



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 3RD FEBRUARY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2911]

Friday, 3rd February, 1995.

The Assembly met at 9.30 a.m. in the International Conference Centre, Kampala.

PRAYERS

(The Chairman, Hon. James Wapakhabulo, in the Chair).

(The Assembly was called to order).

COMMUNICATION FROM THE CHAIR

THE CHAIRMAN: Hon. Delegates, may I have your attention, please? Following the withdrawal yesterday of the Motions by hon. Mbabazi and the hon. Chairman of the Select Committee 4, we came to a situation where since the proposed Chapter was a new insertion, that brought us to the end of consideration of Chapter 2 - the Republic; and we had pronounced ourselves on the various Articles as we went along and that was a matter that had been stood over. That being the case, there is no outstanding matter on that Chapter and so, Chapter 2 as modified or amended, is completed and will be recast by the Technical team and constitute in that form, part of the Draft Constitution. So, that Chapter is closed, until re-consideration. So, now, we are moving on to a new Chapter, Chapter 4 on citizenship and I did urge the delegates to read the Chapter which had been circulated and we shall proceed in similar manner as we did with Chapter 2 and so I will call upon the Chairman of the Committee to introduce his various recommendations and we proceed. Hon. Katenta Apuuli.

CONSIDERATION STAGE OF THE DRAFT CONSTITUTION OF THE REPUBLIC OF UGANDA.

CHAPTER 4 - CITIZENSHIP

MR. KATENTA APUULI: Thank you, Mr. Chairman. Mr. Chairman, I seek your permission to lay the report on the table

THE CHAIRMAN: Yes please. I keep forgetting that Procedural requirement. In future, the Clerk should reflect when it comes to presentation of a new Chapter, the Order Paper should reflect an item laying on the table, so that it is formerly in our records and then we go to the next as a separate item. But for the time being, I think that is sufficient. Could you please go ahead?

MR. KATENTA APUULI: Once again, thank you hon. Chairman. Hon. delegates, Chapter 4 - Citizenship, starts at Article No. 40. Select Committee No. 4 considered Article No. 40 and found it to be a fitting Article and the Select Committee 4 would like to recommend it to the Plenary to be adopted as part of this Constitution without Amendment. However, in your printed document, you will find that in the second line, towards the end, the word 'such' is missing; please insert that word 'such', to read: *'Every person who on the commencement of this Constitution is a citizen of Uganda, shall continue to be such a citizen.'* Hon. Chairman, I beg to move.

THE CHAIRMAN: I put the question - yes, hon. Obua Otoa.

MR. OBUA OTOA (Erute County North): Point of clarification. Thank you, Mr. Chairman. I would like a little clarification from the Chairman of Committee 4. Did they consider that at the commencement of this Constitution, there could be cases of people whom might have acquired citizenship fraudulently? If so, should they continue to be citizens never the less? I would like a bit of clarification there, Mr. Chairman.

THE CHAIRMAN: You are saying that the Constitution would cure the fraud.

MR. KATENTA APUULI: Hon. Obua Otoa, that matter of obtaining citizenship by fraudulent means, does occur in later Articles and Clauses and the Committee did consider it under those other Clauses and our recommendation, as you will see later on, is that, the law should take its course; that was our recommendation and you will see it in later provisions as we go on. That was the position of the committee that, if there is any fraudulent obtaining of citizenship, the law should take its course.

THE CHAIRMAN: I will put the question on the recommendation that Article 40 as it appears in the Draft, do stand part of the Draft Constitution.

(Question put and agreed to).

MR. KATENTA APUULI: Article 41 has paragraphs and in considering paragraph (a), the committee found it necessary to introduce two words to the existing text in the Draft Constitution and the two words we did introduce are: 'and residing'. The

correct terminology should be 'and residing'. I have consulted with the Technical team at the back of this Hall and they advise that we should change the word from 'and living' to 'and residing'; that is the professional advice I got. So, I would like to kindly request hon. delegates to change their text to 'and residing'.

Why did we introduce this word, 'and residing'? Because as you are aware, hon. delegates, we are surrounded by quite a number of neighbours of other countries, but we share common tribes across the border. So, we thought it is essential for us to say here, in the Constitution that, born in Uganda should also include, 'and residing', because there could have been guests who came into the country and their children were born here, and yet, they were not necessarily residents of Uganda. Therefore, 'and residing' seeks to exclude any children of our neighbours who were visiting Uganda and not necessarily permanent residents of this country. The recommendation that we put to the House reads as follows: Article 41, Clause 1, paragraph (a). *"The following persons shall be citizens of Uganda by birth:-*

a) *every person in Uganda, either whose parents or grand parents is or was a member of any of the indigenous communities existing and residing within the borders of Uganda at the first day of February, 1926 and set out in the Second Schedule to this Constitution.*" Hon. Chairman, I beg to move.

MR. ERESU (Kaberamaido County): Point of clarification. Mr. Chairman, I would like to be clarified by the Chairman of Committee 4, as to why we have to adopt 1926 other than the previous one 1962 - as stipulated in the 1962 and 1967 Constitutions?

THE CHAIRMAN: Do you want to answer all the clarifications or you take them down?

MR. KATENTA APUULI: I can take them down and answer them together.

THE CHAIRMAN: Any one seeking clarification?

MR. OBONYO JABWOR (Labwor County): Point of clarification. Mr. Chairman, I want also clarification in regard to that text, February 1926. In June, 1962, before the Independence, when I travelled out of Uganda, I travelled on a British Passport

and my status was stated as a British protected person. Now, this departure which takes us back to 1926, I want a clarification, because the way I understand it is that, citizenship starts when you get Independent. Before 1962, we were British protected persons, I need that clarification, why you decided to come to this year, Mr. Chairman.

MR. MULENGA (Democratic Party): Mr. Chairman, my point is to ask, whether residing, refers to the parent or to the grandparent and if so, whether it should not come before his or was residing and a member of, because, where it has been put, would suggest the indigenous communities existing and residing.

THE CHAIRMAN: I was going to ask, is it making reference to the community or is it making reference to every person?

