
**DUAL CITIZENSHIP AS A SOLUTION TO CITIZENSHIP CHALLENGES FACED BY
WOMEN IN ZAMBIA. A CASE STUDY OF ZAMBIAN WOMEN MARRIED TO NON-
NATIONALS IN LUSAKA AND COPPERBELT PROVINCES OF ZAMBIA.**

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Abstract

As a general rule, Zambia does not recognise dual citizenship. According to Zambia's Constitution, however, its citizens cannot forfeit their citizenship if they acquire a foreign citizenship by marriage. By implication, therefore, the Zambian Constitution permits its citizens to acquire dual citizenship by marriage. As a direct result, however, of a misinterpretation and, hence, misapplication of apparently conflicting provisions of Zambia's Constitution and Citizenship Act, Zambian immigration authorities routinely as a matter of policy (but quite apparently illegally) only confiscate the Zambian passports of Zambian women who marry non-nationals and generally prejudice their rights of citizenship and those of their children. Literally thousands of Zambian women and children both in the country and in the Diaspora suffer as a result of what the writer of this dissertation, an immigration officer, reveals to be a serious problem of gender discrimination on a massive scale for which the government has no legitimate excuse, even on the grounds of national security. He uncovers this largely unchallenged and openly tolerated institutional abuse in this unique and long-overdue piece of research which is driven by gender- and human right-sensitive methodologies, in particular, the Women's Law and Human Rights based Approaches. Together they highlight the interconnected discriminatory laws and practices which impact upon the lived realities of the sample of women and children selected for his case study. He scientifically supports his findings with a vast array of evidence, including relevant laws and literature and information from both the respondents and key informants within the legislature, the courts and the executive who are active in the drafting, enacting, interpreting and enforcing of the law. Finally, the writer suggests eliminating the current confusion by simply and clearly amending the Constitution and other pieces of legislation in such a way as to guarantee the rights of the affected women and children in accordance with Zambia's obligations under binding/persuasive Regional and International Human Right instruments. He argues, further, that while Zambia is in the process of re-drafting its Constitution it should take the opportunity to change its stance and recognise dual citizenship. While this would encourage foreign investment into the country, it would, more importantly, contribute to rewarding the growing number of Zambians who are joining the Diaspora but, sadly, turning their backs on their country.

Declaration

I GREENWELL LYEMPE, do hereby declare that this is my original work and has not been submitted and is not currently being submitted for a degree in any other university.

Signed.....

Date.....

This Dissertation was submitted for examination with my approval as university Supervisor

Signed.....

Dedication

To all who made it possible for me go through this programme and special tribute.

To my late Father James Lyempe ‘Old man as you peacefully rest in your grave; You did a lot to my life’. I shall forever remember your fatherly advice that I should be hard working, honest and disciplined if I am to succeed in life.

I dedicate this achievement to you.

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TABLE OF CONTENTS

Abstract.....	ii
Declaration.....	iii
Dedication.....	iv
Acknowledgements.....	v
List of International Human Rights Instruments cited.....	vi
List of Statutes cited	vi
List of Cases cited.....	vi
CHAPTER ONE.....	1
1.0 INTRODUCTION.....	1
1.1 Research Background.....	1
1.1.1 Retention of separate Nationality by Zambian Women married to foreign Nationals and the adoption of nationality by children born thereof.....	2
1.1.2 International Treaties on the Issue of Nationality.....	3
1.2 Statement of the Problem.....	4
1.3 Significance of the Study.....	5
1.4 Objectives of the Research.....	5
1.5 Research Assumptions.....	6
1.6 Research Questions.....	7
1.7 Demarcation of the Study.....	8
1.8 Limitation of the Study	8
CHAPTER TWO.....	9
2.0 METHODOLOGY AND METHODS OF DATA COLLECTION.....	9
2.1 Introduction.....	9
2.2 RESEARCH METHODOLOGIES.....	9
2.2.1 Actors and Structures.....	9
2.2.2 The Women's Law Approach.....	10
2.2.3 The Human Rights Approach.....	12
2.2.4 The Legal Pluralist Approach.....	13
2.6 RESEARCH METHODS.....	14
2.6.1 Individual Interviews.....	14
2.6.2 Key Informants	15

2.6.3	Questionnaires	15
2.6.4	Library Research-----	15
2.6.5	Group Discussion.....	16
2.6.6	Internet and Facebook Social Interaction System.....	16
CHAPTER THREE.....		17
3.0	LITERATURE REVIEW.....	17
3.1	Introduction.....	17
3.2	Definition of Dual Nationality.....	18
3.3	Acquisition of Dual Nationality	18
3.4	Dual Nationality and the Question of Divided Allegiance.....	19
3.5	The Principle of Dependent Nationality.....	20
3.6	The Opponents of Dual Nationality raise Security Concerns associated with Dual Nationality	25
3.7	Nationality to be adopted by Children born of Women married to Foreign Nationals..	26
3.8	Arguments for the Adoption of Dual Citizenship.....	28
3.9	Cases Relating to Dual Nationality dealt with in other Jurisdictions.....	31
CHAPTER FOUR.....		37
4.0	FINDINGS AND DATA ANALYSIS OF THE RESEARCH.....	37
4.1	MAIN FINDINGS AND DATA ANALYSIS.....	37
4.1.1	<i>There is a law in Zambia that allows dual nationality by marriage.....</i>	<i>37</i>
4.1.2	<i>The Law in Zambia provides that a Citizen cannot lose his/her Zambian Citizenship if he /she acquires another Nationality by Marriage but in practice People who acquire another citizenship by marriage lose their citizenship.....</i>	<i>38</i>
4.1.3	<i>Children born of Zambian Women married to Foreign Nationals encounter Problems if they adopt the Nationality of one of their Parents as they will be deprived of the full Citizenship Rights of their other Parent.....</i>	<i>39</i>
4.1.4	<i>Some Women married to Foreign Nationals prefer Dual Citizenship in order to enjoy the full Citizenship Rights and Benefits of both Countries and also so that their children are not disadvantaged on the grounds of Nationality.....</i>	<i>40</i>
4.1.5	<i>Children born of Zambian Women married to Foreign Nationals encounter Problems if they adopt the Nationality of one of their Parents as they will be deprived of the full Citizenship Rights of their other Parent.....</i>	<i>41</i>

4.2 THE IMPACT OF MY FINDINGS ON MY ASSUMPTIONS	42
4.3 HUMAN RIGHTS, LEGAL AND CONSTITUTIONAL ELEMENTS RELATED TO MY RESEARCH FINDINGS.....	42
4.4 CUSTOMARY LAW AND CUSTOMS AND PRACTICES.....	44
4.5 ZAMBIANS IN THE DIASPORA VIEWS ON THE ISSUE OF DUAL NATIONALITY	44
CHAPTER FIVE.....	51
5.0 CONCLUSION AND RECOMMENDATIONS.....	51
5.1 Conclusion.....	51
5.2 Projections on a deeper Analysis of my Findings.....	52
5.3 Recommendations.....	53
5.3.1 <i>Action Plan Sheet for the abovementioned Recommendations.....</i>	<i>54</i>
BIBLIOGRAPHY.....	57
APPENDICES.....	59
Appendix A: Guide Questionnaire for Children.....	59
Appendix B: Guide Questionnaire for Women.....	61
Appendix C: Guide Questionnaire for Government Officers.....	63
Appendix D: Extracts from the Zambian Constitution.....	65
Appendix E: Extracts from the Immigration and Deportation Act.....	69

CHAPTER ONE

1.0 INTRODUCTION

Nationality signifies the legal relationship between an individual and a State. It not only provides individuals with a sense of belonging and security, but also creates a legal link between the individual and his or her State. Nationals are entitled to the protection of their State—which is of increasing significance in the globalizing world with its large-scale movements of people. Although frequently used interchangeably with nationality, the term denotes a status bestowed on full members of a community.¹ In many cases, nationality is the legal basis for the exercise of citizenship.

In many countries, including Zambia, the full exercise of civil, political, economic, social and cultural rights is dependent upon nationality. Nationality frequently determines whether individuals are entitled to participate fully in the political process, including voting, and to exercise the right to work, the right to education and the right to health. The right to own land may also be contingent upon nationality. It may also determine whether individuals may hold public office, or have access to the judicial system or public services, such as legal aid. As the Committee on the Elimination of Discrimination against Women noted in its General Recommendation 21 on Equality in Marriage and Family Relations, nationality is critical to full participation in society².

1.1 Research Background

Sovereign States closely guard their right under international law to determine the construction of their populations through their nationality laws, as well as through laws and policies on

¹ T.H Marshall, *Class, Citizenship and social Development* (New York, Doubleday 1965).

² Official Records of General Assembly, Forty-ninth Session (A/49/38), Report of the Committee on the Elimination of Discrimination against Women on Its thirteenth session, 1994, p2.

immigration which are closely connected to nationality laws. Exclusive nationality regimes, coupled with restrictive immigration laws and policies, which have been adopted by many States, make issues relating to nationality especially pertinent for the twenty-first century.³

Because of its consequences in national and international law, nationality is critical for the full enjoyment of personal security. However, the nationality laws of Zambia prejudice women married to foreign nationals and their children. This research surveys three legal approaches which have posed particular problems in Zambia's nationality law. These include married women's dependent nationality, the retention of a separate nationality by women married to non-nationals and the nationality of children born of a marriage between a Zambian woman and a non-national.

1.1.1 Retention of separate Nationality by Zambian Women married to foreign Nationals and the adoption of nationality by children born thereof

Historically, Zambia adopted the patriarchal position that a woman's legal status is acquired through her relationship to a man: first her father and then her husband. Although the current laws provides that nationality is conferred through birth or descent, or a combination of these, a widely accepted principle of law in most States at the beginning of the twentieth century⁴ was that of dependent nationality, or the unity of nationality of spouses. The result of the application of this principle was that a woman who married a foreigner automatically acquired the nationality of her husband upon marriage. Usually this is accompanied by the loss of her own nationality.

³ Preliminary report of the Special Rapporteur on the rights of non-citizen (E/CN.4/Sub.2/2001/20, para.29-84).

⁴ United Nations, Convention on the Nationality of Married Women: Historical Background and Commentary (United Nations doc. E/CN.6/389) Sales No 62.IV.3.P2.

Although the law in Zambia allows a woman to maintain her independent nationality upon marriage, many States retain laws that discriminate between women and men with respect to the nationality of their children, particularly in the area of acquisition of nationality by descent.

1.1.2 International Treaties on the Issue of Nationality

Both international judicial jurisprudence and international agreements grant states the right to set their own regulatory framework for granting nationality.⁵ They also provide states the right to confer nationality upon their own citizens according to their own independent will as sovereign states with particular national interests.

In general, women married to non-nationals feel responsible for their situations. Most women claim that they never resorted to their families for help, as they tended to oppose the marriage in the first place.

The category of people who are affected by the problem of dual nationality as per explanation above are Zambian women married to foreign men. Most of these women have migrated with their husbands and acquired the nationality of their husbands. Also the children born from such couples are entitled to both parents citizenship but they cannot have dual citizenship as the practice currently does not allow it.

Considering the extent to which current nationality laws hinder the socio-economic status of women married to non-nationals, this research set out to identify challenges and opportunities of dual nationality for Zambia. The research was based on the case study of women married to foreign men and tried to assess the residential status of children born of such couples. The research was conducted in Lusaka and Copperbelt provinces of Zambia.

⁵ Women 2000 and Beyond, published to promote the goals of Beijing declaration and platform for action.

1.2 Statement of the Problem

The provisions of both the Citizenship Act and the Constitution of Zambia allow for dual nationality by marriage⁶. However in practice any person who voluntarily acquires another nationality is automatically considered to have lost his or her Zambian citizenship and her Zambian passport and national registration card are withdrawn.

It is clear that the above practice denies most Zambian women married to foreign nationals their legal right to dual nationality.

It must be noted that Article 9 of CEDAW explicitly holds Zambia (to which it is a signatory) responsible for granting women equal rights with men to acquire, change or retain their nationality as well as the right of women to pass their nationality on to their children and husbands. However the reality is that most Zambian women married to foreigners and their children have been prejudiced as they are forced either to keep their Zambian citizenship or to lose it as a result of their marriage.

