

THE DUAL CITIZENSHIP (AMENDMENT) BILL, 2021 IS PAST DUE AND SHOULD BE PASSED SOON

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Introduction

In the dying days of July 2021, Ghana's Parliament gazzetted an important Bill—The Dual Citizenship (Amendment) Bill, 2021 ("Bill"). The Hon. Kennedy Osei Nyarko, MP for Akim Swedru, sponsored the Bill.

Though the Hon. Kennedy Osei Nyarko's name is attached to the Bill as its sponsor, I know this Bill is the collective efforts of many individuals both in academia and practice, various diaspora groups that I have had occasion to exchange views with on the 1992 Constitution generally and in particular the limits of dual citizenship and many well-meaning Ghanaians. In fact, some individuals have unsuccessfully invoked the jurisdiction of the Supreme Court to declare the various restriction on dual citizens vis-à-vis certain public offices as unconstitutional.

Besides the trivial question of whom gets credit for this Bill, Ghanaians should be pleased and dual citizens should be thrilled by this Bill. In the rest of my relatively brief remarks on why this Bill is important and should be passed into law,

- (1) I would state the purpose of the Bill;

- (2) I would talk about the provisions that the Bill seeks to repeal, namely articles 8(2) and 94(2)(a) of the 1992 Constitution;
- (3) I would mention few of the agitations, especially in the form of law suits, against proscribing dual citizens from serving in certain public offices;
- (4) I would try and see whether I can bring some clarity to bear on the concept of dual allegiance, which appears to have erroneously informed the view that dual citizens cannot and should not be trusted with certain public offices;
- (5) I would argue that Ghana ought to align itself with the positive global trend, which has seen a decline in anti-dual citizenship;
- (6) I would admit that dual citizenship poses a conundrum, but I would also argue that dual citizens should not be barred from serving in certain public offices; and
- (7) I would conclude with some general observations and remarks.

In executing the above in my remarks, and a little bit more, I would stay close to the content of the Bill on these points. I would stray away from the content of the Bill, especially in my closing remarks only to bring clarity to bear on the importance of passing this Bill. This is because I believe the Bill, in the main, has, within its limited scope, portrayed its theme well.

1. Purpose of the Bill

The Memorandum to the Bill states its purpose as intending “to remove restrictions imposed on dual citizens and persons who owe allegiance to a country other than Ghana from holding the public offices specified in” articles 8(2) and 94(2)(a) of the 1992 Constitution. When this Bill thus becomes law, dual citizens would be able to assume these public offices hitherto proscribed by now existing Ghanaian citizenship codes.

Citizenship entails responsibility. Allowing dual citizens thus to serve in as many public offices as possible is really a call on them to be responsible citizens. “It is in the public interest to leverage the skills and expertise of all Ghanaians even if they hold dual citizenship” is how the Bill phrases this point.

But the beauty of the Bill I believe and in the exact words of the Bill “is to give dual citizens the opportunity to bring their ideas, knowledge, expertise as well as experiences acquired from other jurisdictions to help develop Ghana.” As well, the Bill when it becomes law, has the potential of fully clothing dual citizens with the full garments of citizenship, a key requisite to growing our relatively young democracy.

2. The Old Provisions that the Bill Seeks to Repeal

The Bill seeks to repeal Section 1 of the Constitution of the Republic of Ghana (Amendment) Act, 1996 (Act 527). Section 1 of Act 527 is now Article 8(1) of the 1992 Constitution. But I would like to take us a step back. Recall that section 1 of Act 527 repealed the then article 8(1) of the 1992 Constitution. That old provision states: “(1) Subject to this article, a citizen of Ghana shall cease forthwith to be a citizen of Ghana if, on attaining the age of twenty-one years, he by a voluntary act, other than marriage, acquires or retains the citizenship of a country other than Ghana.”

In 1996, about three years after article 8(1) operated as the law of Ghana barring dual citizenship save marriage, section 1 of Act 527 repealed article 8(1). The new provision allowed for dual citizenship. But it has a string attached: Dual citizens could not hold certain offices: Ambassador or High Commissioner, Secretary to the Cabinet, Chief of Defense Staff or any Service Chief, Inspector-General of Police, Commissioner, Customs, Excise and Preventive Service, Director of Immigration Service, and any office specified by an Act of Parliament.