MR. MULENGA: Or parents?

MR. MAGEZI (Jinja Municipality East): Mr. Chairman, I note with a lot of interest the rational citing that however, the addition of the word 'residing' is to prevent people who came from our neighbouring countries: babies were born in Uganda claiming citizenship through this provision. Would the Chairman of the committee clarify to me, what facilities or records he would have at his disposal, as of February 1926 to vet against the people within the region, most of whom we know - we have got Luos in Uganda, Luos in Kenya, Bateso, the same, and so many other tribes. How are you going to be able to enforce this particular condition which you are dating back to 1926? Is it not more positive to stick to what is nearer our existence from the time Uganda was created - the day Uganda was born?

MR. WANENDEYA (Budadiri County East): Thank you, Mr. Chairman. I note with interest the word 'and living'. Now, when it comes to Ugandan communities, Mr. Chairman, and hon. Members, every body was born in a geographical area of Uganda. I would like the Chairman to clarify to this august House, people like Nubians, which is their geographical area? You find that they are living in given areas, for instance, Bombo, and other places in the whole of East Africa. All I know, they were brought here by the British.

Secondly, Mr. Chairman, the point over here, is that, you find people of Asian origin, some of them were given opportunity in 1962 to be Ugandan citizens,

and after having been given that opportunity - I have forgotten how many years - but they did not respond at all, because they wanted to live here and sit without taking up Ugandan citizenship. So, what criteria did the committee have in saying 'living in Uganda' just perse without giving the criteria for citizenship? I thank you, Mr. Chairman.

MR. RWOMUSHANA (Rujumbura County): Point of clarification. Mr. Chairman. I have got two problems with this Amendment and I would like to seek clarification.

By the year 1926, supposing there are some grand parents who belonged to communities that were in Uganda by then, but because of immigrations, or civil strife, moved to other countries, and then they became citizens there; can they come back and claim to be citizens?

How about those who were born outside Uganda, because they are saying every person born in Uganda. There are some who may have been born outside Uganda, but by grandparents who were members of the indigenous communities, how do you cater for them; for they are not born in Uganda, but they are born outside Uganda, but their grand parents are members of the indigenous communities.

MR. KATENTA APUULI: Thank you Sir. To respond to the hon. delegate from Kaberamaido, why this magical year 1926? There was a lot of debate in the committee regarding this year and why this should be used as a reference point. The committee eventually settled for recommending the year 1926, simply because that is when the border of Uganda, became finally settled. Before this period, Uganda used to extend, as you know, a long distance into Kenya, some distance into Zaire. Uganda before used to be part of the Anglo-Egyptian Sudan, and extended into what is Southern Sudan today, the border with Rwanda used to move up and down, but in 1926, on February 1, the borders were fixed as they are today, except for a small administrative part of Kenya that used to be administered off Sebei, just to the East of Moroto. So, that is why we used this specific date and agreed with the Draft Constitution that this should be the reference point

With regard to hon. Obonyo's question as to British protected persons. British protected persons were persons with a reference. You would be protected under Kenya, or Tanganyika at that time or Uganda and that would be reflected in your Passport that you

were British protected person from a specific colony, protectorate or mandated territory. So, if you were a British protected person in 1962, just before independence, there would be somewhere in your Passport that your reference point would be Uganda. So, although all those people who were British protected persons, just before mid-night on October the 8th, 1962, became Uganda citizens, wisdom had it that we should take that reference point back to 1926, because our borders had been perpetually mobile.

Hon. Mulenga, seeks to talk on a drafting matter, but I think really this is not for the committee, the technical people can look as to the terminology and appropriately polish it.

With regard to hon. Magezi's question on residing and whether I had records or not, I do not think that the committee was really in a position to know that this person or the other person, if one is challenged, there is some difficulty to prove in court that you were or you were not residing at that time, because, a lot of time has passed. However, people know people who lived in specific areas, we know that some people have claims going back to the year 1900. Some of this history gets told and re-told to children and grandchildren. It may have been kept, but scientifically, we cannot prove this point, hon. Magezi.

Hon. Wanendeya wants to know the criteria we used and he refers to Nubians and Asians who did not have a specific geographical area from where they came from or where they were registered in Uganda to become citizens. But surely, this particular paragraph should be read in the context of indigenous groups. That word appearing there is important and immediately following that, there is a Schedule to show who are the indigenous groups of Uganda.

Now, hon. Rwomushana's question regarding people who immigrated and might have come back. Later Clauses deal with that specific item. I thank you, Chairman.

MR. KWERONDA RUHEMBA (Kajara County): I still have almost a similar problem like the one which was expressed in respect of Nubians, but my specific clarification is in respect of people like the Kintoshis, people like Maragoli, people like the Luos and Akambas, who were brought in this country in 1948 to settle in the areas of Masindi and

this was after the people from Bugisu and Kigezi had refused to come to these areas, because of tsetse flies. These people in 1962, were given an umbrella citizenship because they were protected, but when you push the date back to 1926, I do not know whether that umbrella citizenship is taken away or whether it still holds. That is the clarification I am seeking. Because when these people came, I do not think they entered the books of Uganda as citizens. I do not think they hold Passports, but they are very useful people in Kigumba, they are very useful people in Kamwenge and they are contributing to the economy of this country. So, what is the fate of these people? Do we send them back to their ethnic groupings in Kenya or are they citizens at the declaration of this Constitution?

THE CHAIRMAN: Hon. Kweronda, first, on a factual situation, if a person they refer to as a Kitoshi or a Malagolo, you are actually a Muluya. Lua is an embracing term with the sub-tribes, including hon. Awori if he was on the other side, but he is on this side of the border. And most probably the Speaker as well. If you look at the 1962 Constitution, it says, every person who having been born in Uganda and is a citizen of the United Kingdom and colonies of the British protectorate shall become a citizen of Uganda on that date. So, those who were born in Uganda and were satisfying that provision became citizens in 1962. Now, what the Article we have just approved 40, is picking up, saying, every person who on the commencement of this Constitution, is a citizen of Uganda, shall continue to be such a citizens. I thought 41 is trying to draw a distinction between categories of citizenship: they are those by birth and other categories and if you are citizen by birth, if you read elsewhere in the Draft Constitution, you are the only ones who can become Presidents and Vice Presidents of Uganda and I presume it would be possible to confer other additional privileges. That is how I understand it, not granting a new citizenship, but categorizing them as they try to say on a side note. But of course, mine is a casual reading of the text; it is subject to the clarification by the committee. Let us first get further clarifications.