This research explored whether Zambian women married to foreigners acquire their husband's citizenship. If they do so do, whether they lose their Zambian citizenship. Whether a clear dual nationality clause in the Zambian Constitution would provide a solution to these problems and what measures should be put in place to ensure that challenges associated with dual nationality are taken care of.

⁶ Article 9(1)(a) of the Constitution of Zambia and section of 7 the Citizenship Act Chapter 126.

1.3 Significance of the Study

The purpose of the study was to assess the current law and practice on women who acquire another citizenship by marriage and highlight the disparities between the provisions of the law and the current practice when it comes to dual citizenship by marriage.

Upon doing so I had look at the pros and cons of introduction of dual nationality in the Zambian Constitution and how it would benefit women in Zambia.

The rationale for conducting this research on dual nationality was that since the Zambian Constitution is being reviewed and the issue of dual citizenship was very contentious I feel that before the proposal comes into law it is vital that we investigate its challenges and opportunities for Zambia. How will Zambian women married to non-nationals and their children living in Zambia and in the Diaspora benefit from this.

My findings may be used to put measures in place so that as we may amend our citizenship laws in such a way that they address the possible challenges posed by dual citizenship without threatening the benefits citizens derive from it. I also intend to expose the mismatch between the current law and practice so that women who acquire a different citizenship by marriage are not unfairly treated by overzealous officers who misinterpret the law.

1.4 Objectives of the Research

This study's primary objective is to act as a research informed advocacy tool for law and policy-makers. It aims to do so by acting as an additional qualitative data source for the National Constitution Conference (N.C.C), policymakers and any other body concerned with effecting change in the current nationality laws. More specifically it seeks to document and summarize the results of desk and field research. I shall analyse the current law and practice on dual nationality

by marriage and assess the challenges and opportunities of introducing dual nationality into Zambian law. In order to achieve this objective I had to focus on the following;

- 1.4.1 An analysis of the existing law and practice on citizenship in Zambia to assess whether there is any existing law or policy that provides that Zambian women married to non-nationals may acquire their husband's citizenship without losing their own Zambian citizenship.
- 1.4.2 Exploring the challenges faced by women with Zambian passports living in foreign countries and married to foreign nationals.
- 1.4.3 Finding out if children born of Zambian women married to non-nationals have a choice on the nationality they adopt.
- 1.4.4 Assessing the challenges and opportunities likely to be available to women if dual nationality is to be introduced in Zambia.
- 1.4.5 To recommend reforms to the citizenship law of Zambia that is likely to ensure that Zambian women married to non nationals fully enjoy their right of citizenship.

1.5 Research Assumptions

In line with the above mentioned objectives I assumed that:

- 1.5.1 There is a law that allows dual nationality by marriage in Zambia.
- 1.5.2 There is a law in Zambia that provides for women married to non nationals to acquire their husband's citizenship without losing their own Zambian citizenship.

- 1.5.3 Some women married to foreign nationals prefer dual citizenship so that they may enjoy full citizen rights and benefits of both countries and also that their children are not disadvantaged on the basis of nationality.
- 1.5.4 Most women in Zambia have not been consulted and have limited knowledge about the benefits of dual citizenship.
- 1.5.5 Children born of Zambian women married to foreign nationals encounter problems if they adopt the nationality of one of the parents as they will be deprived of the full citizenship rights of the other parent.

1.6 Research Questions

Based on the above assumptions I developed the following research questions to guide the investigation of the areas of interest for the research:

- 1.6.1 Is there any law that allows dual nationality by marriage in Zambia?
- 1.6.2 Is there law in Zambia that provides for women married to non nationals to acquire the husband's citizenship without losing their own Zambian citizenship?
- 1.6.3 Do women married to foreign nationals prefer dual citizenship in order to enjoy full citizen rights and benefits from both countries and also that their children are not disadvantaged on the basis of nationality?
- 1.6.4 Have women in Zambia have been consulted on the benefits of dual citizenship?
- 1.6.5 Do Children born from Zambian women married to foreign nationals encounter problems if they adopt the nationality of one of the parents as they may be deprived of full citizenship rights of the parent?

1.7 Demarcation of the Study

The study was conducted in Lusaka and Copperbelt provinces of Zambia. Respondents were from urban areas of Lusaka, government officials and the city of Kitwe. I decided to do my research in Lusaka and Copperbelt provinces as most foreign nationals are settled in these two provinces. This is mainly due to the fact that Lusaka is capital city while Copperbelt has many mining activities. I also got the views of Zambians in the Diaspora on this issue. I got in touch with them by email and Face book social interaction system. I had over about Ten (10) Zambians living the Diaspora who were willing to be interviewed on this matter.

1.8 Limitation of the Study

Carrying out a research like this one as an Immigration Officer among women married to non nationals posed some serious challenges as I was perceived by most women as either a person coming to resolve their citizenship challenges or a person trying to get information with the view to identify some of their husbands who were living in Zambia illegally. To this effect I had to ensure that my respondents were convinced that the research was for academic purpose and that I was mainly assessing if dual citizenship was a solution to their citizenship challenges.

The use of face book social interaction also posed some limitation as it was difficult to positively identify whether my respondents where males or female or if they where Zambians or non Zambians.

Further I was not awarded study leave by my employer as such I had to find the time for my work and carry out the research. Lack of enough time to do my research made it impossible for me to interview many respondents.

I had also planned to visit Ghana and South Africa to do a comparative study on how these countries have handled the issue of dual nationality since it was allowed in their law. However I could not do so as my research allowance was not sufficient.

CHAPTER TWO

2.0 METHODOLOGY AND METHODS OF DATA COLLECTION

2.1 Introduction

The present study was based on a number of assumptions as I have stated above. Also my observations and experiences as an Immigration officer in Zambia on the problems facing women married to non- nationals and discussions with colleagues from Southern and Eastern Africa Region attending masters in women's law course interestingly revealed that this situation is not unique to Zambia.

This chapter describes methodology and methods I followed in designing, planning and conducting the research to ascertain the research objectives. In this section I had to link the research objectives and questions with the methodological approaches I used namely, Women's Law, Grounded Theory, Actors and Structures, the Human Rights Approach and legal pluralistic approach as the point of departure.

2.2 RESEARCH METHODOLOGIES

2.2.1 Actors and Structures

Taking women and men values as the point of departure I sought to inquire into the role actors and structures play in the enforcement of the law. This methodology explored how the various actors like the lawmakers, the courts, Immigration and Citizenship officers influence the implementation of the law on citizenship in Zambia.

The lawmakers are crucial in this research as they are the ones responsible for the current legal provision which allows dual nationality by marriage but the way its drafted makes it difficult for a laywoman to understand the law. Further the current debate is that dual nationality should be

introduced so that not only will the women benefit but also their children and their foreign husband. To this effect I interviewed two members of parliament, the Chief Parliamentary Draft person and the Spokesperson of the Citizenship Committee of the National Constitution Conference to get their views on the current citizenship law and the proposed law.

The courts are also major actors as they are the ones responsible for interpretation of the law and ensure that it is clear to the beneficiaries. They also ensure that aggrieved person can challenge the action of the executive. In using this methodology I was able assess how courts handle cases where a woman deprived of dual nationality by marriage and their interpretation of the provision the current citizenship. To this effect I interviewed the Judge In charge and Chief Marshal of the High Court in Lusaka.

Immigration and Citizenship officers are the enforcers of the law on citizenship. They are equally vital actors as they are responsible for publicity of this law, ensure that women married to foreign nationals are aware of the provision which allows for dual nationality by marriage. Also that they are also the ones who alleged to be confiscating passports from women with two passport, that is, the Zambian and another nationals passport acquired by marriage. I had a discussion with Chief Passport and Citizenship Officer and the Immigration Public Relations Officer to get their views on the current citizenship law on dual citizenship by marriage and the proposed provision in the draft constitution to allow dual citizenship generally so that children born from Zambian women married to foreign nationals are not disadvantaged.

2.2.2 The Women's Law Approach

The women's law approach is based on the lived realities of human life using women as a starting point. This methodology means discussing moral and cultural questions, dealing with empirical material and analyzing current laws (Dahl 1988). This is done from the perspective of one looking upwards from below. In the women's law approach, the existence of biological, social and cultural differences between men and women are not regarded as the main problem in

women's lives, rather law and society's systematic under valuation of female activities, values and characteristics are the main source of women's subordination (Dahl 1987).

The application of this approach meant going to the grassroots levels and meeting women from all walks of life. In other words, pursuing a grounded approach to achieve a holistic picture on the situation of women affected by citizenship issue and their children. This methodology takes women as the starting point. I interviewed women married to foreign nationals and their children in Copperbelt and Lusaka provinces. I listened to them as they relate their experiences when it comes to the choice of the nationality either their husband's and father's or to remain Zambian.

I choose this methodology mainly because I took advantage of its interactive process in which data, theory and lived realities about the perception and norms are constantly engaged with each other (Bentzon, et al, 1998). Women's law as a methodological approach was deemed necessary to collect relevant data that respond to the research objectives which was aimed at interrogating whether women are aware of the existence of the law on dual citizenship if they are aware do they know the importance and benefit of having dual citizenship especially when they are married to a non Zambian. In applying this methodology most women narrated the real ordeal they undergo if they want to come and settle in Zambia with their foreign spouses as the current Immigration law⁷ does not allow confer permanent residence to their spouses when the opposite is possible. That is when a Zambia man marries a foreign woman she is grant permanent residence at the port of entry. The reality of life is that Zambian women are discriminated against and discouraged from getting married to foreign men as the challenges associated with such relationships are quite huge.

⁷ Section 3(1)(e) of the Immigration and Deportation Act Chapter 123 as read with the First Schedule of the Act.

2.2.3 The Human Rights Approach

The unequal status of women should be addressed as a human rights issue (Tomasevski 1993). Human rights are provided in instruments such as CEDAW and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (hereinafter the Women's Protocol). Zambia has ratified CEDAW and is a signatory to the Women's Protocol.

In the present study the issue of citizenship was analyzed from a human rights perspective. Substantive reference was made to CEDAW to find out why most women who get married to non Zambia men tend to acquire their husband's citizenship and end up losing their own Zambian citizenship. The questions which I keep asking myself include: is the failure of most women to decide what citizenship to adopt when they get married to non Zambian nationals due to the fact that they are denied their rights? Why is it that the African Charter on Human and People's Rights on the Rights of Women in Africa has no provision for women to have dual nationality and decide on the citizenship of their children? Does this contribute to the lack of seriousness on the part of the Zambian government to make women aware of the importance and the benefit of having dual citizenship when they are married to non nationals? All these are questions which required solutions from the human rights approach.

The human rights approach gave me a wider understanding of the contextual framework which enabled me to review the practice and the laws relating to immigration and citizenship which tend to discriminate women vis-a-vis the various human rights instruments to identify which ones are violated and the possible available remedies to address the violations.

The other aspects I examined included the fact that denial of dual citizenship affects the rights of Zambian women married to foreign national and their children. Using the rights based approach enabled me to realize that human rights have implications for a range of actors directly and indirectly concerned with citizenship issues. In so doing I had to interrogate whether the government, as the primary duty bearers, must take concrete steps to respect protect and fulfil the right to citizenship.

To assess the extent to which the right to decide which nationality to choose was being infringed upon among the Zambian women married to foreign nationals, I was guided by the Article 15 of UDHR which states that *“Everyone has the right to a nationality; No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.”*

As a result of the above, I did an analysis of the existing legislation and policy on dual nationality and its impact on women married to foreign nationals together with human rights instruments in effort to make a case for women in Zambia.

2.2.4 The Legal Pluralist Approach

Zambia has plural systems of law. General Law comprises common or received law of the European colonizers operating side by side and interactively with customary laws of different ethnic groups. Further the constitution of Zambia provides for discrimination on matters related to African customary law⁸ which implies that if the customary practice makes it difficult for women to maintain her nationality it can be accepted and tolerated.