Please take careful note of paragraph (g) of clause (2) of article 8. Article 8(2)(g) empowers Parliament to expand the list of offices that dual citizens could not hold in addition to those already listed and in addition to those under article 94(2)(a). (I would come to article 94(2)(a) in a minute.) And Parliament did an expressive job, regrettably, expanding this list under the force of article 8(2)(g). A more comprehensive list of the exclusions, in addition to those listed *supra*, include: President, Vice President, Ministers of State, Deputy Minister of State, Cabinet Member, Speaker of Parliament, Member of Parliament, Member of Electoral Commission, Member of the Public Service Commission, Members of the National Commission for Civic Education,

Member of Lands Commission, Member of Regional Lands Commission, Founding Member of a Political Party, Executive Member of a Political Party, Leader of a Political Party, Chief Justice, Justice of the Supreme Court, Commissioner, Value Added Tax Service, Director-General, Prisons Service, Chief Fire Officer, Chief Director of a Ministry, Rank of a Colonel in the Army or its Equivalent in Other Security Service, Office of the Special Prosecutor and counting.

3. Past Agitations Against Excluding Dual Citizens from Certain Public Offices

Some Ghanaians were unhappy with these exclusions and dual citizens especially sought to change the law that excluded from holding certain public offices. In the Asare v Attorney-General (No. J1/6/2011) case, for example, the plaintiff failed to convince the Supreme Court to declare the prohibitions on dual citizens from holding these public offices unconstitutional. As well, the plaintiff failed to get the majority of the Supreme Court to align with his position that article 8(2)(g) was unconstitutional as MPs could not unilaterally amend portions of the Constitution. And so, MPs continued to recklessly enact laws that barred dual citizens from holding certain offices.

The intellectual basis of excluding dual citizens from serving in certain public offices is rooted, albeit erroneously in the nuance concept of dual allegiance mentioned in article 94(2)(a) of the 1992 Constitution.

4. The Erroneous Foundation of Article 94(2)(a)

Article 94(2)(a) relates to article 8 because it also bars some Ghanaian citizens from holding certain public offices. That is why the Bill seeks to repeal both articles. But the grounds for article 94(2)(a)'s exclusion is different from article 8's, a difference which appears to be lost on our lawmakers of past Parliaments of the Fourth Republic. The former, 94(2)(a), excludes persons from becoming Presidents, Vice President, Chief Justice, Justice of the Supreme Court and Member of Parliament etc because such "persons ... owe allegiance to a country other than Ghana."

A distinction exists between a dual citizen simpliciter, and a Ghanaian citizen “who owe[s] allegiance to a country other than Ghana.” The Bill does enough in shinning this distinction though it could have done more save the limited space and its main focus. The distinction between dual citizenship and dual allegiance is this:

“The former arises when, as a result of the concurrent application of the different laws of two or more states, a person is simultaneously considered a national by the said states. For instance, such a situation may arise when a person whose parents are citizens of a state which adheres to the principle of jus sanguinis is born in a state which follows the doctrine of jus soli. Such a person, ipso facto and without any voluntary act on his part, is concurrently considered a citizen of both states ... Dual allegiance, on the other hand, refers to the situation in which a person simultaneously owes, by some positive act, loyalty to two or more states. While dual citizenship is involuntary, dual allegiance is the result of an individual’s volition.” {*Ernesto S. Mercado v Eduardo Barrios Manzano and the Commission on Elections (G.R. No. 135083)*.}

I disagree with the last bit of the statement above. Dual citizenship is not always involuntary. Dual citizenship is sometimes voluntary and freely chosen. But that is besides point. The key here is that dual citizenship is different from dual allegiance. And the Bill quotes this Philippian case *supra* to draw out this distinction.

Just a bit on dual allegiance before I move on. Per Lord Coke in the 1608 case of Calvin v Smith, dual allegiance applicable to a citizen who is not a natural born citizen. {(1608) 77 Eng. Rep. 377 (K.B.)}. Thus, historically and in its British common law understanding, a Ghanaian dual citizen who was born (and probably raised in Ghana) does not have his allegiance to Ghana question without such a citizen taking “some positive act” to vow allegiance to another state. The question of dual allegiance rises, if it rises at all, in the context of non-natural born citizens.