MR. ETUKU-ONYOK (Moroto County): Thank you, Mr. Chairman. In reference to what you have just given in the Constitution of Uganda in 1962, I think Article 7, says, if I may read again. *Every person who having been born in Uganda is on the 8th October 1962, a citizen of the United Kingdom and colonies or a British Protectorate, protected*

person, shall become a citizen of Uganda on the 9th October, 1962."

Presumably, Mr. Chairman, all those who in 1926 were born in Uganda, became citizens. Now, the clarification I want to seek from the Chairman of Committee 4, is:

i) I would like to be clarified or convinced that by getting back to 1926 we would have covered a few mistakes or certain people that were left out in the Constitution of 1962 or who are these people that we are now bringing in who the Constitution of 1962 had left out by mistake?

ii) I would like to find out as to whether this country loses something or has lost something in 1926, that we should make a Constitutional provision to cover them up. Have we lost a lot of things that we are trying to bring forward? Mr. Chairman, I believe, even those who were born in 1926 if they are alive, they are very few. I want that clarification. Thank you very much, Mr. Chairman.

MRS. KULANY: Thank you, Mr. Chairman. I am also seeking clarification. How do you prove that someone was living in Uganda in 1926? Are there any documents to prove to that?

THE CHAIRMAN: It is arguable whether the word 'residing' is making a reference to the individuals or to the communities, which were residing in Uganda and set out in the Schedule. I think that will be clarified by the Drafting or Technical Committee, but anyway, the Chairman has taken down the question.

MISS. NABAFU (Women Delegate - Mbale): Mr. Chairman, I need help from the Chairman of this committee, whereby, he has told us that every person born in Uganda - I will not read through the whole recommendation - but what I want to see is that, are we going to encourage dual citizenship, especially in the cases whereby the children of these people or grand children of these people have since they were born already attained citizenship from other countries and you know suddenly we are allowing them to be citizens of Uganda. I am just looking at a case whereby they will obtain dual citizenship, Mr. Chairman, thank you.

MR. AWORI (Samia Bugwe North): Mr. Chairman, my question seeking clarification pertains to

the words 'residence' vis-a-vis 'floating territorial boundaries'. Mr. Chairman, this country, we have certain places where the territorial boundary has never been confirmed and has been a source of friction and as a matter of fact, I must say, if it had not been for this kind of situation, we would not be sitting here today. It was because of Kagera salient that Amin created a situation that undid himself.

Mr. Chairman, along Tanzania-Kenya boundary, near the River Kagera, which keeps meandering, there is a place called Kagera salient and there are people who live in that place, Mr. Chairman. These people are neither Tanzanians nor Ugandans or they can be either depending on circumstances. Mr. Chairman, - *(Interruption)*

THE CHAIRMAN: Hon. Guma Frank would like to inform you because that is where he comes from.

LT. COL. GUMA FRANK (Bukanga County): Point of information. Thank you Mr. Chairman. I would like to inform my brother hon. Owori, that the borders are there; the problem is that, at the salient you talk about, you would have to walk 20 miles, passing through Mulongo, to come and collect taxation. Now, it is a problem. When people fail to pay tax they get across, they stay there and the land is very big. So, if you could put there a ferry, you could collect that tax, the borders are very clear. Thank you.

MR. AWORI: Thank you for your information. Mr. Chairman, I could name several; also in the Islands, in Lake Victoria, there is an Island called Sigulu - hon. Wandera might help. Not long ago we had a problem. In Nebbi district, in the East, we have the same situation between Sebei and Teso.

THE CHAIRMAN: Hon. Bageya would like to inform you.

MR. BAGEYA (Kigulu County North): Point of information. I just wanted to inform the hon. Speaker on the Floor that Iganga district is heterogenous as a district and Kigulu Island, there is no debate about it, belongs to Iganga district, therefore it is in Uganda.

MR. CHEBET MAIKUT: Point of information. Mr. Chairman, the information I would like to give to the hon. Member on the Floor, is regarding the boundaries between Kapchorwa district on the ~~Uganda side and the Republic of Kenya~~. The hon.

Member on the Floor has made a statement to allude that there are problems of boundary between Kenya and Uganda on the side of Kapchorwa or Sebei as he called it. But Mr. Chairman, the truth of the matter is that, our boundary is well cleared because there are natural features - rivers which have never changed course, but however, on the side of the border with West Pokot district of Kenya and Moroto district in Uganda, there was a place known as Karasuk which originally was administered by Kenya, but later around 1967 or so, was transferred to the administration of the Uganda. So, that is the position as of now and there is absolutely no conflict of the boundaries between the two countries.

THE CHAIRMAN: Are you not saying it is the other way round?

MR. CHEBET MAIKUT: Let me clarify it, it was administered by Uganda and then transferred to Kenya to be administered by Kenya. Thank you for that clarification.

MR. KAYONDE: Mr. Chairman, we should not be bothered by the boundaries, because they are fixed in the 1st schedule and it is not only on geographical features, but it is determined by bearings and latitudes; even if the river changed, but the latitude and the parallel will not change.

THE CHAIRMAN: Hon. Owori, could you finish your observation?

MR. OWORI: Thank you, Mr. Chairman. My query was regarding residence and territorial boundaries. Information from the Floor from various delegates, especially the last one, more or less conclude that despite or not withstanding lack of physical features, demarcating the boundaries, we can go by this theoretical or scientific things called latitudes and longitudes. Mr. Chairman, my question to the Chairman of Committee 4, these people have been this way and that way, as hon. Chebet put it. At one stage they were in Uganda and another they have now moved to Kenya. I am wondering if such a person came up seeking Ugandan citizenship, saying look, 1926 I was in Uganda; 1967, I had been pushed back to Kenya; I do not like to stay in Kenya, I want to come back to Uganda, I have never taken any papers in Kenya to show that I am a Kenyan, but I want to come back now back home to Uganda. How do you treat such a case?