Most marriages between Zambian women and foreign men are normally either religious or customary. In the case of the area of my research I found that most women married to west Africans like Malians , Senegalese and Nigerians had celebrated their marriages according to Islamic religious law.

To this effect legal pluralism method was necessary as I find out what nationality should women married to non nationals have after marriage especially if they decide to settle in the husband’s country mainly due to difficulties of acquiring permanent residence of their husbands in Zambia.

⁸ Article 23(3)(b) of the Constitution of Zambian

Also what nationality will the children born such couple have? Further that the Zambian customary law requires that a married woman should move to the husband home land. This can be confirmed by the way Immigration law operates in that it is possible for the foreign woman who gets married to a Zambian man to acquire Zambian citizenship as opposed to the other way⁹. The reasoning behind the drafters of the law was that every Zambian woman who gets married to non Zambian man was to join the husband in his country and not vice versa.

To this effect I recognized that employing a methodology that simply looks into the law of the state would be naïve as the real picture on women's position goes beyond formal systems of law. To bring out a holistic picture of the lived realities of women and gender relationships in relation to deciding on children citizenship, the study will not solely be restricted to analyzing the set of rules enforceable through formal court systems but included customs and practices.

2.6 RESEARCH METHODS

During this study it was imperative to use different methods to collect and assist in giving the research a diverse experience as relying on one method might be biased or not be able to allow certain categories of people to relate their side of the story.

In this study I used the following methods to collect information and the justification is as stated:

2.6.1 Individual Interviews

This worked well for most women as it was easy for them to relate their life experience about the citizenship challenges they face when they are married to foreign men. Some were ready to sit

⁹ Section 3(1)(e) as read with Class D of the First Schedule of the Immigration and deportation Act Chapter 123.

with their husbands and share their experience. It turned out that most respondents felt that as senior officer from the department of immigration I was there to resolve some residence challenges their husbands face if they want to settle in Zambia.

2.6.2 Key Informants

Key people in institutions like the Citizenship Office, the Immigration Department and the National Constitution Conference (NCC) were interviewed in order to seek diversity in policy direction, every day practices as well as implementation of the law on citizenship in Zambia and the prospect of incorporating a provision/s on dual citizenship into the draft constitution. The key informants included the Chief Passport and Citizenship officer, the Immigration Public Relations officer and the Spokesperson of the committee on citizenship of National Constitution Conference (NCC).

2.6.3 Questionnaires

This was used in collecting data from respondents who could not find time for an interview due to busy schedules of their work. I must state that as much as I found this method to be efficient method as it reaches a good number of people within a short time, it has its own disadvantages. A questionnaire has no point of clarification in case one does not understand the questions well. It occurred to me that most respondents had to call me to seek clarification by phone. (See Appendices A, B and C)

2.6.4 Library Research

This enabled me to read other related literature on the subject of dual citizenship as the solution to citizenship challenges faced by women globally, regionally and locally. I also read articles in our local news papers related to the issue of dual nationality.

2.6.5 Group Discussion

Group discussions were interesting and rich in that members would be sharing ideas experiences and knowledge. Some women especially in the Copperbelt province were freer when interviewed collectively because they would talk and refer to others. The same scenario was with children born from Zambian women married to foreign nationals. It was easier for them to express their views on the challenges they face on citizenship to adopt.

2.6.6 Internet and Facebook Social Interaction System

The secondary sources included internet research on the pros and cons of dual nationality. To this effect I contacted Zambians in the Diaspora by internet and face book to get their views on the issue of dual nationality. It was important to involve people in the Diaspora as most of them are affected by lack or unclear provision in the current citizenship law on the issue of dual nationality by marriage.

CHAPTER THREE

3.0 LITERATURE REVIEW

3.1 Introduction

I must profess that my venture in this chapter was by no means an easy task. My investigation have so far yielded very little Zambian literature on the topic of dual nationality focusing specifically on women and how it affect women married to non Zambian husbands. It appears that most scholars and writer, male and female alike, have to a great extent shied away from studying the nationality issue as it affect women and their children.

Many writers encountered have written on dual nationality issues from the general point as opposed to how it affect women and children. It appears most scholars interest is mainly to discuss the issue of dual nationality from the general point of view. The absence of substantial previous work somehow greatly affect the development of a theoretical frame work for my research. A clear result is that the bulk of the discussion herein will be substantially based on dual nationality from the general point, my own observation and evaluation since this study is being carried out in more or less a virgin area in Zambia.

The first part of my literature review discusses the issue of dual nationality as it has been dealt worldwide from the general point, the second part presents the locals Zambians view on the issue and the last party is an illustration of and interpretation by the courts on cases related to challenges brought before them on the dual nationality.

3.2 Definition of Dual Nationality

Dual nationality is the simultaneous possession of two citizenships¹⁰. When a person is naturalized in a foreign state (or otherwise possesses another nationality) and is thereafter found not to have lost Zambian citizenship, the individual consequently may possess dual nationality. It is prudent, however, to check with authorities of the other country to see if dual nationality is permissible under local law. From the literature available and from what I was able to find Zambia does have dual nationality by marriage but in practice they are no women who have benefited from this law. The feminist Ronald Barri (1987) of the United States has stated that dual nationality is "a status long recognized in the law" and that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other.

3.3 Acquisition of Dual Nationality

There is no uniform rule of international law relating to the acquisition of nationality. Each country has its own laws on the subject, and its nationality is conferred upon individuals on the basis of its own independent domestic policy. Individuals may have dual nationality not by choice but by automatic operation of these different and sometimes conflicting laws. In the case of Zambia it should be automatically a women gets married to a foreign nationals and she decide to acquire them husbands nationality. However this does not apply to children born from such a couple.

On the other hand as Chesney Lind (1987)¹¹ states that the laws of the United States, no less than those of other countries, contribute to the situation because they provide for acquisition of U.S.

¹⁰ Oxford Advanced Learners Dictionary.

¹¹ Chesney Lind M. (1987) Citizenship in the U S A.

citizenship by birth in the United States and also by birth abroad to an American, regardless of the other nationalities which a person might acquire at birth. For example, a child born abroad to U.S. citizens may acquire at birth not only American citizenship but also the nationality of the country in which it was born. Similarly, a child born in the United States to foreigners may acquire at birth both U.S. citizenship and a foreign nationality. The laws of some countries provide for automatic acquisition of citizenship after birth for example, by marriage. In addition, some countries do not recognize naturalization in a foreign state as grounds for loss of citizenship. A person from one of those countries who is naturalized in the United States keeps the nationality of the country of origin despite the fact that one of the requirements for U.S. naturalization is a renunciation of other nationalities.

Writers like Evans J.M¹² have stated that United States law does not contain any provisions requiring U.S. citizens who are born with dual nationality to choose one nationality or the other when they become adults. While recognizing the existence of dual nationality and permitting Americans to have other nationalities, the U.S. Government does not endorse dual nationality as a matter of policy because of the problems that it may cause. Claims of other countries upon dual-national U.S. citizens often place them in situations where their obligations to one country are in conflict with the laws of the other. In addition, their dual nationality may hamper efforts to provide diplomatic and consular protections to them when they are abroad.

3.4 Dual Nationality and the Question of Divided Allegiance

It is generally considered that while dual nationals are in the country of which they are citizens that country has a predominant claim on their allegiance. As with Americans who possess only U.S. citizenship, dual national U.S. citizens owe allegiance to the United States and are obliged to obey its laws and regulations. Such persons usually have certain obligations to the other

¹² Evans, J.M., *Citizenship and Nationality* (1976), Runnymede Trust - Women and their Nationality in USA.

country as well. This issue double allegiance was very prominent during my research especially among respondents from immigration and citizenship departments. Most respondents raised security concerns associated to double allegiance. Security officers expressed concern as they claim that people with double allegiance are difficult to handle.

3.5 The Principle of Dependent Nationality

As Kathleen and Bill Christenson (2004) stated the rationale for the principle of dependent nationality derived from two assumptions: first, that all members of a family should have the same nationality, secondly, that important decisions affecting the family would be made by the husband. The assumption that all members of a family should have the same nationality was based on the view that nationality entailed loyalty to one's State of nationality. It was believed that if a married woman were to have a nationality different from that of her husband, her loyalties would be divided, and she might be placed in a confliction and intolerable situation. This assumption was also linked to the idea of citizenship, which relates to a person's public identity: the relationship between an individual and the State. Loyalty to the State is the counterpart of the State's duty to protect its citizens.¹³ In many States, the assumption that a married woman's primary location is in the private sphere, within the home, and under the protection of her husband, has prevailed. Accordingly, her need for a separate public identity and legal relationship with a State is not taken into account.¹⁴

The consequences of the application of the principle of dependent nationality can be extreme. By virtue of its application, a Zambian woman who marries a foreign national, and who chooses to acquire the husband's citizenship, will be deprived of her nationality of origin, as well as access to the civil, political, economic social and cultural rights which depend on that nationality. She

¹³ Kathleen and Bill Christenson, Dual Loyalties: What are the effects September 2004.

¹⁴ Ibid at page 6.

will become an alien in the place where she has always resided, and lose all the privileges of citizenship. Where citizenship is restricted for national women (for example where they lack legal capacity to hold or inherit land), the position of the now non national married woman is one of total dependence upon her (foreign) spouse.¹⁵ Her identity and sense of belonging to her State of origin, and of being important to that State, are compromised and disregarded because of her reduced status within the place she has always called home. Moreover, the State's lack of interest in her potential contribution to its well-being is indicated by its willingness to make her assume a new nationality. Section (2) of the Zambia Citizenship Act provides as follows:

Any citizen of full age who by voluntary act, acquires the citizenship of a country other than Zambia, or who does any act indicating his intention to adopt or make use of such other citizenship, shall cease to be a citizen on the date of his acquisition of the citizenship of that other country.

In addition, if the law of the husband's State of nationality stipulate that a wife retain his nationality during the marriage only, its termination, through death or divorce, will end her entitlement to her husband's nationality and the protection that it may provide. A woman in these circumstances will be able to revert to her nationality of origin only if the laws of that State so allow. If they do not, she will be stateless, and may find that she is unable to return to her own country to live. Even if she is able to do so, she may find herself without the rights which flow from nationality. Laws that entrench the principle of dependent nationality disempowered married women by depriving them of any choice about their nationality. As such, these laws, and married women's nationality in general, have long attracted the attention of feminist activists. They were among one of the first issues that women sought to place on the international legal agenda, alongside other issues of social and political inequality affecting women, including the right to vote.¹⁶

¹⁵ Agora M.D., The Effect of having a second Passport and Dual Nationality.

¹⁶ Rumpf, Christian 2000. "Citizenship and Multiple Citizenship," presented at Managing Dual Nationality workshop, Berlin, July 14-15,2000.

Reforms that entitle married women to retain their independent nationality do not resolve all disadvantages which women who marry foreigners face. Such reforms do not address migration and residency rights for foreign spouses, issues relating to the nationality of children and legal restrictions imposed on alien spouses, such as limitations on the right to work access to credit and land ownership. Entitling married women to retain their own nationality means that it is possible for different members of a family to hold different nationalities and thereby enjoy differing rights of entry into and residency in States, as well as varying access to State services and benefits. Increasingly, States have restricted entry to foreigners through stringent immigration controls and visa requirements. In Zambia the objectives of the Immigration and Deportation Act¹⁷ includes among others the regulating the entry into and the remaining within Zambia of immigrants and visitors; to provide for the removal from Zambia of criminals and other specified persons; and to make provision for matters incidental to the foregoing.¹⁸

In many cases, these restrictions or regulations have created legal obstacles for women married to foreigners who wish to live with their husbands in Zambia, and for women married to foreigners who wish to live in their husband's State.

Zambian women who marry foreign men and who do not acquire their husband's nationality may be especially vulnerable to abuse because of the inherent powerlessness of their position. For example, a woman may have entered the State at the request of her husband for the very purpose of marriage, perhaps as a "mail-order bride". This growing phenomenon leads hundreds of thousands of women to leave their countries each year to marry men with whom they have made contact through international matchmaking services, more and more via the Internet.¹⁹ Women

¹⁷ Chapter 123 of the Laws of Zambia.

