Nationality requirements for public office

A number of African countries have rules prohibiting people with dual nationality or those who are naturalised rather than nationals from birth from holding senior public office, on the grounds that such office holders should not have divided loyalties.

Dual nationality

The constitutions or nationality laws of several countries prohibit the president (and vice president and/or prime minister) from holding dual nationality, including Algeria, Cape Verde, Chad, Djibouti, Egypt, Equatorial Guinea, Gambia, Ghana, Kenya, Mozambique, São Tomé and Príncipe, Senegal, Togo and Uganda. (In other cases, such exclusions are provided in the electoral code: these have not been surveyed for this overview.)

Ghana has an absolute prohibition on dual citizens holding a set of listed positions, and several Ghanaian politicians have been barred from taking up ministerial positions until they have renounced a foreign nationality.

In Côte d’Ivoire, the constitution prohibits those who have ever held another nationality from becoming the president of the republic or the speaker or deputy speaker of parliament. Uganda has a whole list of public offices that cannot be held by dual citizens, introduced at the time general rules on dual citizenship were relaxed. Kenya’s 2010 constitution similarly introduced, at the same time as the general prohibition on dual citizenship was lifted, a ban on dual nationals holding any state office (except for judges and members of commissions).

Similar rules have been the subject of challenge in Egypt (see box). In DRC, dual nationality is generally prohibited under the law, but in early 2007 the newly elected National Assembly hastily adopted a resolution purporting to bring in a six-month moratorium on the enforcement of the provision, after it emerged that a large number of politically important

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233 Ghana Citizenship Act of 2000, section 16(2) lists the following posts to which a dual citizen may not be appointed: “(a) Chief justice and Justices of the Supreme Court; (b) Ambassador or High Commissioner; (c) Secretary to the Cabinet; (d) Chief of Defence Staff or any Service Chief; (e) Inspector-General of Police; (f) Commissioner, Customs, Excise and Preventive Service; (g) Director of Immigration Service; (h) Commissioner, Value Added Tax Service; (i) Director-General, Prisons Service; (j) Chief Fire Officer; (k) Chief Director of a Ministry; (l) The rank of a Colonel in the Army or its equivalent in the other security services; and (m) Any other public office that the Minister may by legislative instrument prescribe.” See also, Constitution of the Republic of Ghana, 1992, article 94(2).


235 Constitution of Côte d’Ivoire, Articles 35 and 65.

members of the Assembly in fact held two passports. A special committee was appointed to propose a solution to the problem.\textsuperscript{237}

In Nigeria, the 1999 constitution appears to ban holders of elected public office from holding another nationality “subject to” the provisions of the article that permits dual nationality for other citizens in most cases;\textsuperscript{238} however, the Court of Appeal has held that dual citizenship is in fact no disqualification for public office for a Nigerian citizen from birth, given that the constitution allows a citizen from birth to hold another nationality.\textsuperscript{239}

Naturalised persons

There are often distinctions between the rights enjoyed by those who have naturalised as against those who have held nationality from birth. Only a few African countries, including Ethiopia, provide that all nationals have equal rights, regardless of how nationality was obtained. In particular, the state may usually deprive a naturalised person of his or her nationality much more easily; in the Commonwealth countries it is common for deprivation only to be possible at all in the case of those who have acquired citizenship as an adult.

Some countries also place restrictions on the role of naturalised citizens in public life (see the second to last column in Table 6). Nationality laws in Benin, Burkina Faso, Burundi, Cameroon, Central African Republic, Comoros, Congo Republic, Côte d’Ivoire, Egypt, Gabon, Guinea, Kenya, Libya, Madagascar, Mali, Mauritania, Morocco, Niger, Senegal, Togo and Tunisia impose a waiting period of three to 10 years before naturalised citizens can hold a range of offices. Mozambique has a wide prohibition on naturalised citizens being deputies of the parliament, members of the government and members of the diplomatic service and military. Constitutional prohibitions on naturalised citizens holding the presidency exist in at least 23 countries: Botswana, Burundi, Côte d’Ivoire, Equatorial Guinea, Gabon, Ghana, Kenya, Liberia, Malawi, Mali, Mauritania, Mozambique, Niger, Nigeria, Rwanda, São Tomé and Príncipe, Sierra Leone, South Sudan, Sudan, Tanzania, Togo, Uganda and Zambia. (Other countries may have provided the same ban in the electoral code; these have not been surveyed as part of this research.) In Gabon, the president must be fourth-generation Gabonese; in Côte d’Ivoire and Zambia, both parents must also be nationals from birth; in Rwanda, at least one parent of the president must be a national from birth; Mozambique and Sierra Leone permanently bar naturalised citizens from a wide range of offices. In Algeria, the Constitutional Council has at least twice criticised (in 1989 and 1995) a clause introduced into

\begin{footnotesize}
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\item \textsuperscript{237} “Un moratoire accordé aux personnes concernées par la double nationalité”, Agence Congolaise de Presse, 13 February 2007.
\item \textsuperscript{238} For example, Article 182 (1)(a) of the 1999 constitution provides that: “No person shall be qualified for election to the office of governor of a state if, subject to the provision of 28 of this constitution, he has voluntarily acquired the citizenship of a country other than Nigeria or except in such cases as may be prescribed by the National Assembly, he has made a declaration of allegiance to such other country”. Similar provisions apply to members of the Federal House of Representatives and Senate, to State Houses of Assembly, and to the president (articles 66, 107 and 137).
\item \textsuperscript{239} Ogbeide v. Osula (2004) 12 NWLR, Part 886, page 86.
\end{itemize}
\end{footnotesize}
the electoral law forbidding candidates to stand for election as president if they or their spouses do not hold Algerian nationality of origin.²⁴⁰

The African Commission considered restrictions on political rights based on the nationality of the parents of a candidate (but not the type of nationality of the candidate him or herself) in its decision on the provisions of Article 35 of the constitution of Côte d’Ivoire as applied to Alassane Ouattara, and found them to be in violation of the African Charter (see the section on the jurisprudence of the African human rights bodies on page 33).