THE CHAIRMAN: Okay, any other case for clarification?

DR. MUGYENYI (Isingiro North): Thank you, Mr. Chairman. Although I am in committee 4, I would like to seek clarification maybe from the Chairman and the members on something which is becoming unclear to me on second thought. When you read the Article we have just passed, which says that every person who, on the commencement of this Constitution, is a citizen of Uganda, shall continue to be such a citizen... and when you go to the following Article which is being proposed in (a), which provides for people to be citizens by birth, I am beginning to see a conflict. People who were made citizens by Article 7 of the 1962 Constitution which says that every person who having been born in Uganda is on 8th October 1962 a citizen of the United Kingdom and Colonies or a British protected person, shall become a citizen of Uganda on 9th October, 1962, provided that, a person shall not become a citizen of Uganda by virtue of this sub-section if neither of his parents was born in Uganda. This Article confers citizenship to certain people who may have come here after 1926. So, by the time this Constitution is promulgated, these people will be citizens and therefore, by the virtue of the Article we have already passed, they are supposed to be citizens. Now, we come to 41 (a), which is saying that unless, your father was living or residing in Uganda in 1926, you cannot be a citizen. Mr. Chairman, I am seeing a conflict of these people who may be in between. I am seeking clarification, Mr. Chairman.

THE CHAIRMAN: Could you read the opening line of 41?

DR. MUGYENYI: Mr. Chairman, the opening of article 41 says, "the following persons shall be citizens of Uganda by birth."

THE CHAIRMAN: As a distinction by registration.

DR. MUGYENYI: And I am imagining when you go to (c), which says: they shall be citizens of Uganda by birth, every person born outside Uganda or one of whose parents or whose grandparents was a citizen of Uganda at a time of his birth. So, these people may have become citizens by virtue of this Article which is in the 1962 Constitution and if their parents were citizens, they are born in Uganda, my mind is not clear whether they are not going to claim citizenship

by virtue of the Article we have passed in 40. I am seeking clarification on that, Mr. Chairman.

THE CHAIRMAN: hon. Nabafu wanted to give information?

MISS. NABAFU: Thank you, Mr. Chairman. Mr. Chairman, I belong to committee 1, which has been assigned the duty of debating and recommending or concerning the schedule on boundaries. Mr. Chairman, during our discussion in that committee, we also invited an expert on surveys and mapping and that happened to be the Commissioner, who clearly informed us that there are certain borders and have never been clearly marked and therefore, as a committee, we decided to stay the discussion on borders and inside we instituted a sub-committee to make recommendation to Government to probably establish some maybe Commissions to talk with the neighbouring countries and agree on these borders at a later date.

On that note, Mr. Chairman, I would just may be give an example of the border with Sudan at the West Nile corner, that is one of the examples that I can give at the moment and therefore, I would rather that may be the arguments that we can use 1926 date when Uganda's borders were marked may not quite give us a clear argument for citizenship, because the border is not clear plus other areas. Mr. Chairman. That is the information I wanted to give.

THE CHAIRMAN: That normally when they talk of borders not being clear, it is a question of really demarcating on the ground - the laying of stones. I will give an example. For those of you who are familiar with the map of Australia, it has got a very sharp end called Cape York and just three miles from the end of Cape York, is another country called Papua New Guinea. Now, there are small Islands in between and you know that normally if you are fishing in a sea, they assume that you have three miles either way towards the sea - that is part of your territory. Now, if the difference between the two countries is three miles, who has the three miles? So the two had to sit down and draw a line and agree that okay, you take that Island so that we mark it this way and then wrote some kind of Treaty as late as 1984, although if you see the maps of Australia, it appears to be well known, but those are details. I think what they are talking about are details of Mark stones and the rest, but generally it is really know. So, I will not really take that as a very serious issue.

DR. CHEBROT: Point of clarification. I am seeking clarification from the Chairman about situations where before 1926, before the borders were drawn, there existed a situation where some communities had homes on the other side of the rivers; where the River Nile, in 1926 formed the boundary. So what happened was that, some families were divided into two and because they were divided by the border which was not a border by that time, it happens that one person could have two wives, and one wife is across the river and the other one is on this side. Now, the situation arises where a child can be born on either side of the river. Now, what citizen is he now and how do we go about it?

THE CHAIRMAN: That sounds very hypothetical but it could be true.

MR. DIDI (Moyo County West): Mr. Chairman, thank you for giving me the Floor. My question is directed to the Chairman with regard to the Second Schedule. We have got a certain category of people - *(interruption)*

THE CHAIRMAN: I do not think we have come to that yet.

MR. DIDI: No, what I wanted to say was in the Schedule, there are people like the Bazungu, the Bahindi, the Arbas and the Somalis.

THE CHAIRMAN: You see, the details of the Schedule is coming, because I think there is a whole recommendation concerning the Second Schedule.

MR. DIDI: There is, but this one was omitted.

THE CHAIRMAN: What do you want to clarify?

DR. CHEBROT: Mr. Chairman, you made a remark that my comment was a bit hypothetical because I was referring mainly to a situation like that of hon. Awori. He has a brother on the other side of Kenya; although they are brothers, I do not know what the situation would have been like and the river has dried up.

MR. AWORI: Mr. Chairman, I was not particularly attentive, but when I heard the name Awori, I pricked my ears. So, I may answer the question half-heartedly. Mr. Chairman, when I put up my question for clarification, it was neither fictitious nor shallow. Mr. Chairman, we have a serious situation where, as

the hon. Delegate has put it, those of us who come from the boundary, the parents have more than one home traditionally. A tribe goes across the border, this man has wives on both sides of the border and the children - *(Interruption)* - no, for us, we do not have a wife who has more than one husband, never.

