



A REVIEW ON DUAL NATIONALITY INVESTMENT TRENDS IN GHANA AND OTHER AFRICAN COUNTRIES

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ABSTRACT

As globalization persists, there is an increasing presence of international investment treaties on the agendas of numerous African leaders, reflecting the interconnectedness of the global economy. African nations seek to instil investor confidence and provide legal protection for investments by endorsing these treaties. Additionally, the objective is to mitigate the occurrence of dual taxation for foreign corporations. Similar to numerous other African nations, Ghana has engaged in bilateral investment treaties (BITs) and other international agreements that specifically deal with the handling of individuals who hold dual nationality. The structural composition of these provisions may vary across different treaties. This paper examines the important aspects pertaining to investment treaties in Ghana. When formulating regulations regarding dual nationals in their investment treaties, other African countries should take into account similar factors. Nonetheless, one must note that no universally applicable method exists, as the composition of these regulations might differ significantly across African countries. The present research examines the trends and variances under discussion.

Keywords: *Dual nationality, investment treaties, African countries, Ghana.*

INTRODUCTION

Bilateral investment treaties (BITs) have demonstrated their efficacy as policy instruments employed by governments seeking to guarantee fair treatment and safeguard foreign direct investment (FDI). Over the course of the last four decades, the global network of BITs has experienced significant growth, resulting in the conclusion of over 2,400 treaties. (Unctad, n.d.) To date, Ghana has successfully concluded a total of 26 BITs, primarily with nations in Africa and Europe. Through the act of signing these agreements, Ghana demonstrates its dedication to establishing a consistent, open, and foreseeable environment for investment. This is a significant difficulty for Ghana and other developing nations in managing various investment commitments that may involve overlapping or potentially conflicting provisions. The growing quantity of international arbitration proceedings and the expansion of foreign investment into emerging sectors, like liberalised utilities, are bringing about a heightened examination of the language and extent of BITs. Emerging agreements are currently being observed, which exhibit a distinct structure and attitude towards investment matters that were absent in previous agreements. These agreements demonstrate variations in terms of their extent and substance, and address the issue of policy consistency. It is advisable to conduct a comprehensive examination of current obligations within BITs and other investment agreements, with the aim of revising or formulating a novel model BIT that can serve as a reference for forthcoming BIT talks. It is imperative to consider both national development goals and current advancements in international investment legislation. Furthermore, Ghana is now engaged in negotiations for the establishment of treaties aimed at preventing double taxation (DTT). It is imperative to actively pursue the expansion of this network of treaties.

Ghana's IPR was completed in 2003. The report offered the government policy recommendations pertaining to the enhancement of Ghana's investment framework, methods for encouraging investment, and the overall conducive climate for attracting and capitalizing on FDI. In 2006, the



UNCTAD produced a publication titled "Best Practice in Investment Promotion and Facilitation: A Blue Book." This endeavour was made possible with the generous financial assistance provided by the Japan Bank for International Cooperation. The publication titled "The Blue Book" outlines a set of 15 practical steps that are recommended to be executed within a span of 12 months. These initiatives aim to advance Ghana's investment promotion and facilitation efforts towards achieving optimal standards. In line with the provisions stated in paragraph 149 of the Accra Accord, which aims to provide support to underdeveloped countries in their efforts to follow through on investment policy reviews, the UNCTAD conducted a mission to Ghana in July 2008. The objective of this mission was to evaluate the level of implementation of the suggestions that were outlined in the Investment Policy Review (IPR) and the blue book. The results of the expedition are succinctly outlined in this article.