¹⁸ The preamble of the Immigration and Deportation Act Chapter 123.

¹⁹ The United States Immigration and Naturalization Service estimates that between 100,000 and 150,000 women advertise themselves as potential mail-order brides each year. A report to Congress, Immigration and Naturalization Service", 2/99 (Washington, D.C United States Department of Justice, March 1999); Robert J Scholes, "The 'mail-order bride' industry and its impact on U.S. immigration. The advent of the Internet means that the services are more widely available."

who have entered as low-paid, temporary migrant workers, typically domestic servants dependent upon their employers, women seeking asylum and those who have been trafficked, may also marry men in their country of residence and be unaware that marriage does not automatically grant nationality or unqualified residency rights in their husbands' State.

Women who have married in these scenarios tend to be without resources and, accordingly, totally dependent upon their husbands—economically, socially and sometimes linguistically. The husband may look down on the wife because she is a foreigner, despise her for her dependence upon him and seek to humiliate her in a variety of ways. The husband may also have assumed responsibility for the legal requirements for her residency and, ultimately, acquisition of nationality, but in fact may have failed to do so. The barriers he is able to create between his foreign wife and the outside world can isolate her and subject her to his control.

Women, who have no unconditional right to stay in a country if they leave their marriage to a national before satisfying the requirements for permanent residency or naturalization, are dependent upon the marital relationship and can be vulnerable to violence and exploitation. They may be wary of reporting domestic violence or other abuse to the authorities for fear of deportation. This will be particularly so if they lack documentation or their documents are no longer in their possession.

Seeking assistance may expose such women to abuse or contempt from the authorities. Authorities may also be reluctant to offer assistance since the marital relationship is regarded as private and consensual.

Another risk is of the husband terminating the marriage (for example if his economic situation worsens and he sees his wife as a financial burden, or in the case of a mail-order bride perhaps intending to acquire a new bride through the same means) before a wife has gained her right of residency. In all these situations, whether the woman's own State of nationality will accord her legal or practical assistance depends upon many factors. These include whether she has retained that nationality and has the documents in her possession testifying to that nationality; whether the

State regards marriage (even to a foreigner) as a private matter that does not warrant intervention even when it is needed; and the relations between the states in question.

The law in Zambia imposes longer residency requirements on a husband who wishes to acquire the nationality of a Zambian wife than on a wife to acquire that of her husband. Zambia also maintains laws which make it harder for the spouses or fiancés of Zambian women than the spouses or fiancées of Zambian male to enter and reside in the country. Zambia has such kind of law as per section 3 of the Immigration and Deportation Act which provides that a non-national man married to a Zambian woman cannot acquire permanent residence or citizenship by virtue of a marriage.

In these cases although the legal impact falls upon the foreign man, the restrictions are based on discriminatory attitudes based on stereotypical expectations—that a wife should follow her husband and that a married couple should live together in the husband's State of nationality.

The couple may choose to live together in the wife's State of nationality. However, if a non-national husband is subsequently deported for some wrongdoing, his wife faces such dilemmas as going with him to a country of which she is not a national, separation or family break-up. Authorities within Zambia may be unsympathetic to requests to allow her husband to remain, deeming it to be her marital duty to follow him to his State, regardless of whether she has any ties there, can speak the language, or of the dislocation to her life that such a move inevitably entails.

In many of these situations, gender based discrimination interlocks with other forms of discrimination including that based on race, ethnicity, caste and economic status, which can affect public officials and private relationships. Discriminatory attitudes can be seen in other contexts. There may be an underlying suspicion that arranged marriages between foreign men and local women are “non-genuine”. It is frequently assumed that male immigrants will seek work in the paid workforce, and may thereby increase local unemployment by taking the available jobs, or become a burden upon the State if unemployed. At the same time, there may be a notion that it is men who should determine the proper constitution of the public realm—the

workforce, the market, religious congregations and the security forces and that the entry of foreign men to join their wives will dilute the national identity and may subvert the national interest.

3.6 The Opponents of Dual Nationality raise Security Concerns associated with Dual Nationality

Despite the apparent enormous advantages to be derived from the concept of dual nationality, it has often times been argued that it could be risky to trust a person whose allegiance is to two countries.

The Zambian National Broadcasting Corporation (ZNBC)²⁰ aired a live discussion on the national television looking at the issue of dual nationality. During the discussion some prominent Zambians, such as former Republican Vice-President Christon Tembo and the former Chief Immigration Officer Ndiyoyi Mutiti opposed the recommendation on grounds of national security. For Christon Tembo, dual citizenship would compromise national security as those involved may have problems of conflicting allegiances while Ndiyoyi Mutiti argued that dual citizenship will increase crime as criminal will easily run away to another country for safety. “There is divided allegiance which seriously compromises the security of the country,” said Mutiti:

Research has shown that most conflicts are a result of allowing dual nationality as such kind of citizens have divided loyalty. In an event that such citizens commit a crime, the chances that he can sneak out of the country and safely find haven on the other nationality are high.

²⁰ This a government owned national broadcasting media house.

Security reasons are often cited by policy makers and was, for many years, used to deny people dual citizenship in Zambia. The same was raised by most government officers I interviewed during my research.

3.7 Nationality to be adopted by Children born of Women married to Foreign Nationals

Most legal regimes that provide for nationality by descent accord the nationality of the father to his children, irrespective of the nationality of his spouse. It is less usual for such regimes to devolve the nationality of a woman married to a foreigner on her children automatically. In many States, nationality through descent from the mother is conferred only where she is unmarried or the father is unknown or stateless. Laws which disadvantage women in this way enshrine the priority of men's rights over the children of a marriage—without any inquiry into the nature of the marriage, such as whether it is violent, abusive or the result of economic convenience.

In its reservation to article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, which grants women equal rights with men with respect to the nationality of their children, Egypt explains the reason why Egyptian law precludes Egyptian women who marry non-Egyptians from passing their nationality to their children:

This is in order to prevent a child's acquisition of two nationalities where his [sic] parents are of different nationalities, since this may be prejudicial to his future. It is clear that the child's acquisition of his father's nationality is the procedure most suitable for the child and that this does not infringe upon the principle of equality between men and women, since it is customary for a woman to agree, upon marrying an alien, that her children shall be of the father's nationality.²¹

²¹ Egyptian reservation, 18 September 1981; see <http://www.un.org/womenwatch/daw/cedaw/reservations.htm>

The explanation reflects the longstanding objection to dual nationality, but provides no evidence of its “prejudicial” effects. No reasons are given to explain why acquisition of the father’s nationality is the “most suitable procedure” for a child, especially as the father is unlikely to be the primary caregiver.

In extreme cases, in States with similar laws, a foreign child living with her mother in the mother’s State of nationality could face deportation, presenting her with the dilemma of leaving her State, or being separated from her child. In other situations, a mother whose child has a nationality different from her own, and who has no independent right of residence in the State where the child is located, may face legal obstacles to continued enjoyment of custody of, or access to, her child, in particular if her marriage is terminated by divorce or death. If the marriage is abusive, the foreign mother might have to choose between staying with the father or losing her child. If the mother has custody of the child after break-up of the marriage, the father may seek possession of the child with the support of his State— also the State of nationality of the child. If the father leaves and takes (even kidnaps) the child to a State where the mother has no right of residence (for example, his own State), her rights of access may be severely undermined. If the laws of her own State do not bestow her nationality upon her child, the mother’s State cannot exercise its right of diplomatic protection to recover the child, and its standing to take up claims on the mother’s behalf will be limited. Even if the mother and child are living in the mother’s State of origin, the child might be regarded as a foreigner under the law of that State, and be ineligible for full access to State education, health care or property rights.

3.8 Arguments for the Adoption of Dual Citizenship

As Dr Neol Simutanyi²² wrote in the Post News Paper Edition dated 12 April 2009 that National Constitutional Conference (NCC) unanimously resolved to recommend to include dual citizen on the Zambian constitution. The resolution provoked mixed reactions from the Zambian public.

In this article Dr Simutanyi analysed proponents of dual nationality and oppositions. The article stated that proponents of dual citizenship, who included former Chief Justice Mathew Ngulube, argued that it was desirable given globalization, the increase in cross-national marriages and the inevitable migration to other countries in search of better economic opportunities. There are also those who argued that there are many Zambian women who have had to give up their citizenship of the country of birth for economic reasons and which becomes a disincentive for them to invest and have closer links with their home country. Further the children born of Zambian parents abroad who automatically acquire citizenship by birth tend to lose out the benefits of belonging to the country of their parents. There is also the difficult choice of having to choose between the nationality of one of having parents with two different nationalities²³. The opposition to the notion of dual citizenship is informed by a less appreciation of the African and Zambian reality. It should be recognized that many Africans and even Zambians tend to have multiple identities²⁴. They belong to particular tribes/ ethnic groups, are members of particular districts and province and citizens of a particular districts and provinces and citizens of a particular country. In cases of cross-ethnic and cross-national marriages, children will tend to have dual identities, of their parents. For example, children from a Lunda and Tonga parents cannot be expected to choose between the identity of one of their parents. They belong to both and often have rights of residence and enjoy all rights of belonging to that social group. They enjoy rights of citizenship from both their father and mothers side. But this is not the case with children born of parents of

²² Dr Neol Simutanyi is a Lecturer at the University of Zambia.

²³ Ibid at page 2

²⁴ Ibid page 3

different nationalities. The child is made to choose the nationality of one of the parents, as the Zambian constitution does not encourage dual citizenship.

The article further stated that the current dual citizenship debate in Zambia should be understood within the context of global trends. It should be recognized that in the last forty years, Zambia has been home to tens of thousands of people from other countries who have come here to work, by virtue of marriage or due to social ties with Zambian nationals. Some of these people have lived in Zambia for most of their lives, but do not want to cut links with their home country. Thus they have remained established residents without citizenship rights. It would be wrong to doubt the patriotism of these men and women, who have made many contributions to the life and economy of this country.

The New York Times dated 12th November 2009 carried an article entitled “Is dual citizenship a solution to African citizenship challenge?” The author stated that there are at least 40 countries in the world that recognize dual citizenship and nine of them are in Africa. These include, the Australia, India United States, United Kingdom, Canada, Germany, Israel Italy, South Africa, Burundi, Mali. There are discussion in Kenya, Ghana, Rwanda and Uganda on dual citizenship²⁵. It is now recognized that allowing dual citizenship encourages foreign investment as foreigners are assured of enjoying citizenship rights, while not losing identity of their countries, one can be granted citizenship if they come with investment of a certain amount. The success of Australian, Canada and the United States is partly because of the policy of encouraging dual citizenship and flexible nationality laws²⁶.

In my analysis of the two articles it is clear that there is no doubt that nationals in the Diaspora who could have acquired the citizenship of the host country for convenience can also identify more closely with their home country if they do not have to lose their original citizenship. There

²⁵ New York Times dated 12 November 2009

²⁶ Ibid page 14

is evidence that points to the fact that the Philippines and India, among others, have more than a million of their nationals working and living abroad, who transfer millions of dollars to support their families back home and undertake investments. In my view, dual citizenship provides an incentive to identify more closely with the home country.

In the case of Zambia, it should be recognized that tens of thousands of our nationals have fled the country for many reasons, which include fear of political persecution, marriage or to seek economic opportunities or a combination of these. It is important that we ascertain the number of Zambians who have left the country in the last twenty years and are living abroad and how many of them have had to renounce their citizenship. Further, it is important to establish the extent of remittances from Zambians living abroad.

Politicians have continued to call on Zambians living abroad to return and make a contribution to the Zambian economy. But the problem that has not been addressed is that most of these may have acquired the citizenship of their host countries and may have forfeited their Zambian citizenship rights. I hope the proposal to introduce dual citizenship in our constitution will help to resolve the citizenship challenges by most women and children who have acquired other citizenship. We need a constitution which is inclusive and stripping our nationals of their citizenship should not be entertained. Further, we should also encourage other nationals to feel welcome in our country by granting them dual citizenship so that they can develop a sense of belonging. It is incorrect to suggest that dual citizenship poses a danger to national security or increases crime. If this was the case, large and highly developed countries, such as Australia, Canada, United Kingdom and United States would not be promoting such a policy. As a Pan-Africanist who believes in an African identity, I believe that the encouragement of dual citizenship is a progressive idea, which will provide the building blocks to the transition to a common African citizenship. Those opposed to dual citizenship may have difficulties accepting the notion of African citizenship. But they should be reminded that the African Union is moving towards political union, which will include not only the removal of Visa restrictions, but the creation of a United States of Africa with a common African passport.