5. Global Decline in Anti-Dual Citizenship

As the Bill rightly observes, “research shows that dual citizenship toleration has increased in the past half century from one-third to three-quarters of states globally.” {Bill p. 6.}. Several factors account for this embrative posture towards dual citizenship. The Bill elaborates on these factors. I wish to merely list them:

- Globalization;
- Technology;
- increased respect for the rights of citizens, which is increasingly seen as a universal right;
- rejection of the pathology that dual citizens inherently have split loyalties; and
- liberal democracy

Citizenship is partly a rights-base concept: “Even at the height of the suspicions of dual citizens, countries such as [the] UK and USA that allowed and still allow dual citizenship did not impose public office holding exclusions on dual citizens. This is as a result of the liberal conception of citizenship as a status that entitles individuals to a specific set of universal rights that are granted by the State.” {Bill, p. 6.}. Further, “[i]t is significant to note that the concept of citizenship is understood as a bundle of universal rights and responsibilities and hence, many countries are averse to disturbing this bundle of universal rights and responsibilities.” {Bill, p. 6.}.

6. Admitting the Dual Citizenship Conundrum

Even so, admittedly, certain classes of citizenships are still restricted. For example, only a natural born citizen, regardless of whether such a citizen is a citizen of another country or not, can be the president of the USA. And in Nigeria, only a natural born citizen, regardless of whether such a citizen is a citizen of another country or not, can assume certain public offices.

The Bill admits that dual citizenship may in practice—and but not in law—limit its holder. A Ghanaian Nigerian, for example, may not be the ideal candidate as Ghana’s Ambassador to Nigerian, the Bill agrees. And I agree. But the Bill

is right that such a Ghanaian Nigerian should not be barred by law from being an ambassador to other countries. These other countries are about 193. I agree with the Bill.

And recall the *Asare* dual citizenship case, which I mentioned a while ago. In the the *Asare* dual citizenship case, the Attorney-General asked how Ghanaians can trust a Colonel in the Ghanaian Army who is a Ghanaian Nigerian in a war between Ghana and Nigeria? The Attorney-General also asked how Ghanaians could trust Ghana's High Commissioner to the UK who is also a citizen of the UK in a diplomatic tussle between the two countries? These are fair and sensible questions. But Nigeria is not the only country that Ghana could potentially be at war with. And the UK is not the only country that Ghana could potentially have a diplomatic fend with. Our Ghanaian Nigerian Colonel can serve in other wars besides this fictitious war with Nigeria (which by the way would never happen). And our Ghanaian British can be a diplomat elsewhere besides the UK. These are reasonable responses, in my view, to the position of the government in the *Asare* dual citizenship case. I hope government has or would change its view on this subject.

7. This Bill Is Past Due and Should Be Passed Now

Several reasons render proscribing dual citizens from holding certain public offices unfair and self-defeating as a country, especially as a relatively poor, developing country. I have written extensively and spoken well about them in other fora, and the Bill expands on some of them. So I list few of them:

- Huge remittances;
- A Source of fund-raising for the government: former President John Dramani Mahama and current President Akufo-Addo have issued Diaspora Bonds to fund infrastructure. {Bill, p. 8};
- Dual citizens contribute money to local political parties;
- Estimated at one million, Ghanaians in the diaspora are “a significant source of wealth, knowledge, skills and experience that the country can tap into.” {Bill p. 8};
- Dual citizens help in formulating national policies;

- Per the Representation of the People (Amendment) Act, 2006 (Act 699), also known as ROPAA, Ghanaians in the diaspora can vote while outside the country. “Therefore, the right of citizens of Ghana to vote should coexist with their right to be voted for.” {Bill, p. 8}; and
- Some dual citizens left Ghana to avoid military dictators. Their offspring became citizens of other countries through no fault of theirs. “These soldiers of constitutionalism and their offspring should not be denied an opportunity to hold public office merely because they have acquired other citizenships during their involuntary emigration.” (Bill, p. 8).