HISTORY OF DUAL CITIZENSHIP IN GHANA

The historical context of Ghana's diverse citizenship has been shaped by the country's colonial ties, along with commonwealth origins, and migration regulations, porous borders, along with significant Pan-Africanism involvement. Contrary to the prevalent trend observed in many Western democracies, which have shown a reluctance to embrace plural citizenship, the country in question paradoxically began as a nation comprising numerous citizens. In addition to establishing provisions for Ghanaian citizenship, the initial citizenship legislation enacted in 1957 in Ghana permitted individuals to retain their previous citizenship as either the UK and Colonies' citizens or British-protected persons. In addition, they obtained Commonwealth citizenship as a result of their citizenship in the Republic of Ireland. Consequently, the monarchical constitution of 1957, which was handed down through inheritance, did not prohibit dual citizens from holding public office. It did, however, include a section mandating that legislators owe no allegiance to foreign nations. Therefore, upon attaining independence, all of the country's leaders held multiple citizenships. This statement is accurate for several Commonwealth nations, including Nigeria, Canada, along with New Zealand. Professor Lee, a distinguished conservationist with dual British and Gabonese citizenship, was recently appointed by the government of Gabon to supervise the long-term sustainability of the country's forests and oceans. The primary objective of Professor Lee is to ensure that Gabon achieves its chosen aim of dropping greenhouse gas emissions.

DUAL NATIONALS IN GHANA

The presence of a significant Ghanaian diaspora abroad has led to a modification of the prior restriction on dual citizenship. Ghana has implemented a policy of dual citizenship since 2002. Individuals who have forfeited their Ghanaian citizenship due to the acquisition of another nationality in accordance with the former regulations are eligible to submit a new application for Ghanaian citizenship. Individuals who are not of Ghanaian descent have the opportunity to seek Ghanaian citizenship through the process of registration, provided they are residing in Ghana as ordinary residents. Alternatively, they may also pursue Ghanaian citizenship by naturalization if they have made a significant contribution to the development or advancement of any sector of national activity. The eligibility for obtaining Ghanaian citizenship by registration or naturalization is contingent upon the applicant's proficiency in speaking and comprehending an indigenous Ghanaian language. The Citizenship Act imposes restrictions on Ghanaians who have obtained citizenship of another nation, barring them from assuming the president or parliamentary positions, as well as from being appointed to specific public offices.

Ghana holds the distinction of being the inaugural African nation to extend the privilege of repatriation and unrestricted residency to those belonging to the wider African diaspora. According to Section 17(1)(b) of the Immigration Act 573 of 2000, the minister of the interior has the authority, subject to the president's permission, to confer the "right of abode" upon an individual of African heritage. The inclusion of this provision can be attributed to the influence exerted by a significant



number of African Americans who had relocated to Ghana subsequent to its attainment of independence, and subsequently established permanent residency inside the nation. The administration has additionally expressed its intention to implement measures that would streamline travel and investment opportunities for individuals belonging to the Ghanaian diaspora. In May 2003, the establishment of a Non-Resident Ghanaians Secretariat (NRGS) was initiated with the aim of fostering stronger connections with Ghanaians residing outside the country and facilitating their potential repatriation.

THE SUPREME COURT'S PRONOUNCEMENTS ON DUAL CITIZENSHIP IN GHANA

The Supreme Court has lately issued significant rulings regarding dual citizenship, which have notable implications in terms of statutes, regulations, and travel. The announcements lead to the dissemination of false and outdated material that is published on the websites of numerous embassies.

In the year 1996, the First Parliament of the Fourth Republic made amendments to the Constitution of 1992 with the enactment of Act 527. The Act 527 effectively nullified the provision stated in Article 8(1), which granted Ghanaian residents the right to possess dual citizenship with any other country alongside their Ghanaian citizenship.

In 2001, the implementation of the Citizenship Regulation required individuals who possess Ghanaian citizenship as well as citizenship from a different nation to formally request Dual Citizenship. The applicant is required to submit a cover letter, along with supporting documents that verify Ghanaian citizenship, evidence of parental citizenship, a naturalization certificate, and four passport-sized pictures. It is imperative that the applications form be securely sealed. Upon being content with the application, the esteemed Minister of Interior would proceed to provide the citizen of Ghana an official Certificate of Dual Citizenship, duly signed. This certificate is obtainable upon payment of a prescribed cost, now estimated at approximately \$20.

THE EXCLUSIONS ARE IRRATIONAL

The Republic first attempted to offer a legal explanation for these restrictions in a lawsuit brought before the Supreme Court in 2012. Concerns about loyalty and dedication were raised by the Republic, requiring the Court to weigh two possible outcomes. The Republic has expressed concern over the loyalty of a Ghanaian Army Colonel who also has citizenship in Nigeria in the event of a confrontation between Ghana and Nigeria. The plaintiff argued that the claims of dedication and fidelity have no substance in law. The Republic, they contended, had offered no evidence beyond conjecture and fantasy to back up these claims. The plaintiff further pointed out that all previous treasonous attempts to overthrow governments have been led by Ghanaian nationals.

