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CENTRE

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# DUAL CITIZENSHIP IN NAMIBIA



**N**amibian law currently allows Namibian citizens by birth or descent to hold the citizenship of other countries at the same time.

The Legal Assistance Centre believes that dual citizenship has positive practical benefits for Namibia. It is also an important part of personal identity for many individuals. Specific concerns about dual citizenship could be addressed by legislative safeguards, without removing the possibility of dual citizenship altogether.

## 1. WHAT IS CITIZENSHIP?

Citizenship refers to membership of a political community. Generally, citizenship includes various dimensions such as legal status and rights, participation in the political community, and a sense of belonging. In virtually all countries, citizenship is based on some combination of principles concerning place of birth, bloodline, marital status and residence.

Citizenship involves both rights and duties. The rights of citizens include the right to legal protection by the State and the exercise of political rights such as the right to vote. The duties of citizens include the obligation to pay taxes and, in a few countries, to perform military service.

Citizenship also includes the right to be protected against the arbitrary withdrawal of that citizenship.



## 2. HOW DO PEOPLE GET DUAL CITIZENSHIP?

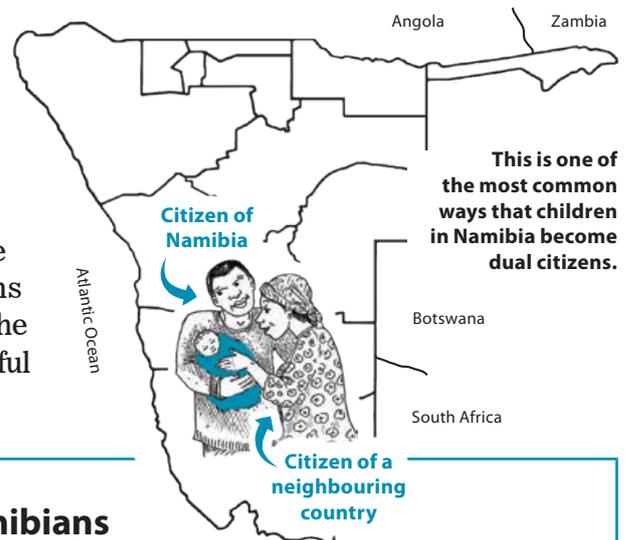
**Citizenship by birth:** Discussions of dual citizenship often make reference to two key principles: (1) “law of the soil”, which means citizenship by place of birth; and (2) “law of the bloodline”, which means citizenship by descent from a parent who is a citizen. Dual citizenship often arises where these principles overlap.

**Marriages between people of different nationalities:** Increased travel, study and work in countries outside a person’s home country have led to more marriages between persons of different nationalities. In Namibia, many people in exile during the liberation struggle met and married non-Namibian spouses. Marriage to foreigners happens in the post-Independence era partly because Namibia attracts foreign visitors, donors and investors, and partly because Namibian citizens

now have increased opportunities to travel for sport, study, business or tourism. At the same time, the arbitrariness of colonial boundaries means that many communities split by superimposed international borders have cross-border ties going back for generations.

**Gender equality:** Dual citizenship by descent has increased as a result of increased gender equality. In the past, women were often unable to retain their nationality of birth if they married a man from another country. They were often unable to pass their citizenship to their children even if they were allowed to retain it. As a result of the advancement of women's rights, women in most countries now have the right to retain their citizenship upon marriage to a man of another nationality, and to transmit their citizenship to their children.

**Dual citizenship after naturalisation:** Another source of dual citizenship is where immigrants to a country are allowed to retain their original citizenship even after they become naturalised citizens of the second country. Many countries have no objections to dual citizenship in such cases, because retaining the original citizenship helps such persons to maintain useful ties with their original home countries.