3.9 Cases Relating to Dual Nationality dealt with in other Jurisdictions

So far no one has challenged the denial of dual citizenship in the Zambian courts as such I had to search in other jurisdictions and this what I was able to find. This was mainly meant to use the comparative system.

3.9.1 Unity Dow Vs The Attorney General CA No.4/91

On the 3rd day of July 1992 the court of Appeal of the Republic of Botswana delivered its decision in the celebrated case of Unity Dow Vs Attorney General. In this case Unity Dow successfully challenged the legitimacy of citizenship Act which denied Botswana citizenship her children on the basis that her husband is a foreigner, even though she herself is a citizen of Botswana.

The court ruled that the gender discrimination which is inherent within the Botswana Citizenship Act was in violation of the constitution and ordered that Dow's children had a right to be Botswana citizens.

Effort by Unity Dow to challenge such a draconian law should be applauded as she did not stand in court merely for herself or women of Botswana who are married to foreigners but also on behalf of other women in most African countries which has such discriminatory law.

Such citizenship law which provides unequal access to citizenship reveals arrogance of patriarchal power. There is close parallel in Zambian situation. In 1990 Edith Nawakwi got a court ruling that it is unconstitutional for the government to require written permission from the father of her children before putting the children's names on her passport. To date the Zambian government upholds a similar discriminatory requirement.

3.9.2 U.S. v. Wong Kim Ark, 169 U.S. 649 (1898)

Wong Kim Ark was born in San Francisco to Chinese parents around 1870. In 1895, upon his return from a visit to China, he was refused entry by US customs officials, who asserted that despite his having been born in the US, he was a subject of the Chinese emperor and not a US citizen.

At this time, US law (the "Chinese Exclusion Acts") severely limited Chinese immigration and barred people of Chinese ancestry from becoming naturalized US citizens -- and it was argued, on this basis, that Wong was ineligible to be considered a US citizen, in spite of his having been born in the US.

The Supreme Court disagreed, ruling on a 6-2 vote that Wong Kim Ark was in fact a US citizen. The court cited the "citizenship clause" of the 14th Amendment, which states that all persons born (or naturalized) in the United States, and subject to the jurisdiction thereof, are citizens. Although the original motivation for this language in the 14th Amendment was to secure citizenship for the freed Negro slaves, the court held that the clause clearly applied to "all persons", regardless of their race or national origin.

The court rejected outright the idea that the Chinese could be singled out for special treatment in this respect. *"To hold that the fourteenth amendment of the Constitution excludes from citizenship the children born in the United States of citizens or subjects of other countries,"* the majority wrote, *"would be to deny citizenship to thousands of persons of English, Scotch, Irish, German, or other European parentage, who have always been considered and treated as citizens of the United States."*

As for the question of being "subject to the jurisdiction" of the United States -- i.e., the relationship between a person and a government whereby one "owes obedience to the laws of that government, and may be punished for treason or other crimes" -- the Supreme Court observed that English common law (legal tradition inherited from Britain by the US) had long recognized only two jurisdictional exceptions to the principle of *ius soli* (citizenship by birth on a

country's soil): namely, (a) foreign diplomats, and (b) enemy forces in hostile occupation of a portion of the country's territory. Since neither of the above exceptions applied to Wong Kim Ark's parents, the court held that he was unquestionably a US citizen by virtue of his having been born in the US.

The fact that, under the Chinese Exclusion Acts, Wong's parents could not become US citizens -- or even that Wong himself would not have been eligible for naturalization in the US on account of his race was simply irrelevant in light of the 14th Amendment's citizenship clause. The Constitution was superior to statutes such as the Chinese Exclusion Acts; *“These acts of Congress”*, according to the Supreme Court, *“cannot control [the 14th Amendment's] meaning, or impair its effect, but must be construed and executed in subordination to its provisions.”*

This is quite a progressive judgment and if it was considered in the light of the Zambian situation it can help in resolving difficulties on the issue of dual nationality. The case has persuasive power on the Zambian courts.

3.9.3 Perkins v. Elg, 307 U.S. 325 (1939)

Marie Elizabeth Elg was born in the US to Swedish parents, who took her back with them to Sweden when she was a baby. Shortly after her 21st birthday, she obtained a US passport and returned to the US.

Some years later, the US government attempted to deport her on the grounds that when her parents had taken her to live in Sweden, she had become a Swedish citizen (under Swedish law), and as a result had lost her US citizenship. It was argued that an 1869 citizenship treaty between the US and Sweden, providing for the orderly transfer of citizenship by immigrants, called for loss of US citizenship following Swedish naturalization. This was one of the so-called "Bancroft Treaties" enacted between the US and numerous other countries between 1868 and 1937.

The Supreme Court ruled, unanimously, that the actions of Elg's parents in obtaining Swedish citizenship for their daughter could not prevent her from reclaiming US citizenship and returning to the US as an adult, provided she did so within a reasonable time after reaching adulthood.

From the findings of my research it appears there are many children in Zambia who are in similar situations Marie Elizabeth Elg. Unfortunately due to lack of serious and progressive local judicial guidance nothing much has been done to help such a situation.

3.9.4 Kawakita v. U.S., 343 U.S. 717 (1952)

Tomoya Kawakita was a dual US/Japanese citizen (born in the US to Japanese parents). He was in Japan when World War II broke out, and because of the war was unable to return to the US. During the war, he actively supported the Japanese cause and abused US prisoners of war who had been forced to work under him. After the war, he returned to the US on a US passport, and shortly thereafter he was charged with (and convicted of) treason for his wartime activities.

Kawakita claimed that he had lost his US citizenship by registering in Japan as a Japanese national during the war, and as a result he could not be found guilty of treason against the US. Presumably, the reason Kawakita fought so tenaciously not to be considered a US citizen was that he saw this as the only way to escape a death sentence for his treason conviction.

However, the Supreme Court ruled that since Kawakita had dual nationality by birth, when he registered himself as Japanese, he was simply reaffirming an already existing fact and was not actually acquiring Japanese citizenship or renouncing his US citizenship.

This case clearly demonstrates that dual nationality can pose a serious challenge on security issues as holders of dual nationality have divided allegiances.

3.9.5 Mandoli v. Acheson, 344 U.S. 133 (1952)

Joseph Mandoli was a dual US/Italian citizen by birth (born in the US to Italian parents). He left the US as an infant and moved to Italy with his parents. When he sought to return to the US in 1937, his claim to US citizenship was rejected because he had failed to return promptly to the US upon reaching the age of majority, and also because he had served briefly in the Italian army in 1931.

The Supreme Court ruled that the law, as it then stood, did not permit natural-born US citizens to be stripped of US citizenship for failing to return to the US upon reaching adulthood.

The court did not base its ruling in this case on any overarching constitutional arguments. Rather, it examined the legislative history of the portions of US citizenship law, and concluded that Congress had consciously chosen to make these provisions applicable only to naturalized US citizens. In particular, the court noted that although US law at that time required certain US citizens with childhood dual citizenship (such as those born abroad to American parents) to make a specific "election" of US citizenship (i.e., a declaration of allegiance followed by a return to the US) upon reaching adulthood, no such requirement applied to a person who had US citizenship on account of having been born in the US. Lower courts had apparently interpreted the Supreme Court's earlier decision in *Perkins v Elg* as imposing such an "election" requirement quite broadly.

The court also decided that Mandoli's foreign military service did not warrant loss of his US citizenship because, under Mussolini's Fascist government, he really had had no choice but to join the Italian army.

Most children born from Zambian women married to foreign nationals do find themselves in similar situation like Joseph Mandoli. A typical case in mind are children born of Lebanese fathers who are expected to undergo mandatory military training upon attaining the age of 18 years.

3.9.6 Schneider v. Rusk, 377 U.S. 163 (1964)

Angelika Schneider was born in Germany. She came to the US with her parents and became a US citizen upon their naturalization. While a graduate student in Europe, she met a German man whom she later married, and she moved permanently to Germany to live with him.

The State Department claimed Schneider had lost her US citizenship in accordance with a section of the Immigration and Nationality Act which revoked the citizenship of any naturalized citizen who returned to his or her country of birth and remained there for at least three years. Schneider took the State Department to court and won her case before the Supreme Court in a 5-3 decision.

The Supreme Court held that since no provision of the law stripped natural-born Americans of their citizenship as a result of extended or permanent residence abroad, it was unconstitutionally discriminatory to apply such a rule only to naturalized citizens. The court rejected arguments that naturalized citizens who resumed permanent residence in their countries of origin presented particular challenges to US foreign policy, and that the government had a right to strip such people of their US citizenship in order to safeguard the country's diplomatic objectives.

CHAPTER FOUR

4.0 FINDINGS AND DATA ANALYSIS OF THE RESEARCH

4.1 MAIN FINDINGS AND DATA ANALYSIS

After carrying out my research in line with my assumptions I found the following:

4.1.1 There is a law in Zambia that allows dual nationality by marriage

There is a law which allows for dual nationality by marriage in Zambia. However most women married to foreign nationals who acquire their foreign spouse's nationality due to marriage who I interviewed stated that they are forced to surrender their Zambian nationality if they acquire their husbands nationality as they are not aware of this law.

When I got married to a Senegalese man we decided to settle in his country. The law in Senegal allows wives of Senegalese men to acquire their husband's nationality. I was given a Senegalese passport. However when I decided to visit my parents Immigration officers at the airport grabbed my Zambian passport allowed fourteen days to see my parents using a Senegalese passport.

(Narrated by Mrs Mirriam Bwalya Ndiaye)

This clearly indicates that there is no policy in Zambia regarding the implementation of dual citizenship by marriage. This can be evidenced by the conduct of officials from immigration and citizenship office who have not bothered to sensitize women married to foreign national that can enjoy dual nationality by marriage. As Mrs Mirriam Bwalya Ndiaye indicated most women have been a victim of overzealous immigration officers at border controls who have confiscated the Zambian passports from women. This makes the existence of the law useless as the beneficiaries do not seem to enjoy its benefit. This clearly shows that there is urgent need to review the law on citizenship to remove all ambiguities.

The current citizenship law makes it possible for Mrs Ndiaye to hold and use two passports that is a Zambian and Senegalese. On entry into Zambia should be allowed to use the Zambian Passport.

4.1.2 The Law in Zambia provides that a Citizen cannot lose his/her Zambian Citizenship if he /she acquires another Nationality by Marriage but in practice People who acquire another citizenship by marriage lose their citizenship

I interviewed women to find out if they are aware that they can acquire their foreign husbands' nationality without losing their Zambian citizenship. Most women stated that they are not aware of the existence of such a law.

It is actually news for me to hear that there is a law which allows women to acquire their husband's citizenship without losing the Zambian citizenship stated Mrs Biabiyana Bulaya Kearns. I attempted to acquire a British passport as I qualify for a British passport but I was told that my Zambian passport was to be withdraw. Immediately stopped as I cannot to lose afford my nationality just because of marriage

(Narrated by Biabiyana Bulaya Kearns, a woman married to a British man.)

When I interviewed the Chief Passport and Citizenship Officer , she revealed that the citizenship Act allows persons who acquire another citizenship by marriage not to lose the Zambian citizenship.

It is true the law allows people to acquire another citizenship by marriage without losing the Zambian citizen. Unfortunately most people are not aware. As a department responsible for citizenship we have done very little to sensitize people on this law.

(Confirmed by Mrs Brenda Banda)

The act of confiscating Zambian passport from women who acquire other nationality and lack of any record at Zambian courts by any women who challenged this action clearly confirms the

level of secrecy surrounding this legal provision. The law is suppose to be public and know to the beneficiaries and that the departments responsible for citizenship matters should make sure that the law is taken to the people. The confirmation by the Chief passport and Citizenship officer that very few women are aware of this legal provision confirms my assumption that most women in Zambia are not aware of this legal provision.