THE CHAIRMAN: Please, hon. Maisotigalya, please do not harass hon. Awori. I was protecting you from your neighbour who was harassing you.

MR. AWORI: Mr. Chairman, what happened is that, you are born say, on the Kenya side or Uganda side, it could be Tanzania side or Uganda side, you could be a Karasuk or you could be a Karamajong and this Karamajong and a Karasuk share the same father who has been floating between the territory of Kenya and the territory of Uganda and the chances are that, he has got two homes. So, the Karasuk brother decides to be a Kenyan and a Karamajong brother decides to be a Ugandan. Mr. Chairman, as I speak, I am an example. I have brothers and sisters in Kenya, I have brothers and sisters in Uganda. In addition to that, Mr. Chairman, I know of two former senior UNLA Officers who are now Ministers in Kenya. Mr. Chairman, as I speak now, I know of delegates here, who succeeded other delegates, let me be more specific without beating about the bush.

THE CHAIRMAN: Order, order!

MR. AWORI: Mr. Chairman, at one time, we had a Minister here called hon. Chemonges whose brother was at the same known by a different name called Mosi, a Minister in Kenya. Mr. Chairman, - *(Interruption)*

THE CHAIRMAN: There are two hands. I will pick hon. Kulany to clarify this point.

MRS. KULANY: Point of information. Mr. Chairman, I would like to inform hon. Aggrey Awori that actually Mosi and Chemonges were never brothers - they were friends. So, that information is not true. Thank you.

MR. AWORI: Mr. Chairman, what I am saying is fact, but they way we put it politically, we shall call them Friends, because I do not want to go into family details; but Mr. Chairman, if it is a question of getting embarrassed or embarrassing people - *(interruption)*

THE CHAIRMAN: He has withdrawn the names, so he cannot clarify a matter which is not on the Floor. Please go ahead.

MR. AWORI: Mr. Chairman, I do not want to be specific, otherwise, I tread on very sore toes. I do not like to go into specifics, but generally this has been the case. It is not only there, we have the same situation in West Nile, particularly Nebbi; we have the same situation in Madi - generally the Madi tribe. We have the same situation in one constituency here - the Upe; also what I call immigratory or floating tribes. From time to time, Mr. Chairman, depending on the environmental conditions, these people move from one place to another and as they do so, there is a tendency of developing homes on both sides of the border. So, Mr. Chairman, I cannot enumerate all the examples, but as we always say, we the abaitu, the Baitus on the border and other tribes of Uganda, we have a problem of being doubted on both sides of the border. The Ugandans who are now Kenyans are being told: Uganda is now safe, go back to Uganda. The Ugandans who are prominent in Uganda but have got relatives in other parts of the world are also being doubted. When I talk about the Baitu, I am talking about the border tribes which we have already enumerated including tribes, such as the Nubians, the Indians. Mr. Chairman, we have got the Banyarwanda who are not from Kisoro - yes! The Banyarwanda, who are not from Kisoro, I consider them as an international tribe. In other words, they exist or they live in other parts of the world other than Uganda and yet they are also recognised in Uganda as citizens. We have people of Arab origin, particularly from Oman and Muscat and I am sure delegates here from Busoga will confirm that in the small village between Iganga and Bugiri, we have a small community of people of Muscat origin. These I consider as international tribes; they do not know Muscat, but they have always been in Uganda and yet their ancestry cannot be traced to any specific region of Uganda. Mr. Chairman, we have another group of a tribe which I consider international.

THE CHAIRMAN: Now, are you giving a lecture on tribes or are you seeking clarification?

MR. AWORI: Mr. Chairman - *(interruption)*

THE CHAIRMAN: I think you have given enough examples to enable the Chairman to - *(interruption)*

MR. AWORI: I would like to clarify this to the

Chairman, so that he understands when he is considering all these factors. Some of these people particularly what I call the international tribes, like Nubians, the Banyarwanda - Basamia Bugwe are not an international tribe, they have their roots in both sides of the border; they have their roots in Buganda, they have their roots also in Kenya, just like the Babukusu of Kenya and the Bagisu of Uganda, it is a matter of nomenclature, but these two are the same. I do not know if the Banyarwanda from Rwanda have any connection with Banyarwanda of Kisoro. No! I am not talking about refugees, I am talking about - *(Interruption)*

THE CHAIRMAN: I think you are going to be informed by hon. Mulenga first.

MR. MULENGA: Point of information. Thank you, Mr. Chairman. I would like to inform hon. Awori who has exposed so much knowledge about these tribes or ethnic groups, that what applies to Busia, applies to Kisoro. Banyarwanda were from a country long ago called Rwanda and then boundaries came; some Banyarwanda were left in Rwanda, others were assigned to Zaire, others to Uganda. They are no more or less international than the Basamia Bagwe.

THE CHAIRMAN: Hon. Chebrot also had some information but I think we should come to the end of that, as soon as.....

DR. CHEBROT: Point of clarification. Mr. Chairman, I just wanted to make a small clarification to hon. Awori, that there is no such a thing as an international tribe. What we have is refugees in orbit and the people he is referring to who have come from Muscat and other areas, those are equally refugees in orbit, who cannot be identified.

MR. AWORI: Mr. Chairman, with your permission, I would like to reject that information, because it is totally inaccurate. These people, Mr. Chairman, came here as refugees from Muscat.

THE CHAIRMAN: Order, order! They may have come as traders. But hon. Awori, because I think we should be going to the Chairman to clarify the points raised and we conclude. What is your cut off time? How do you regard a person like Hon. Nekyon, who says they came from Abyssinia or something like that? I have heard him say it before and because of that he calls hon. Byanyima his niece and she calls

him Uncle. What is your cut off period in relation to the examples I have given or are you talking about the more recent ones, because ...

