger ties to emigrated nationals for social, political, and/or economic benefits (Sejersen, 2008). On the other hand, the “immigrant approach” to dual citizenship is as an attempt to integrate immigrants to the nation’s social, political, and economic fabric of the society (Sejersen, 2008; Joppke, 2003). A number of countries have recently changed their legislation with emigrant or immigrant approach appearing to be the main motivation. The resulting successes from these legislation changes vary. Prominent among these countries include India, Italy, and Sweden.

## India

Both the Indian Constitution and the Indian Citizenship Act, 1955, as amended in 1986, 1992, 2003, and 2005 expressly prohibit dual citizenship. The Constitutional Bench of the Indian Supreme Court in *Izhar Ahmad Khan v Union of India (1962)* has also maintained that dual citizenship is not permissible under Indian laws. ‘If it is shown that a person has acquired foreign citizenship either by naturalization or registration, there can be no doubt that he ceases to be a Citizen of India by virtue of that naturalization or registration.’

Xavier (2011) found that due to domestic apprehension to dual nationality, the Indian government shied away from fully legalizing dual citizenship and instead created the Overseas Citizenship of India (OCI). Whereas the Constitution outlaws dual citizenship, the law provides for OCI, which permits enjoyment of certain economic rights but restricts such citizens from voting, vying for political office or taking up employment in the public sector. It also excludes certain nationals from the acquisition of OCI, i.e. Pakistani and Bangladeshi citizens.

OCI was made available to all Persons of Indian Origin (PIOs) of a certain category as long as their other country allows dual citizenship in one form or another ‘to extract the emigrants’ material wealth in return for cultural capital’.

Although OCIs are denied political rights, the right to an Indian passport and normally cannot obtain employment in the government, they have certain benefits like:

- a) Multiple entry, multi-purpose lifelong visa to visit India;
- b) Exemption from reporting to police authorities for any length of stay in India;
- c) Parity with non-resident Indians in financial, economic and educational opportunities except in the acquisition of agricultural or plantation properties.

These rights and benefits fall far short of the rights of citizenship. As Xavier (2011) pointed out, PIOs quickly realized that OCI policy effectively integrated them economically and culturally, but denied them access to formal citizenship rights, a situation which critics among the PIO, such as Lord Bikhu Parekh, compared OCI policy with viewing the PIO as cows that can only be milked. Though not equal to citizenship, the OCI policy fits that of the emigrant approach. Despite these concerns for lack of sufficient engagement, which could lead to alienation of the Indian diaspora, recent studies argue that the Indian diaspora has contributed considerably to the progress of their host countries as well as back home in India (Mishra, 2016).

## Italy

Italy is one of the classic examples of a country which, in 1992, used the “emigrant approach” to change its dual citizenship policy in order to create stronger ties with its citizens abroad (Sejersen, 2008). Though it is both a sender and receiver country, Italian legislation has focused more on encouraging dual citizenship for Italians living abroad while immigrants in Italy face harder naturalization requirements (Sejersen, 2008). Unlike India, Italy has gone to greater lengths to create even stronger ties with its Diaspora abroad through incentives such as dedicating special seats in the House of Deputies and Senate to the Diaspora constituency and creating mechanisms for effective Diaspora political participation including overseas voting (Sejersen, 2008).

Without reference to economic advantages, Italy has effectively modeled the “emigrant approach” to dual citizenship. The resulting outcome is enormous, with approximately over 50 million Italians residing abroad. For instance, it was estimated that, almost 80 percent of Italians residing in Australia voted in the 2006 Italian elections.

## Sweden

Sweden represents a fitting example of “migrant receiver state” in Europe, Muenz (2006) estimated

that approximately 12 percent of the Swedish population were born outside Sweden. In 2001, Sweden was not only the first Nordic country to provide for dual citizenship, but also encourage immigrants to naturalize (Westin, 2006). The Swedish example illustrates a perfect model of an “immigrant approach” to dual citizenship with a primary focus on integrating immigrants into the Swedish social, political, and economic fabric (Sejersen, 2008).

### Case for a hybrid

As the reality of globalization takes root, there is bound to be countries that are both migrant “receiver” as well as “sender” states. Such a condition will require a hybrid model that incorporates policies geared towards the “emigrant” as well as the “immigrant” approach to dual citizenship. Such a hybrid model that engages its citizens in the Diaspora as well as integrating immigrants into the social, political, and economic fabric of the society can be referred to as “a dual approach to dual citizenship.” Such a model is likely to maximize the cultural and economic benefits of dual citizenship.

While Kenya has primarily been a migrant “sender” state, more recent trends show a rising wave of immigrants from other countries entering and seeking permanent residence in Kenya. Most of these immigrants originate from neighboring countries such as Somalia and Southern Sudan as well as from India and, more recently, China. The case of Somalia is quite evident with some neighborhoods, particularly in Nairobi being referred to as “Little Mogadishu” (Cagayare, 2013). There are more recent waves of immigrants from other non-African regions such as USA, Europe, and Asia. Highly publicized cases of several USA Ambassadors to Kenya opting to permanently settle in Kenya is a good illustration of this trend. This is an opportunity that Kenya can capitalize on, as a form of what Spiro (2016) refers to as “investor citizenship” with positive economic outcomes. Several countries have formalized such a form of citizenship. For instance, the Canadian Immigrant Investor Program is internally politically popular and very attractive to potential investors (THEPROVINCE.COM, April 15, 2012). With such considerations, a dual approach to dual citizenship, to embrace policies for the “immigrant” as well as the “emigrant” approach to dual citizenship, may be preferable for the future stability and prosperity of the country.

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