4.1.3 Children born of Zambian Women married to Foreign Nationals encounter Problems if they adopt the Nationality of one of their Parents as they will be deprived of the full Citizenship Rights of their other Parent

A discussion of with some of the children born from one foreign parent revealed that they face challenges as they are forced to acquire their mother's citizenship and abandon their father's as they are not be allowed to work in some government institutions if they use or have any connection to their foreign parents citizenship.

At the time I was being admitted to the Bar as an advocate I had problems as they wanted to confirm my nationality. This is ridiculous and unfair. Is it a crime to be born from a non Zambia father?

(Queried Mirriam Mutesa Bar, a child born of a Senegalese father and a Zambian woman)

The experience by Mirriam Bar can so traumatizing for child born from a Zambian woman married to a foreign national as no one chooses the father. Most Women I discussed with stated that their husbands have taken advantage of this discriminatory law to take their children to their country and do not come back as they make sure that they given foreign passports which require visa requirements to come Zambia.

These Senegalese men do take our girl children the moment they reach puberty and make them get married at a tender age. I do not even know where my two daughter are in Senegal.

(Lamented Mrs Maria Mumba Konate a woman who was divorced from a Senegalese Man)

It is clear that children that are born of women married to foreign nationals encounter problems. The adoption of one of the parents citizenship makes it impossible to enjoy the rights of the citizenship of the other parent.

4.1.4 Some Women married to Foreign Nationals prefer Dual Citizenship in order to enjoy the full Citizenship Rights and Benefits of both Countries and also so that their children are not disadvantaged on the grounds of Nationality

A cross section of women married to foreign nationals I interviewed preferred dual citizenship as they claim that they can easily settle in any of the countries and also that their children can stay in either in parents country without difficulties and enjoy rights and privileges from either country. Mrs Abigail Nalishebo Cole a lady married to an American National stated that to stay in America with an American passport life is easier as all is provided for to citizen. As foreigner it is tough. It is therefore better to have dual nationality as you can enjoy full citizenship rights from both countries.

The benefits are for dual nationality are mainly for those in the Diaspora. This is mainly due to the fact they avoid inconveniences when dealing with the respective bureaucracies (such as being able to visit relative in your other homeland without going through the hoops of visa applications), and the sense of acceptance.

The sceptics may view the case for dual citizenship to be weak, but it is still compelling because the case against it is non-existent. *“Why should my daughter and others with inexorable links with Zambia and another country, be forced to make the false choice of which country is better?”* questioned Mrs Nalishebo Cole. Most of them stated their concern was not access to Zambia for foreign nationals, but access to the rest of the world .They stated that currently residing in the UK, it is annoying to book appointments months in advance and travel half-way across the country, with all the time and expense that involves, to get a Schengen visa to hop across the English Channel and travel to France for the day. If Zambia allowed dual citizenship, could just get a British passport without losing her Zambian citizenship and move freely

throughout the EU. Similarly, when they move to Zambia, would be able to travel back to the UK without the time, expense and humiliation of applying for visas at the British High Commission in Lusaka.

This equally confirms my assumption that some women married to foreign nationals prefer dual citizenship in order to enjoy full citizenship rights and benefits from both countries and also that their children are not disadvantaged on the basis of nationality.

4.1.5 Children born of Zambian Women married to Foreign Nationals encounter Problems if they adopt the Nationality of one of their Parents as they will be deprived of the full Citizenship Rights of their other Parent

The current law in terms of section 9(1)(a) of the Zambian Constitution clearly states that any adult citizen who by voluntary act **other than by marriage** or does any act indicating that person's intention to adopt or make use of any other citizenship shall cease to be citizen of Zambia.

Most children I interviewed confirmed that they normally hide their other passport when they are coming to Zambia.

You see in Mali I am entitled to get my fathers citizenship and since we moved to Mali after my dad divorced mum I got the Malian passport. However I make it impossible for immigration officers to know as I fear that they will grab my Zambian passport and coming back to see my mother would a problem as getting a visa if you are holding a Malian passport is problem.

(Revealed Sheilk Muhamed Sidime a Child born from a Zambian woman who was at one time married to a Malian.)

The experience by Sheilk Muhamed Sidime and Mirriam Mutesa Bar confirms my assumptions that children born from Zambians women married to foreign nationals encounter problems they adopt the nationality of one of the parents.

4.2 THE IMPACT OF MY FINDINGS ON MY ASSUMPTIONS

From my findings it clear that my most of assumptions were not shaken.

Only assumption number one was to some extent shaken as it was found that the Citizenship Act has a provision which allows dual citizenship by marriage but in practice no women in Zambia have benefited from this provision. It was also found that there was no policy to back the enforcement of this provision as such very few women where aware of the existence of this law. This was confirmed by officials from Passport and Citizenship Office.

The Chief passport Officer Mrs Loveness Banda stated that her office has no record of persons with dual nationality as it is considered illegal. She also said that even persons who are married to foreign nationals do not seem to be aware that the law allows them to acquire their husband's citizenship without losing the Zambian citizenship.

This position was upheld by the Immigration Public Relations Officer who stated that the government has no policy on dual nationality. She clearly stated that dual nationality was a serious security risk as persons with divided loyalty where difficulty to handle.

4.3 HUMAN RIGHTS, LEGAL AND CONSTITUTIONAL ELEMENTS RELATED TO MY RESEARCH FINDINGS

Everyone has the right to a nationality; No one shall be arbitrarily deprived of his nationality nor denied the right to change his nationality.²⁷

The Zambian law which denies women married to foreign nationals and their children to acquire the nationality of their husbands and fathers if they want runs contrary to the spirit of this article.

²⁷ As per Article 15 of the Universal Declaration of Human Rights.

Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women, grants women equal rights with men with respect to the nationality of their children. However the Zambian citizenship law does not allow children born from parents of different nationalities to acquire two nationalities of both parents.

The current Zambian constitution²⁸ does not allow dual citizenship. According to article 19(2) “any citizen of full age who by voluntary act other than marriage acquires the citizenship of country other than Zambia ,or who does any act indicating his intention to adopt or make use of such other citizenship , shall cease to be a citizen on the date of his acquisition of the citizenship of that other country.” The position is the same with the provisions of the citizenship Act.²⁹

The draft constitution has proposed to introduce dual nationality.

Article 26(1) of the draft constitution states that:

A citizen by birth shall not lose that citizenship by acquiring the citizenship.

Article 26 (2) further states that:

a person who before the commencement of this constitution, acquired the citizen of another country and as result ceased to be a citizen as specified in clause (1) ,is entitled, on application to regain the citizenship.

The NCC has adopted this Article but its awaiting parliament to enact it into law.

²⁸ Chapter 1 of the laws of Zambia enacted in 1996

²⁹ Section 13(1) of the Citizenship Act Chapter 126 of the Laws of Zambia.

4.4 CUSTOMARY LAW AND CUSTOMS AND PRACTICES

During the research I found out that customary law and practice contributed to the failure by law enforcement officers to implement the legal requirements provided for in the constitution and the citizenship Act.

Customary law and practice that requires that when a woman gets married becomes the Husband's property as such she has to abandon her nationality and acquire the Husband's also influenced the implementation of dual nationality by marriage in Zambia. Also the cultural belief and practice that children belong to the husband as such they cannot enjoy their mother's citizenship has also contributed. Most children born from Senegalese and Malian parents are taken to their father's country to learn their culture the moment they reach the age of 12 years. A good number of them especially girls never return to Zambia as they are married at tender age as per their fathers customs. Mrs Beatrice Chongo Amadou complained that she last saw her daughter 10 years ago and since then has never come to Zambia.

4.5 ZAMBIANS IN THE DIASPORA VIEWS ON THE ISSUE OF DUAL NATIONALITY

Zambia has a countless number of citizens living and doing fine overseas, and I had chance to talk to them by way of face book³⁰ and Skype³¹ some of these did have chance to participate in the Let the People Talk³² programme either by phone or electronic mail.

³⁰ www.facebook.com

³¹ www.Skype.com

³² This programme is aired live by a privately owned radio Phoenix. People are allowed to call and make contributions to what is being discussed.

The first was Mrs Chasaya Sichilima, chairperson of the Zambia-Canadian Association who has lived out of Zambia for 20 years, beginning with 13 years in England and the other seven in Canada.

Calling from London, Ontario, Mrs Sichilima said Canada had made vast developments in many fields because it had harnessed the skills of people from different parts of the world.

On the issue of dual nationality, Mrs Sichilima said: It should have been done like yesterday. That's how late we are. We have, as a country, lost out on our own people who have gone to apply their skills elsewhere.

She explained that one of the chief reasons people acquired citizenship when they migrated was that it became easier for them to stay in those countries and have access to loans and certain jobs which they would not if they were merely residents.

Mrs Sichilima urged the Zambian Government to utilise its citizens in the Diaspora as they had the capacity to contribute a lot more than the FDI coming into the country.

She said they did not necessarily need to be back in Zambia physically as they could contribute while being away.

We want a shift where the president and the Government begin to recognize and make efforts to ensure that the Diaspora becomes a prominent force.

We actually should be given the incentive to contribute even a lot more than foreign investors because our hearts are in Zambia, our minds are in Zambia," he said.

A lot of Zambians, she said, were willing to help but needed a platform that could make them get even more rebates than those offered to foreign investors.

She cited Kenya as one country that had put in place a Diaspora Act which made it a lot easier for people to invest or acquire land and, as a result, the country was getting a lot more money from its nationals abroad than what came in from foreign investors.

Mrs Sichilima advised the Government to consider opening Diaspora desks in all foreign missions to help Zambians access investment information without having to take a flight back home.

And Miss Musaba Chailunga, from Toronto, in Canada said the Government should make use of the Diaspora and encourage them to invest in Zambia.

Miss Chailunga, who is the secretary of the Zambia-Canadian Association, and chairperson of the dual citizenship sub-committee, said the Government should re-think its stance on dual nationality as it was currently losing out.

The Government has to encourage people to send back money for them to be doing their own projects. There are a lot of Zambians who hold foreign citizenship. One of the major motivators is to allow dual citizenship, because then they would know that their country thinks of them as they think of it, she said.

Miss Chailunga said her sub-committee had already sent a petition to the NCC to consider recommending that the new Constitution allows for dual nationality.

Another Zambian who has been in Toronto for 10 years, Kaela Mulenga said the Government should recognize that it had a pool of human capital in the Diaspora, which could be used to make Zambia a better country.

From Oklahoma University in the United States, Heminigild Mpundu urged Zambian missions to take an active role in communicating not only with foreign investors but also Zambians.

He said it was unacceptable for Zambia to rank together with countries that had been at war for many years and yet it had a lot of its citizens doing well in the Diaspora.

Sharing the same view was Patrick Mumba, an architect and real estate manager from Christianfeld, Denmark. Mr. Mumba, who has lived in Denmark for 20 years, went further to say Zambians in the Diaspora wanted to continue being a part of the country and should, therefore, be helped to participate in governance by retaining the right to vote even after migrating.

He called on the Government to come up with incentives that could attract investment from Zambians abroad.

Most of us people who work in the Diaspora earn a pension and these pensions are invested in funds here. I could imagine if the Government provided some incentives for us to save some of our pensions in things back at home.

“We are talking about a whole lot of money, and that could go a long way in boosting our economic climate. If it can be done in Kenya, it can be done in Zambia, if it can be done in Ghana, it can be done in Zambia, Mr. Mumba said.

He said being part of the global village, Zambia could not afford to remain behind and Zambia should consider dual nationality as a priority.

George Brown a British National said my spouse is Zambian. Our daughter is British and Zambian. Zambian Immigration may declare that she can only be one legally, but culturally and practically, she is both. That is the truth.

The pros of dual citizenship are admittedly minor, but the cons are nonexistent, so in the scales of reason dual citizenship wins.

Incidentally, current Zambian law does force children of mixed nationality parents to choose one nationality over the other, despite neither being “foreign”.