MR. AWORI: I am talking about 1926. Hon. Nekyon as I understand, given the geography of his constituency, basically it is in that region administratively called Lango. So, I would imagine he speaks that language and his ancestors are of Lango origin. So, I cannot consider him an Ethiopian. *(Laughter)*

MR. CHANGO MACHYO (Samia Bugwe South): Mr Chairman, the immigration of African peoples do not allow any one of us to claim that he is a Kenyan or a Ugandan or what. What hon. Nekyon said is correct, because the Gallas, the Turkanas, the Karamajong and the Iteso, belong to the same group and what hon. Byanyima said is safe, because if you look at the ancient Egyptians, they are just like what you call Bahuma or Batutsi and the so-called Bantu are actually from West Africa and that is why it has been said, there are only three language groups in Africa. The Bantu speaking, the Nilo-Hamitic and Afro-Asiatic Ethiopian language. So, I think, Mr. Chairman, if we try to say who came from where, we are just wasting time, because it is very difficult for any one of us to prove that he is indigenous to where he belongs. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Awori, I think you better wind up, because we want to - *(Interruption)*

MR. AWORI: Mr Chairman, I would like to conclude my remarks by agreeing entirely with Mr Chango Machyo who happens to be my close relative and we share the same sentiments on the same things

Mr Chairman, I could stretch my argument to include the idea of the Busia district. We people in Samia Bugwe particularly, have been split administratively, first of all, internationally and then internally here, again we have been split between Busoga and Samia.

THE CHAIRMAN: I thought we settled the question of districts the other day

MR. AWORI: I was just trying to confirm, Mr Chairman, what Mr Chango Machyo is saying. But really nobody can claim to be indigenous to this place unless we are talking about a specific period of

time. If we talk about a specific period of time, then we can say so and so, is this and that. But otherwise, nobody in Uganda can strictly be more Ugandan than other Ugandans by virtue of its geography. If you talk about the Bakiga, one could say, Bakiga are basically Banyarwanda and vice-versa.

THE CHAIRMAN: Okay, I think hon. Awori that is sufficient. I will give the Floor to the Chairman of the Committee to clarify the points.

MR. KATENTA APUULI: Thank you Sir Chairman, I would like to appeal to hon. Delegates that they seek their clarification in the context of this whole Chapter because if you seek Clarification in the context of a paragraph in isolation, it becomes difficult for me really to clarify because some of these things that are in paragraph one hinge on other things that are in other paragraphs or other clauses and articles. So, it would be very useful if hon. Delegates read the document and internalised it and therefore, would be able to follow from whatever point we are - they will be able to understand what is going to follow, so that some of the clarifications that hon. Delegates have sought to get are really explained in other parts of the same chapter.

Let me start with hon. Rwomushana who sought to know whether people who left Uganda - ethnic groups that were originally in Uganda, they left Uganda, went to other countries, can now come back and claim ownership. That is a difficult question for me to answer because there is no specific sample I could go by. However, I would also like to appeal to hon. Delegates that in considering this Chapter and this whole wide question of ethnicity especially in the area of where these ethnic groups are border ethnic groups, please note that - the borders of Uganda and many other African countries were drawn in the last century in a place called Berlin and those who drew those borders had no bearing whatsoever as to where which tribe is. So, for that problem, we are writing the Constitution of Uganda and we are saddled with that problem that was given to us in the last century by those who drew up the borders of Uganda without any regard that they might split a family, have one wife in Kenya and the other wife in Uganda and we have to determine the citizenship of the children.

Hon. Kweronda sought to know what is going to happen to the Luhya and the Akamba and I can add the Kikuyu who are settled in Kigumba plus the Nandi who are settled in Toro. In other parts of this

chapter, provision is made for them to become citizens of Uganda. There is provision where that problem will be taken care of later.

Hon. Kulany sought to know, I think she was talking about the issue of this particular date 1962 and there was also another hon. Member who sought to know how this date of 1962 relates also to 1926. The emphasis in this particular paragraph is on indigenous groups and like the international tribes that hon. Awori talked about, those are taken care of in another Clause of the same chapter. So, we have looked at all and taken care of them; but right now, we are dealing with indigenous groups as a community and that is why after this specific paragraph, we would like to take you to the schedule of the specific groups we are talking about. They are named in a schedule of ethnic groups. The International tribes will come in another section of our deliberations.

If families happen to be divided - that we have a member of a family living on the border with his two wives in either Kenya and Uganda or Zaire and Uganda or Sudan and Uganda, there is provision as to where the children will belong. If the children choose to be Kenyans, they can be Kenyans and there is a procedure through which they can do that. If they choose to become Ugandans, they can be Ugandans and there is a procedure of doing that. Normally, the children choose to become the tribe of the father or of the mother and therefore, of the nation of the father or the mother. I hope I have been able to cover as much ground as possible for the hon. Delegates that raised points of Clarification.

THE CHAIRMAN: Hon. Delegates, we are taking a long time on this but really we are making it appear as if there is granting new citizenship. Is it really?

DR. ODUR (Dokolo County): Thank you very much Mr. Chairman. Actually the question which is in my mind is a very simple one and I think it is bothering delegates. Do we, as a result of not recognising the 1926 as a reference point for citizenship, do we now have people in Uganda who are stateless? Do we? That is why I want to know from the Chairman of Committee IV and I will be very satisfied.

MR. KIRENGA (Matyana North): The question was directed to the Chairman but I can give him the information. Under the British Nationality Act of

1948, everybody who was born within the protectorate was a British Protected person and therefore, a citizen of Britain. At independence in 1962 - a provision which has been read - it provided that everybody who was a British Protected person became a Ugandan citizen but he did not become such a citizen if none of his parents was born within Uganda.

Then there is another provision in the British Nationality Act - I think it is an Order-in-Council which says that such a person reverted to British citizenship. So, he became a British citizen; but I understand Britain does not want to entertain a Uganda citizen who because of the 1962 Uganda Constitution was not made a Uganda citizen. So, where does he belong? So, anybody who was British protected, was born here, but none of whose parents was born here, at independence ceased to be a Uganda citizen and became a British citizen. But then Britain says 'No'; such a person is not accepted as a British citizen. So, such a person is actually stateless.