The totality of the above “is evidence that dual citizens and persons of dual allegiance continue to be loyal citizens of Ghana who regularly exercise their civic responsibilities to Ghana and hence, should be embraced rather than placing fetters on their ability to serve their nation, Ghana. Removing the restrictions imposed on their ability to hold these public offices would not automatically entitle them to hold these offices; ultimately, they must persuade the appointing authorities or the electorates that they are qualified to hold the positions before being given the nod.” {Bill, pp. 8-9}.

Conclusion: General Observation and Remarks

Please permit me to conclude with the following remarks:

Forcing the Donkey to Drink Water:

I hope when this Bill becomes law, it would not end up like one of those laws that has been passed but not implemented. ROPAA readily springs to mind. Under article 42 of the 1992 Constitution, every eligible Ghanaian anywhere had the constitutional right to vote. Hence, strictly speaking, ROPAA was superfluous as the Supreme Court notes in the Ocansey/CHURCIL, Tehn Addy v EC and Apaloo v EC line of cases. ROPAA’s logic was that those living abroad did not vote because there was no law directly backing their right to vote. ROPAA thus was passed. Yet a huge number of eligible Ghanaians

living abroad are yet to vote in public elections and referenda so many years after ROPAA.

The Bill should not end up like ROPAA. Sure, when it is passed, the EC would not have to organize another by-election because the elected MP is supposedly a dual citizen. But what happens if a president who does not believe in the Bill refuses to appoint dual citizens to certain public offices? Or would Ghanaians who hold the view that dual citizens have inherent split loyalties be willing to vote for a candidate who openly admits his dual citizen status?

Beyond this Bill, I believe we need to do more to integrate dual citizens into the general citizenry.

The Minister of Foreign Affairs July 27, 2021 Letter:

I happened to chance upon a letter from the Minister of Foreign Affairs to Ghanaian foreign missions abroad with the subject: **Dual Nationality and Application for Dual Citizenship Cards and Certificates**. This internally circulated letter was in reaction “to complaints by some Ghanaians abroad on the implementation of the Supreme Court’s decision in the case of Asare v Attorney General [2012] 1 SCGLR, on the rights of dual nationals.” Dual citizens per the Asare case do not need to acquire a dual citizenship certificate/card as proof of their status. Apparently, some dual nationals believe or are made to believe that they should acquire these dual citizenship certificates/cards. The Minister’s letter further clarifies, a clarity which is relevant to our present discussion, that “contrary to the misconceptions of some of our compatriots with dual nationality status, our Republic imposes no fetter or conditions on the exercise of dual nationals rights as citizens, except for appointment to some public offices of Ghana ...”

But here is the intriguing portion of the Minister’s letter: If you are a dual national of Ghana with a Ghanaian passport, you do not need a Ghanaian visa to travel to Ghana. Though if you do not have a Ghanaian passport as a dual national, you need the dual citizenship certificate/card to enter Ghana. However, if you renounced your Ghanaian citizenship, as required by countries such as Germany, Austria and the Netherlands of Ghanaian dual

nationals, you need a Ghanaian visa to enter Ghana. Ghanaian nationals are forced to renounce their Ghanaian citizenship by these three countries and others like them.

My point: Even with all the legal impairments removed in their way, dual citizens still shoulder these bureaucratic and practical bottlenecks.

Allowing Even Non-Citizens to Vote:

Some countries allow foreigners who have stayed in that country for a certain number of years to vote to elect their presidents and lawmakers. Jamaica used to be one such country and probably still allows foreigners to vote in its national elections.

In a recent opinion article in *the New York Times* Newspaper, the author argued that US permanent residents should be allowed to vote for US presidents, senators, and congress men and women. {Atossa Araxia Abrahamian, “There Is no Good Reason You Should Have to Be a Citizen to Vote,” in New York Times (July 28, 2021).} In fact, this article reveals that some states allow non-US citizens to vote in local elections.

Please think about it. If some countries are allowing non-citizens to as much as vote for their leaders, what does that tell Ghana that puts fetters in the way of its nationals in either voting in elections or serving in public offices? Just a simple question.

I do not, by these concluding remarks, wish to disturb the good news that the proposed Bill brings. So I would end my brief take on the Bill here.

Truly, the Dual Citizenship (Amendment) Bill, 2021 should delight Ghanaians and renew the faith of Ghanaian dual citizens in a country they call their home.

It is past due and ought to be passed soon!