Also, dual citizenship does operate successfully and smoothly in most countries of the world, and

does not always prohibit executive office: in the US, California Governor Arnold Schwarzenegger retains his Austrian citizenship; in the UK, a Zambian can stand to be an MP, even without British citizenship, provided they are resident; and in Canada, former Prime Minister John Turner had dual citizenship with the UK.

From the discussion I had with my respondents on face book and Skype phone it is clear that the introduction of Dual Citizenship in the Zambian constitution would allow women married to foreign Nationals to hold two passports and absolve them from applying for visas as they travel back and forth. The idea is that you these women will be accepted back as a Zambian citizen if they decide to ditch the other new country.

Dual citizenship, as the United States Immigration Support has noted, is essentially not something that can be applied for; it occurs automatically to some individuals. For example, a child who is born in the United States to foreign parents has United States dual citizenship since the child is automatically a citizen of the United States and a citizen of his or her parents' home country. This also applies to children of United States citizens born abroad where the child is both a United States citizen and a citizen of the country of birth.

The same situation applies to Zambia, where Article 5 of the 1996 Republican Constitution³³ reads as follows:

A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.

³³ This is the current constitution in force in Zambia.

This provision is likely to remain intact in the new Zambian constitution, whether or not the Dual Citizenship clause I have cited in my contribution above is adopted.

Countries worldwide generally provide for such dual citizenship, although there is the potential of loss or cession of such citizenship for a variety of reasons. In the United States (U.S.), for example, Section 349 of the Immigration and Naturalization Act specifies several conditions under which U.S. citizenship may be lost. They include the following:

- (a) Becoming a naturalized citizen of another country, or declaring allegiance to another country, after reaching age 18;
- (b) Serving as an officer in a foreign country's military service, or serving in the armed forces of a country which is engaged in hostilities against the U.S.;
- (c) Working for a foreign government (for example, in political office or as a civil servant);
- (d) Formally renouncing one's U.S. citizenship before duly authorized U.S. officials; or
- (e) Committing treason against, or attempting or conspiring to overthrow the government of, the U.S.

In Zambia, similarly, Article 9 of the 1996 Republican Constitution³⁴ has stipulated conditions for cessation of Zambian citizenship as follows:

- (a) *A citizen of Zambia shall cease to be such a citizen if at any time he acquires the citizenship of a country other than Zambia by a voluntary act other than*
-

³⁴ Ibid

marriage or does any act indicating his intention to adopt or make use of such citizenship; and

- (b) *A person who (i) becomes a citizen of Zambia by registration; and (ii) is, immediately after he becomes a citizen of Zambia, also a citizen of some other country shall ... cease to be a citizen of Zambia at the expiration of three months after he becomes a citizen of Zambia unless he has renounced the citizenship of that other country, taken the oath of allegiance and made and registered such declaration of his intention concerning residence as may be prescribed by or under an Act of Parliament.*

CHAPTER FIVE

5.0 CONCLUSION AND RECOMMENDATIONS

5.1 Conclusion

The research has revealed that Zambia is in transitional period regarding the law reform in citizenship laws. The National Constitutional Commission (NCC) is currently reviewing the constitution of Zambia and issue of citizenship law has taken a centre stage.

Even though the dual nationality clause has been adopted still it does not address the problem facing women married to foreign national and their children.

To worsen the situation there is resistance on the part of the law enforcing officers from the Citizenship and Immigration departments. They feel that allowing dual nationality in Zambia poses serious security risk for the country as persons with divided loyalty may difficulty to hand. Apart from marriage there are many factors obtaining in Zambia which have contributed to the desire among some Zambians to seek citizenship in other countries. They include poor conditions of service, potential human rights abuses, nepotism and favouritism, disregard for local talent, scarcity of jobs, limited access to education, poor healthcare services, a high level of crime, and the fear of losing valued relationships developed in host countries.

There have been many non-Zambians who have made a tremendous contribution this country in different ways. I do not agree with the argument that dual citizenship necessarily poses a national security problem. If anything, it will only help enhance a sense of belonging on those of our compatriots who have had to make the difficult choice of renouncing the citizenship of their country of birth.

The decision by the Citizenship Committee of the NCC is most progressive and deserves our support. It reflects global trends encouraging dual citizenship for economic, social and cultural reasons. I am particularly opposed to a decision to strip a Zambian of his/ her citizenship simply

because of having acquired the nationality of another country. In my view citizenship rights should be non-negotiable and should be revoked under very exceptional circumstances. This is because one's nationality forms their primary identity and as such they should continue to hold it, irrespective of their decision to acquire the citizenship of another country for economic or social reasons.

It is clear from my findings that Zambia needs citizenship and nationality laws that are more inclusive and take account of Zambia's historical, social and cultural heritage on one hand and the dynamics of globalization on the other. Dual citizenship should be an unobjectionable and ban stoppable phenomenon given our multiple identities and we should reflect that in our national law.

Given that the task of enacting laws is largely political, the question arises as to how valuable this research can be to the law makers as they consider enacting progressive citizenship laws which can help to resolve the problems faced by women married to foreign nationals and their children.

5.2 Projections on a deeper Analysis of my Findings

The deeper analysis of findings clearly indicates that issues of citizenship are quite contentious in Zambia. There are divided views on whether the country should adopt dual citizenship or not.

This division has contributed to the reluctance by law enforcement officer to make women be aware that the current law allows for dual nationality by marriage.

Officials responsible for citizenship issues should not hide on security concerns and deprive people of their entitlement but instead they should find means to take care of security concerns.

The most blatant view of women as appendages of their husbands is shown in the fact that in Zambia a woman marrying a Zambian man becomes automatically partial , no longer subject to

immigration control, whereas there has never been any corresponding right for the foreign husbands of Zambian woman. The government pays lip service to idea of family unification, as such the dual nationality may resolve the problem as a Zambian woman may settle in a country where her foreign husband has permanent residence and she can be allowed to acquire another citizen without losing her Zambian citizenship.

5.3 Recommendations

Arising from the findings of my research I wish to make the following recommendations

- * The provisions of constitution and the citizenship Act which allows for dual citizenship by Marriage should be enforced by the citizenship office.
- * The government should come up with a policy guideline to make it easier for women married to foreign national to have dual citizenship if they want.
- * Minor children born from Zambian women married to foreign nationals should be allowed to have dual nationality as the Law only restrict adult citizens.
- * The constitution of Zambia should be clearer on the issue of dual nationality. The current provisions are quite difficult to understand for a lay person.
- * The Immigration and deportation Act provision which is discriminate women married to foreign nationals should be amended as it contribute to Zambian women married to foreign nationals to be appendage to their husbands as they cannot easily acquire permanent residence.
- * All Zambian foreign missions should have a Diaspora desk which has a full record of Zambian women married to foreigners and children born from such couples. The same desk should keep an updated desk for all Zambia in that country.

- * It should be a legal requirement that all Zambians in the Diaspora be registered with the nearest Zambian mission.
- * The Ministry of Home affairs should identify a team of officers to undertake a study tour of countries which have adopted the dual nationality so that they can learn the pros and cons of dual nationality.
- * There is an urgent need to repeal the current citizenship law so as to enable it much with the current citizenship laws being adopted globally.

5.3.1 Action Plan Sheet for the abovementioned Recommendations

The Recommendation without action can sometimes be an exercise in futility as there is need to ensure that whatever is recommended is acted on. Bearing this in mind I decided to come up with an action plan. Here below is table showing the summary of the action to be done on each recommendation.

RECOMMENDATION	RESPONSIBLE INSTITUTION	PERIOD FOR THE ACTION TO BE TAKEN.	REMARKS
The provisions of constitution and the citizenship Act which allows for dual citizenship by Marriage should be enforced by the citizenship office	The Citizenship office	Immediately as the law is already in place.	The Resistance by law enforcement officers should not act as a stumbling block.
The government should come up with a policy guideline to make it easier for women married to foreign national to have dual citizenship if they want	The Citizenship office	Immediately as the law is already in place.	The lack of policy guideline may have contributed to the resistance on officers.

RECOMMENDATION	RESPONSIBLE INSTITUTION	PERIOD FOR THE ACTION TO BE TAKEN.	REMARKS
Minor children born from Zambian women married to foreign nationals should be allowed to have dual nationality as the Law only restrict adult citizens.	The Immigration Department	As soon as the Constitution is amended to allow for the introduction of dual nationality.	The current law does not allow for general dual nationality.
The constitution of Zambia should be clearer on the issue of dual nationality. The current provisions are quite difficult to understand for a lay person	The Attorney General's Office should issue a public notice to clearly interpret the provision of the law which allows for dual nationality by marriage	Immediately as the current law is ambiguous and difficult for a layperson to understand it.	Public law should be simple, clear .The current amendments to the constitution should ensure that all ambiguous law are made clear.
The Immigration and deportation Act provision which discriminates against women married to foreign nationals should be amended as it contribute to Zambian women married to foreign nationals to be appendage to their husbands as they cannot easily acquire permanent residence.	The Immigration Department	As soon as the amendment to immigration Act are done.	Since the current law on immigration is being amended its important that such draconian laws are repealed.
All Zambian foreign missions should have a Diaspora desk which has a full record of Zambian women married to foreigners and children born from such couples. The same desk should keep an updated desk for	Ministry of foreign affairs	Immediately	If people are registered it is easy to consider their application if dual nationality is to be considered.

RECOMMENDATION	RESPONSIBLE INSTITUTION	PERIOD FOR THE ACTION TO BE TAKEN.	REMARKS
all Zambia in that country.			
It should be a legal requirement that all Zambians in the Diaspora should be registered with the nearest Zambian mission.	Ministry of foreign affairs	As soon as the minister responsible for foreign affairs Issues a statutory instrument to allow for the registration of Zambian in the Diaspora.	There is currently no legal requirement to compel Zambians in the Diaspora to register with Zambian missions abroad.
The Ministry of Home affairs should identify a team of officers to undertake a study tour of countries which have adopt the dual nationality so that they can learn the pros and cons of dual nationality	The Ministry of Home Affairs.	Immediately	It is vital that this is done as it will help to come up with amendments to the Citizenship Act.
There is an urgent need to repeal the current citizenship law so as to enable it much with the current citizenship laws being adopted globally.	The Ministry of Home affairs The department of Citizenship	As soon as the Constitution is amended to allow for dual nationality.	The current Citizenship Act can only be amended after/when the Constitution is amended.

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A Reservation Made by Egypt on CEDAW [.http://www.un.org/womanwatch/daw/cedaw/reservations.htm](http://www.un.org/womanwatch/daw/cedaw/reservations.htm)

An Article By Dr Neol Simutanyi Titled *Dual citizenship is it a solution to citizenship challenges* published in the post news paper <http://www.the Postzambia news.com>

APPENDICES

Appendix A: Guide Questionnaire for Children

GUIDING QUESTIONS WHEN INTERVIEWING RESPONDENTS DURING RESEARCH (CHILDREN)

NAME:

OCCUPATION:

NATIONALITY:

NATIONALITY OF FATHER:

RESIDENTIAL STATUS OF FATHER:

DATE OF INTERVIEW:

1. WHAT DO UNDERSTAND BY DUAL CITIZENSHIP?

2. ARE YOU AWARE THAT THE CURRENT CONSTITUTION DOES NOT ALLOW DUAL CITIZENSHIP IN ZAMBIA?

3. WHAT NATIONALITY WOULD YOU WANT TO HAVE? YOUR FATHER'S OR MOTHER'S? GIVE REASONS FOR YOUR ANSWER.

4. AS A CHILD BORN OF A ZAMBIAN MOTHER MARRIED TO FOREIGN FATHER, DO YOU PREFER DUAL CITIZENSHIP IN ORDER TO ENJOY FULL CITIZENS RIGHTS AND BENEFITS OF BOTH COUNTIRES?

5. DO YOU ENCOUNTER PROBLEMS IF YOU ADOPT THE NATIONALITY OF ONE OF Y OUR PARENTS AND NOT THE OTHER? WHAT ARE THOSE PROBLEMS?