DR. MAGEZI: Mr. Chairman, I have been listening very attentively to the deliberations this afternoon and taking into account how we have pronounced ourselves on Article 40, I find the proposed new Article 41 (a) lacking in satisfying me that it should be included in the Constitution because among the reasons that I have, I feel that citizenship is the status of an individual, not an ethnicity or a community. I consequently would like to move an Amendment that we delete the Proposed Article 41-1(a) and instead substitute the definition of citizenship by birth as contained in the Constitution of 1962. If I am seconded, I will go ahead to read the Proposed Amendment, Mr. Chairman.

THE CHAIRMAN: There is a Point of Order from hon. Kirenga.

MR. KIRENGA: Mr. Chairman, will it be in order for the hon. member who is just now speaking to move an Amendment which was not considered by Committee IV? Is it not a departure from what we have been doing? Is it a minority report or -

THE CHAIRMAN: Ordinarily what the chair would have done is to ask the Chairman of the Committee - because he had not read out the Amendment which drastically departs from the recommendation. The guidelines we have given ourselves is that we would like to know from the Chairman of the

Committee whether that Amendment was raised in Committee and whether it was considered and what its fate was so that we know from the beginning that someone is drawing us back to an argument which was lost in the Committee; but Amendments which tend to improve the text are the ones we said we would gladly accept.

Now, the Member has not yet moved his Amendment. So, it is difficult for me to proceed. It will be better if you read out what you proposed, then we shall test it against the views of the members of the Committee.

DR. MAGEZI: Mr. Chairman, thank you very much. The Proposed Amendment reads as follows: *The following persons shall be citizens of Uganda by Birth - a) Every person who, having been born in Uganda, is on the 8th October, 1962, a citizen of United Kingdom and colonies or a British Protected person shall become a citizen of Uganda on 9th October, 1962 provided that a person shall not become a citizen of Uganda by virtue of this subsection if neither of his parents was born in Uganda.* I beg to move.

THE CHAIRMAN: But hon. Magezi, let us fit what you have read into 41 (a) and the following. You are saying that you are moving to delete (a) of 41.

DR. MAGEZI: Yes, Mr. Chairman, it is deleting the report of the Committee - Item (a) and replacing it with what I have read out, Mr. Chairman.

THE CHAIRMAN: What you have read out is a reproduction of 7(1). Now, from those who are lawyers, is this a consistent wording of what would follow from (1)? Hon. Kaggwa, if you were to read 7(1) including the proviso as it is, to replace Paragraph (a), how consistent would it be? In language, before we consider whether it should be ...

MR. KAGGWA (Kawempe South): Thank you, Mr. Chairman. I think one needs to read the Proposed Amendment very carefully with this before one can make a meaningful comment Mr. Chairman.

THE CHAIRMAN: Hon. Kirenga.

MR. KIRENGA: Mr. Chairman, it is very clear that this is not an improvement. It is just a complete

departure from (a). It is something new. It has no relationship at all; so it cannot be called an improvement. It is a very serious departure.

MR. MALINGA (Usuk County): Mr. Chairman, I think the import of what hon. Magezi has moved is this - that instead of 1st February, 1926, substitute 9th October, 1962. That is the import of his Amendment.

THE CHAIRMAN: If what you want is to say that you want to confer a status of citizen by birth to people who were citizens in the 1962 Constitution under Article 7 (1). Then you simply say that the following persons shall be citizens of Uganda by birth (a) a person who by virtue of the provisions of Article such and such of 1962 Constitution was a citizen of Uganda. ~~(b)~~ - then you come to the others. If that is what you are looking at rather than - but of course you have a problem. This is a repealed document. So, whether you can adopt, you can use it as a document from which you can take authority or you will be using it as a book which is available on the shelves. Hon. Kaggwa.

MR. KAGGWA: Mr. Chairman, I imagine if that is to apply, then we will have to restate the law. It does not have to refer to it as you have correctly said that the 1962 Constitution is no longer a valid document. But I imagine if we restated the law, then we will have to quote the exact words if it has to have significance here.

THE CHAIRMAN: Okay, let us now put words in and see if they fit and say: *The following persons shall be citizens of Uganda by birth (a) Every person who having been born in Uganda is on the 8th of October, 1962 a citizen of United Kingdom and colonies or a British protected person shall become a citizen of Uganda on the 9th October, 1962 provided that that person shall not become a citizen of Uganda by virtue of this subsection if neither of his parents was born in Uganda.* Does that follow logically from - *the following person shall be a citizen of Uganda by birth?* That is what I am trying to say. *(Interjection)* But what about the proviso? Because you see the proviso is picked up in another section. Yes, hon. Musumba.

MR. MUSUMBA (Buzaaya County): Thank you very much Mr. Chairman. From a legal point of view, if you want to restate the position as it was in 1962, I think the thing to do is: in order to avoid

mentioning a repealed document, you just say that *anyone who was a citizen lawfully as at 9th October, 1962* - that alone will cater for anyone who is interested in establishing the status of that person at that time.

THE CHAIRMAN: But you see there is a problem there still because - you see the import of 41, the way I understand it, it is not conferring a new citizenship - 41 (a). It is trying to describe who among the Ugandans should be Ugandans by birth. It is like in some countries they have what they call automatic citizens and others are citizens by registration i.e. indigenous people are citizens by virtue of being indigenous. Any other person who has come and cannot trace himself within that category, he cannot benefit from the title of being an indigenous citizen. The others are citizens either by registration or in those good old days - by naturalisation. Now, in Uganda I think these people try to draw a distinction between Ugandans by birth and Ugandans by registration. In some Constitutions they draw a distinction between a citizen by birth, a citizen by descent and another one by registration. They are trying to combine birth and descent in one, hence, (a) (b) and (c) and calling them under one title - Ugandans by birth. The reason being that if you go to (100), it says that unless you are a Ugandan by birth, i.e. you can trace yourself to some indigenous tribe or you are a child of a citizen who was already one on the coming into force of this Constitution, then you cannot become a President or Vice President of Uganda and this is I think what they are looking at in Article 41. They are not saying you are Ugandan, you are not a Ugandan; they are saying - okay, you are all Ugandans, those of you who were here when this Constitution comes in force; but among you, we have categories. Some of you are by birth, others are by registration and the effect of that can be seen in subsequent sections. In fact, in some countries they go further and say freehold titles will be held only by citizens by birth. In America for instance Kissinger could not become President because he could not trace his line beyond being a person who came as a refugee and therefore, he cannot become president however sharp he is. So that is what, I think, we want to do but I am not entitled to debate the matter. Hon. Kutesa.