### Three routes to dual citizenship for Namibians

- 1) **Birth to parents with non-identical citizenships from countries where citizenship is inherited from both the father and the mother. (Currently allowed in Namibia)**

*EXAMPLE: A child is born to one South African parent and one Namibian parent. Both countries recognise citizenship by descent, so the child is a citizen of both South Africa and Namibia no matter where the child is born.*

- 2) **Birth in a country which allocates citizenship on the basis of birthplace with one parent from a country that allows citizenship by descent. (Currently allowed in Namibia)**

*EXAMPLE: A child is born in Namibia to one South African parent and one British parent who are both ordinarily resident in Namibia. This child is a triple citizen – a citizen of South Africa and Britain by descent, and a Namibian citizen by birth.*

*EXAMPLE: A child is born in the USA to two Namibian parents who are studying there. The child is a citizen of Namibia by descent, and a US citizen because of birth on US soil.*

- 3) **Naturalisation without renunciation of previous citizenship. (Not allowed for naturalised Namibians, but can happen where a Namibian by birth becomes a naturalised citizen of a second country)**

*EXAMPLE: A Namibian citizen by birth goes to live in the USA and acquires American citizenship.*

### 3. WHAT IS THE CURRENT NAMIBIAN LAW?

The Namibian Citizenship Act has a general provision prohibiting dual citizenship. However, Article 4 of the Namibian Constitution states that “no person who is a citizen of Namibia by birth or descent may be deprived of Namibian citizenship by such legislation”. The High Court has confirmed this in several cases.

## 4. INTERNATIONAL LAW ON DUAL CITIZENSHIP

International conventions provide little detail on the issue of dual citizenship. This is because it is generally considered to be part of a state's sovereign power to make rules on citizenship of that state. In the past, many countries viewed dual citizenship as the political equivalent of bigamy, fearing that it would mean divided political loyalties. But in recent times, dual citizenship has been more often viewed as a positive possibility rather than a problem.

## 5. WHAT DO OTHER COUNTRIES DO?

There is a trend in the world, and in Africa, towards allowing dual citizenship. More than half of all African countries allow dual citizenship, and many African countries which still prohibit it in theory do not enforce the prohibition in practice. Examples of different types of dual citizenship permitted by African countries are as follows:

- GHANA: dual citizenship for all Ghanaian citizens.
- KENYA: dual citizenship for Kenyans by birth.
- SOUTH AFRICA: no prohibition on dual citizenship acquired automatically; dual citizenship allowed at government discretion for any South African citizen who acquires another citizenship by a voluntary act.
- BOTSWANA: dual citizenship allowed for children and persons who automatically acquire another citizenship by marriage.
- ZAMBIA: Constitutional amendment allowing dual citizenship for all Zambian citizens under consideration.



## 6. ARGUMENTS FOR DUAL CITIZENSHIP

### 1. Dual citizenship does not excuse citizens from any of the obligations of citizenship in either country.

For example, dual citizenship does not excuse people from facing criminal prosecution if they break the law in any country where they are present. If a person with dual citizenship is in Namibia, Namibia would not take any account of the second citizenship; Namibia would treat all of its citizens in the same way, regardless of any other citizenships they might hold.

### 2. Dual citizenship recognises the reality of people's diverse cultural backgrounds. This is particularly relevant in Africa where many people migrate between countries for work or study, or for other reasons.

This concept can be compared to multiple cultural identities within Namibia – imagine a marriage between one spouse who is Owambo and one spouse who is Herero. How would the family feel if the children were forced to choose one cultural identity and discard the other?

### 3. Dual citizenship can have practical benefits for the nation.

A dual citizen of Namibia and another country may be able to study in the other country of citizenship at reduced fees, and then bring the acquired skills back home to Namibia. Dual citizenship can also open up job opportunities which result in remittances to family members in Namibia. The possibility of dual citizenship may attract skilled persons and investors to come to Namibia, or remain here, rather than contributing to the economy of some other country. Dual citizenship may provide entitlement to social programmes in another country – such as health care or pensions – which take some burdens off the Namibian Government.

#### **4. Avoiding statelessness.**

One effect of restrictive laws on citizenship is that they can leave some persons stateless. This can happen, for example, where a dual citizen renounces or loses one citizenship, only to find that there is some problem with the claim to the other citizenship.