6. WHAT DO THINK WILL BE THE CHALLENGES ZAMBIA WILL FACE IF DUAL CITIZENSHIP IS TO BE INTRODUCED?

7. WHAT OPPORTUNITIES ARE AVAILABLE IF DUAL CITIZENSHIP IS TO BE INTRODUCED IN ZAMBIA?
8. IS DUAL NATIONALITY TO THE BENEFIT OF INDIVIDUALS OR THE WHOLE COUNTRY?
9. ANY PROPOSALS OF THE LAW WOULD YOU WANT TO BE INTRODUCED TO FACILITATE DUAL NATIONALITY SO THAT IT IS NOT ABUSED AND DIVIDED LOYALTY IS CURTAILED ON THE HOLDERS OF DUAL CITIZENSHIP IN ZAMBIA?
10. ANY OTHER COMMENTS?

Appendix B: Guide Questionnaire for Women

GUIDING QUESTIONS WHEN INTERVIEWING RESPONDENTS DURING RESEARCH (WOMEN)

NAME:

OCCUPATION:

NATIONALITY:

NATIONALITY OF HUSBAND:

PERIOD OF MARRIAGE:

NUMBER OF CHILDREN:

NATIONALITIES OF CHILDREN:

RESIDENTIAL STATUS OF HUSBAND:

1. WHAT DO YOU UNDERSTAND BY DUAL CITIZENSHIP?
2. WHAT IS THE CURRENT LAW ON DUAL CITIZENSHIP?
3. WOULD DO WANT YOUR HUSBAND TO ACQUIRE ZAMBIAN CITIZENSHIP?
GIVE REASONS FOR YOUR ANSWER.
4. WHAT NATIONALITY WOULD YOU WANT YOUR CHILDREN TO HAVE?
GIVE REASONS FOR YOUR ANSWER.
5. DO YOU KNOW THAT THE CURRENT LAW ALLOWS FOR DUAL CITIZENSHIP
BY MARRIAGE?
6. AS WOMEN MARRIED TO FOREIGN NATIONALS DO YOU PREFER DUAL
CITIZENSHIP IN ORDER TO ENJOY FULL CITIZENS RIGHTS AND BENEFITS

OF BOTH COUNTRIES AND ALSO THAT YOUR CHILDREN ARE NOT DISADVANTAGED ON BASIS OF NATIONALITY?

7. AS A WOMAN MARRIED TO A FOREIGN HUSBAND ARE YOU AWARE THAT YOU CAN ENJOY DUAL NATIONALITY BY MARRIAGE? IF SO, HAVE YOU EVER ATTEMPTED TO ACQUIRE YOUR HUSBAND'S NATIONALITY?
8. DO YOUR CHILDREN ENCOUNTER PROBLEMS IF THEY ADOPT THE NATIONALITY OF ONE OF YOUR HUSBAND'S AS THEY WILL BE DEPRIVED OF RIGHTS AND PRIVILEGES OF THE BEING A ZAMBIAN?
9. WHAT DO YOU THINK WILL BE THE CHALLENGES ZAMBIA WILL FACE IF DUAL CITIZENSHIP IS TO BE INTRODUCED?
10. WHAT OPPORTUNITIES ARE AVAILABLE IF DUAL CITIZENSHIP IS TO BE INTRODUCED IN ZAMBIA?
11. AS WOMEN MARRIED TO FOREIGN NATIONALS WHAT ARE YOUR VIEWS ON THE INTRODUCTION OF DUAL CITIZENSHIP IN ZAMBIA?
12. DO IMMIGRATION AND CITIZENSHIP LAW DISCRIMINATE WOMEN IN ZAMBIA?
13. IS DUAL NATIONALITY TO THE BENEFIT OF INDIVIDUALS OR THE WHOLE COUNTRY?
14. DO YOU HAVE ANY PROPOSALS TO IMMIGRATION AND CITIZENSHIP LAW TO BE INTRODUCED TO ENABLE WOMEN IN ZAMBIA TO BE TREATED THE SAME AS MEN?
15. ANY OTHER COMMENTS?

Appendix C: Guide Questionnaire for Government Officers

GUIDING QUESTIONS WHEN INTERVIEWING RESPONDENTS DURING RESEARCH (GOVERNMENT OFFICERS)

NAME:

OCCUPATION:

DEPARTMENT:

1. WHAT DO YOU KNOW ABOUT DUAL CITIZENSHIP?
2. WHAT IS THE CURRENT LAW ON DUAL CITIZENSHIP IN ZAMBIA?
3. DO YOU KNOW THAT THE CURRENT CITIZENSHIP LAW IN ZAMBIA ALLOWS FOR DUAL CITIZENSHIP BY MARRIAGE?
4. DO WOMEN MARRIED TO FOREIGN NATIONALS PREFER DUAL CITIZENSHIP IN ORDER TO ENJOY FULL CITIZENS' RIGHTS AND BENEFITS FROM BOTH COUNTRIES AND ALSO THAT THEIR CHILDREN ARE NOT DISADVANTAGED ON THE BASIS OF NATIONALITY?
5. WHAT DO YOU THINK WILL BE THE CHALLENGES ZAMBIA WILL FACE IF DUAL CITIZENSHIP IS TO BE INTRODUCED?
6. WHAT OPPORTUNITIES ARE AVAILABLE IF DUAL CITIZENSHIP IS TO BE INTRODUCED IN ZAMBIA?
7. ARE THERE SECURITY CONCERNS WHICH MAY ARISE IF DUAL CITIZENSHIP IS TO BE INTRODUCED IN ZAMBIA?

8. IF THEY ARE ANY SECURITY CONCERNS WHICH CAN ARISE WHAT MEASURES SHOULD THE GOVERNMENT PUT IN PLACE TO ENSURE THAT SECURITY IS NOT COMPRISED?
9. IS DUAL CITIZENSHIP TO THE BENEFIT OF INDIVIDUALS OR THE WHOLE COUNTRY?
10. DO YOU HAVE ANY PROPOSALS TO THE CITIZENSHIP LAW TO TAKE CARE OF DUAL NATIONALITY CHALLENGES?
11. ANY OTHER COMMENTS?

Appendix D: Extracts from the Zambian Constitution

EXTRACTS FROM THE CURRENT ZAMBIAN CONSTITUTION CHAPTER 1 AND THE IMMIGRATION AND DEPORTATION ACT RELATING TO DUAL CITIZENSHIP

PART II

CITIZENSHIP

(As amended by Act No. 18 of 1996)

Citizens of Zambia

- 4(1) *Every person who immediately before the commencement of this constitution was a citizen of Zambia shall continue to be a citizen of Zambia after the commencement of this Constitution.*
- 4(2) *A person who was entitled to citizenship of Zambia before the commencement of this Constitution subject to the performance of any conditions following the happening of a future event, shall become a citizen upon the performance of such conditions.*

Children of citizens of Zambia

5. *A person born in or outside Zambia after the commencement of this Constitution shall become a citizen of Zambia at the date of his birth if on that date at least one of his parents is a citizen of Zambia.*

Persons entitled to apply to be registered as Citizens

- 6(1) *Any person who-*
- (a) *has attained the age of twenty-one years; and*
- (b) *has been ordinarily resident in Zambia for a continuous period of not less than ten years immediately preceding that person's application for registration;*
- shall be entitled to apply to the Citizenship Board, in such manner as may be prescribed by or under an Act of Parliament, to be registered as a citizen of Zambia.*

- 6(2) *An application for registration as a citizen under this Article shall not be made by or on behalf of any person who, under any law in force in Zambia, is adjudged or otherwise declared to be of unsound mind.*
- 6(3) *Parliament may provide that any period during which a person has the right to reside in Zambia by virtue of a permit issued under the authority of any law relating to immigration shall not be taken into account in computing the period of ten years referred to in paragraph (b) of clause (1).*

Powers of Parliament

7. *Parliament may make provision for-*
- (a) *the acquisition of citizenship of Zambia by persons who are not eligible to become citizens of Zambia under this Part;*
- (b) *depriving any person of that person's citizenship of Zambia:*

Provided that a person shall not be deprived of his citizenship except on the grounds that-

- (i) *that person is a citizen of a country other than Zambia; or*
- (ii) *that person obtained such citizenship by fraud.*

Citizenship Board

8. *Parliament may make provision for the establishment of a Citizenship Board to deal with any of the matters falling under the provisions of Articles 6 or 7.*

Ceaser of Citizenship

- 9(1) *A person shall cease to be a citizen of Zambia if that person-*
- (a) *acquires the citizenship of a country other than Zambia by a voluntary act, other than marriage; and*

(b) *does any act indicating that person's intention to adopt or make use of any other citizenship.*

9(2) *A person who-*

(a) *becomes a citizen of Zambia by registration; and*

(b) *immediately after becoming a citizen of Zambia, is also a citizen of some other country;*

shall, subject to clause (4), 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 Parliament.

9(3) *For the purpose of this Article, where, under the law of a country other than Zambia, a person cannot renounce the citizenship of that other country that person need not make such renunciation but may instead be required to make such declaration concerning that citizenship as may be prescribed by or under an Act of Parliament.*

9(4) *Provision may be made by or under an Act of Parliament for extending the period within which any person may make a renunciation of citizenship, take oath or make or register a declaration for the purpose of this Article, and if such provision is made that person shall cease to be a citizen of Zambia only if at the expiration of the extended period that person has not then made the renunciation, taken the oath or made or registered the declaration, as the case may be.*

Interpretation

10(1) *For the purpose of this Part, a person born aboard a registered ship or aircraft, or aboard an unregistered ship or aircraft of the Government of any country, shall be deemed to have been born in the place in which the ship or aircraft was registered or in that country, as the case may be.*

10(2) *Any reference in this Part to the national status of the parent of a person at the time of the birth of that person shall, in relation to a person born after the death of his parent, be construed as a reference to the national status of the parent at the time of the parent's death.*

10(3) *For the avoidance of doubt, it is hereby declared that a person born in Zambia before the 1st April, 1986, whose father was an established resident shall continue to enjoy the rights and privileges, under, and remain subject to, the law prevailing immediately before that date.*

Appendix E: Extracts from the Immigration and Deportation Act

EXTRACT FROM THE IMMIGRATION AND DEPORTATION ACT CHAPTER 123 OF THE LAWS OF ZAMBIA

- 3(1) Subject to subsection (2), Parts III, IV and V shall not apply to*
- (a) any person duly accredited to Zambia by or under the authority of the government of any sovereign state;*
 - (b) any person who under any written law is entitled to any diplomatic immunities and privileges by reason of his association with an organisation of which the Republic or the Government and one or more other states or the government or governments thereof are members;*
 - (c) any member of the official staff or of the household of a person described in paragraph (a) or (b);*
 - (d) any citizen or established resident;*
 - (e) any wife or minor child of a person described in paragraph (a), (b), (c) or (d);*

and such persons shall be entitled to enter and re-enter into and to remain within Zambia.

FIRST SCHEDULE OF THE IMMIGRATION AND DEPORTATION ACT CHAPTER 123
(Sections 14 and 18)

CLASSES OF PERSONS WHO MAY BE ISSUED WITH ENTRY PERMITS

Class A

Any person who intends for gain to engage in any trade, business, profession, employment or other occupation-

- (i) *for which he is fitted by virtue of his academic or professional qualifications, standard of education, skill and financial resources;*
- (ii) *in which, having regard to the productivity and efficiency of the persons already engaged therein, there is not already a sufficient number of persons engaged or available in Zambia to meet the requirements of the inhabitants of Zambia; and*
- (iii) *which is likely to be of benefit to the inhabitants generally of Zambia.*

Class B

Any person-

- (i) *who has in his own right and at his full and free disposition for use in Zambia such financial resources as shall be sufficient to maintain him; and*
- (ii) *whose presence in Zambia is likely to be of benefit to the inhabitants generally of Zambia.*

Class C

Any forebear, parent, wife, minor child or grandchild of a person who is dependent on that person if such person-

- (i) *is the holder of a valid entry permit;*

(ii) *is capable of maintaining such dependant; and*

(iii) *undertakes such maintenance.*

Class D

Any forebear, parent or grandchild of a person who is dependent on that person if such person-

(i) *is a citizen or established resident;*

(ii) *is capable of maintaining such dependant; and*

(iii) *undertakes such maintenance.*