THE EXCLUSIONS ARE SELECTIVELY APPLIED

The judge in the case challenging Jerry Rawlings' eligibility to run for president distinguished across loyalty along with citizenship. The court reasoned that Rawlings was not obligated to show loyalty to any foreign nation due to his repeated declarations of allegiance, even if there were claims of dual citizenship upon reaching the age of 21 (which are not acknowledged). President Rawlings stated in his bio that he was born in the UK and that he became a citizen of the UK and Colonies in January 1949. Additionally, he stated that he became a citizen of Ghana in May 1957 through the provisions outlined in the first Ghana Nationality and Citizenship Act. However, a court did not distinguish between the ideals of devotion and citizenship when it sentenced lawmaker Adamu Sakande to prison for holding dual citizenship. The recent activities of MPs from the NPP, the ruling political party, illustrate the constitutional challenge surrounding the use of dedication as a method of exclusion. These representatives proposed a change to the Party's constitution that would bar those with foreign



allegiances from holding executive posts within the NPP. The caucus stated that their action involved the incorporation of Articles 55(8) along with 94(2)(a) from the national constitution into the constitution of the party.

GHANA'S YEAR OF RETURN: CITIZENSHIP WITHOUT POLITICAL RIGHTS

Ghana officially designated 2019 as the "year of return" for anyone of African descent residing outside of the continent, as a means of observing the 400th anniversary of the initial arrival of a slave vessel from Africa to Virginia. The proclamation and its associated events had the objective of revitalising the effort to foster unity between Africans residing on the continent and their diaspora counterparts. In pursuit of this objective, the government intended to grant Ghanaian citizenship to a group of 200 individuals of African-American descent. The nation has consistently demonstrated a pioneering role in engaging with the African diaspora. An example of this can be observed in the case of Kwame Nkrumah, the first Prime Minister of Ghana, who gained recognition for formulating the notion of Africa's emancipation through the repatriation of Africans residing across the globe back to Africa. The final resting places of the famed African-American civil rights advocate, W. E. B Du Bois, and his spouse are situated in close proximity to the United States Embassy, within the central region of Accra. In the year 2000, the nation implemented a legislation known as the "Right of Abode," granting those of African heritage in the Diaspora the freedom to enter and exit the country without encountering any obstacles. In 2007, the government commenced The Joseph Project to celebrate 200 years since the British parliament abolished slavery and to encourage the return of African immigrants living in other countries. People who were born in Ghana but have since moved elsewhere (members of the so-called "diaspora") are also included in the "year of return" project. The government has a deep comprehension, heartfelt appreciation, and heightened awareness of the potential economic implications associated with the repatriation of individuals from the African diaspora, and works to facilitate the reconnection of socio-cultural ties between the nation and the African diaspora. Plural citizenship is an issue that must be addressed if the African diaspora or native-born Ghanaians who have acquired foreign citizenship are ever going to find peace with one another.

CONCLUSION

In summary, the clauses pertaining to dual nationals in investment treaties inside Ghana and other African nations exhibit significant variability, contingent upon the particular treaty, historical circumstances, and governmental goals. These clauses frequently undergo changes over time in order to adapt to shifting investment dynamics and evolving international norms. In order to acquire ample understanding of the particular stipulations within the treaties of Ghana and other African nations, it is imperative to do a thorough examination of each treaty on an individual basis, seek guidance from legal professionals, and take into account the broader regional and international framework. The establishment of a universally applicable framework for investment treaties that effectively safeguard the rights of individuals with dual nationality remains elusive. When engaging in negotiations and building treaties, it is imperative for Ghana to conscientiously evaluate its distinct objectives, interests, and the dynamic nature of international investment law. Achieving a harmonious equilibrium that promotes foreign investment, upholds Ghana's sovereignty, and safeguards the rights of lawful dual nationals is of paramount importance. Furthermore, the continuous monitoring and adaption of treaty provisions are of utmost importance in order to guarantee their long-term effectiveness.



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