Egypt: Nationality and political rights

The Egyptian constitution provides that “Egyptian Nationality is defined by law.”²⁴¹ The law in force is Law No. 26 of 1975 Concerning Egyptian Nationality (as amended in 2004), which forbids an Egyptian national from obtaining nationality of another country without the permission of the minister of the interior.²⁴² However, in practice a person is considered to retain Egyptian nationality together with the new nationality unless a notice is published in the Official Gazette that Egyptian nationality is lost.²⁴³

Between 1998 and 2003, 26 individuals lost their nationality because they obtained foreign nationalities without the consent of the Egyptian government. In addition, between 1986 and 2004, 7,196 individuals lost their Egyptian nationality after being allowed to obtain foreign nationalities and abandon their Egyptian one. It is possible for a person to appeal the minister’s decision to revoke nationality with the Council of State.²⁴⁴

The issue of dual nationality in Egypt has proved contentious, particularly as it relates to politicians and other prominent public figures, even though no restrictions were placed on dual nationality for elected representatives in the 1971 constitution or in the 1975 nationality law. The controversy came to the fore on the eve of the parliamentary elections in October 2000, when a candidate contested the credentials of his opponent and asked for his exclusion on the grounds that he had both Dutch and Egyptian nationalities. In January 2001, three court decisions barred Egyptians who held dual nationality from being

²⁴² Constitution of the Arab Republic of Egypt, 1971, article 6; the 2014 Constitution, article 6, repeats this provision but also adds that nationality is the right of any child of an Egyptian father or mother.
²⁴³ “It is not permitted for an Egyptian to obtain a foreign nationality without the Minister of Interior’s permission; otherwise he will be considered an Egyptian citizen in all forms and situations provided the Council of Ministers does not decide to revoke his citizenship in accordance with Article 16 of this Law. The Egyptian citizen will lose his nationality if he obtains a foreign citizenship after receiving permission from the authorities. However, it is permitted that the applicant’s request to obtain a foreign nationality contain a request to keep the Egyptian citizenship for himself, his wife and his children. If he expresses his wish to keep his Egyptian citizenship during a period that does not exceed one year following his naturalisation, he and his family will keep their Egyptian citizenship despite their naturalisation.” Egypt Nationality Act (No. 26 of 1975), section 10 (unofficial translation by the UNHCR).
²⁴⁵ A. Khalil, Halat Isqat wa Zawal Al-Genseya Al-Misriya. (Cases of Revocation and Loss of Egyptian Citizenship), cited in Center for Migration and Refugee Studies, Africa Citizenship and Discrimination Audit: The Case Study of Egypt, 2005. On the other hand, between 1986 and 2005, 819 persons had their citizenship restored following a decision/decree issued by the Minister of Interior in accordance with section 18 of the Nationality Law (Ibid.).
members of parliament. In the first case, the Administrative Court ruled that a business magnate, Rami Lakah, who held a French passport in addition to his Egyptian nationality, could not be a parliamentarian. Basing its decision on Article 90 of the 1971 constitution, which required an oath to preserve the safety of the nation, the court held that, since Egyptians who carry other nationalities are exempt from military service and prohibited from enrolling in military and police academies, “it cannot be imagined that the person who is required to look after the country’s interest may share his loyalty to Egypt with another country”.

The second and third decisions, by the Supreme Administrative Court, went against Mohamed Ahmed Mohamed Saleh, who was said to have forfeited Egyptian nationality after gaining German nationality, and Talaat Mutawi, who held American and Egyptian passports. The decisions were final and could not be appealed. In September 2001, the Supreme Administrative Court confirmed that the parliamentary membership of Lakah was null and void because he had dual nationality.

These decisions encouraged other persons to file similar appeals against prominent ruling National Democratic Party candidates believed to hold dual nationality, including Economy Minister Youssef Boutros Ghali, Minister of Housing Mohamed Ibrahim Suleiman, and a businessman, Mohamed Abul-Enein. Ghali and Suleiman presented the court with documents attesting that they did not hold a second nationality.

The People’s Assembly (the Egyptian parliament), argued that it had sole jurisdiction over its own affairs, but confirmed the cancellation of the membership of both Lakah and Mutawi. In 2004, however, the Constitutional and Legislative Affairs Committee of the Assembly stated its opinion that appointing dual nationality persons to the cabinet did not violate the law or the constitution, on the grounds that the court ruling banning dual nationality persons from standing for election did not apply to appointed ministers and executive officials. The chair of the committee, Mohamed Moussa, added that he saw no need to amend the nationality law, noting that dual nationals should enjoy all constitutional and legal rights granted to nationals except election to parliament.

Nationality and public office in Egypt came back to prominence following the upheavals set off by the 2011 Arab awakening and the fall of President Hosni Mubarak. New strict nationality requirements were introduced for those wishing to be run for president in 2012, requiring that candidates be born in Egypt to Egyptian parents, none of them dual nationals, and not be married to a foreigner. At least one Islamist candidate, Hazim Abu Isma’il, was removed from the ballot because of his mother’s acquisition of US citizenship. In 2014, the new constitution confirmed these new conditions. Article 141 stated that “[a] presidential candidate must be an Egyptian born to Egyptian parents, and neither he or his parents or his spouse may have held any other nationality.” Article 164 provided the same criteria for the prime minister.