#### **5. Gender equality.**

If dual citizens born to parents of different nationalities are forced to choose, this could mean that gender inequality will re-surface because of prevailing patriarchal norms.

### **5. ANSWERING ARGUMENTS AGAINST DUAL CITIZENSHIP**

#### **1. Divided loyalties.**

Some people worry that dual citizens may have divided loyalties which will be detrimental to the nation, fearing that a lack of total commitment to one country may undermine national identity and cohesion. But concepts of exclusive loyalty carry less weight in a globalised world which is increasingly interconnected, especially given the dramatic increase in international migration and the increase in regional cooperation through bodies such as the African Union.

#### **2. Voting in more than one country.**

Dual citizens can, in theory, vote in more than one country in elections which have no residency requirements. However, voting by dual citizens outside their countries of normal residence is generally low – mainly because it is more difficult to do in practice. Some countries require their citizens to be resident in the country in order to vote. Other countries take the view that, since dual citizens have a connection to two countries, it is fair for them to have a say in both countries through voting.

#### **3. Dual citizens holding political office.**

Several countries which allow dual citizenship prohibit dual citizens from holding key political offices or sensitive government posts.

#### **4. Taxation.**

Most countries, including Namibia, impose income tax on the basis of residency rather than citizenship, so this issue raises no problems in respect of dual citizenship.

#### **5. National security concerns.**

Very few countries now require compulsory military service, so concerns about military service for dual citizens are not very relevant. If this does come up, the usual rule is that dual citizens should perform military service in their state of residence and not in states where they have other citizenships. There have been no notable cases of dual citizens working as spies anywhere in the world – and dual citizens could be excluded from high-level military positions or tasks relating to national security.

When it comes to entering and exiting a country, some countries such as the US and South Africa address security concerns by not permitting their citizens to enter the country on a foreign passport. Namibia could require that a Namibian citizen with other citizenships must enter and leave on a Namibian passport and not on another country's passport.

## 6. SPECIAL CONCERNS PERTAINING TO CHILDREN

A prohibition on dual citizenship can be particularly problematic for children who acquire multiple citizenships by the circumstances of their birth. Many countries do not allow minors to renounce citizenship, and do not allow parents to make this decision on behalf of a minor.

*Consider, for example, a child born in Namibia to one Namibian citizen parent and one UK citizen parent. This child would automatically be a dual UK-Namibian citizen. Under British law, a child under 18 cannot renounce British citizenship, so the only way such a child could avoid dual citizenship would be for the child (or the child's parents) to renounce the child's Namibian citizenship – even though the child was born in Namibia and may never have left the country. The result would be to make some children foreigners in their own homeland.*

Under Namibian law, if dual citizenship were prohibited, a parent would probably have to sign the necessary documents in order to renounce Namibian citizenship on behalf of the child. The wisdom of allowing a parent to make this momentous decision on behalf of a child should be questioned.



## 7. RECOMMENDATIONS

**There are many positive benefits to dual citizenship. Dual citizenship can also be an important part of an individual's personal sense of identity. The Legal Assistance Centre calls on the Government of Namibia not to take away the right of Namibians by birth or descent to hold multiple citizenships.**

Instead, the Legal Assistance Centre recommends that the government utilise **legislative safeguards** to address specific concerns about dual nationality rather than outlawing it entirely by means of a constitutional amendment. For example:

1. Namibia could follow Ghana's example and pass legislation stating explicitly that a citizen of Namibia who is also a citizen of any other country shall, whilst in Namibia, be subject to the laws of Namibia in the same way as any other citizen. Dual citizens could also be required to sign an oath of allegiance.
2. Absentee voting abroad could be conditioned on the voter having been resident or at least present in Namibia in the recent past.
3. Eligibility for sensitive government posts could be reserved for persons who hold only Namibian citizenship, although a preferable approach would be to require full disclosure of multiple citizenships and an oath of loyalty to Namibia.



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