MR. KUTESA SAM (Mawogola County) Mr. Chairman, I am seeking clarification. When you read the Proposed Amendment by hon. Magezi, it says that if you were by the 8th October, a citizen of the United Kingdom and colonies or a British Pro-

TECTED person, you would be a citizen of Uganda provided one of your parents was born in Uganda. It seems to me that what that provision in the 1962 Constitution was seeking to attain is actually better attained by the current provision in 41 (a) because how was one a protected person? I think a protected person was one who lived in this protectorate and when were the borders of this protectorate finally established? The borders of this protectorate of Uganda were finally established on the 1st of February, 1926. So, for me it seems to me that provided one of your parents or grandparents was born in this region of this protectorate when the final borders of this protectorate were laid down, then you become a citizen. I see nothing in conflict - rather I see something better expounded in 41 (a) than was contained in the Constitution of 1962 because if you read it - in fact, 1962 was even wider. You could be a citizen of the United Kingdom and other colonies or a protected person, 41 in this chapter, really limits it more to whoever was a protected person or lived in the protectorate. I would imagine that a protected person by the British is the person who lived in the protectorate and when was the border of the protectorate finally established?

THE CHAIRMAN: But I think that is the rationale of 41 (a) - it is to try to say - only indigenous people will be citizens by birth.

MR. KUTESA: 41 (a) says that but there are others which provide for - (*Interruption*)

THE CHAIRMAN: It is cutting out those others who were not natives.

MR. KUTESA S: But, Sir, even 7 (1), if you completed by reading the proviso in the 1962 Constitution. It barred laws - It says, you could not have become a citizen by virtue of this sub section if neither of your parents was born here, which also makes you to be indigenous. You could be a citizen on the 8th but if one your parents had not been born here - in other words, if you are not indigenous, you could not have become a citizen by virtue of that Article 7. So, anybody who is moving it and thinking that 41 (a) limits to indigenesness, even 7 (1) does! So, I do not see the need for this Amendment.

THE CHAIRMAN: Hon. Obua Otoa

MR. OBUA OTOA (Erute North): Thank you very much Mr. Chairman. I think we are getting bogged down at the level of formulation when to my

mind the issue is - where do we begin to determine the question of Ugandan citizenship? Is it at Uganda's independence? When Uganda was born as an independent sovereign state. I think that is the issue we should concentrate on. This business of going back to some other date like 1926 when borders of a protectorate were drawn. When there was no issue of who is a Ugandan citizen or not - I think that is what is bogging us down. If it is a question of formulation, let us talk about it as a question of formulation but the idea is to establish Ugandan citizenship as at independence because there was such a thing as the republic of Uganda, the sovereign state of Uganda was not there before 1962. You can only name a child after it is born, not before. So, who is a citizen of Uganda should be a question which dates back to 1962 and that is the real essence of the Amendment which is being moved by hon. Magezi. *(Applause)* We should not beat about the bush talking about when was Ugandan map drawn. It is not the map which determines citizenship. It is the sovereignty of the nation - when it became a sovereign state complete with its citizens. *(Interjections)* - Yes! Mr. Chairman, I think if it is a matter of formulation, let us seek advice from the formulators - the technical people because I think what we want to establish is simply from independence, not before.

THE CHAIRMAN: Let me hear hon. Mulenga and then hon. Nekyon.

MR. MULENGA (DP Delegate): Thank you Mr. Chairman. I would like to say that the first thing which ought to strike everyone is the contrast between 41 (a) and the provision in the 1962 Constitution. In this Draft, there is an attempt to have a Ugandan definition; whereas the 1962 Constitution was referring to laws of Britain. You have to look for the British Nationality Act in order to determine who was a British protected person, a citizen of United Kingdom and colonies and so forth. Now, hon. Otoa Obua says that we should start from independence, he is not appreciating that this (a) is not stating that these people who were here in 1926 are to be citizens. It is a point of reference. It is saying the children born of people who were in those communities as of 1926 are entitled to be citizens. It is not the parents we are talking about, we are *(Applause)* - talking about those who were born of them. Every person born in Ugandan - either of whose parents or grandparents is or was a member of the indigenous communities existing within the borders. Let us imagine a person born today. A person born today stays in Uganda

says: "I am a citizen because I am born in Uganda and one of my grandparents belonged to an indigenous community that was existing in Uganda since 1926." This is a reference that is being made.

THE CHAIRMAN: And therefore, I am a Ugandan by birth.

MR. MULENGA: I am a Ugandan by birth.

THE CHAIRMAN: I think that is what we are really driving at.

MR. MULENGA: Yes, then we have to look for the British laws to - *(Interruption)*

THE CHAIRMAN: Hon. Nekyon.

MR. NEKYON (Maruzi County): Mr. Chairman, my contribution is in the very same line as the hon. Member who has just finished. Hon. Magezi seeks to say that citizenship is for individuals, not communities. That is a fallacy. From the beginning we must recognise that Uganda was composed of communities. In 1962 it is the communities which reached agreement to constitute the State of Uganda. It was not individuals. If you go to Parliament, you find minutes of the communities that agreed to come together to become Uganda. So, you cannot leave it open for anybody who might have been there on the 8th of October - whoever he was, to become a citizen because he is an individual who was caught within the boundaries. No! We must know who are the people who agreed to become Ugandans. And here they are saying the final border of Uganda was determined in 1926 so that all the communities that were caught in that net by 1926, then should be recognised as the communities that produced the citizenship by birth. Anybody walking in a community but from outside would not now be recognised as a citizen. We cannot leave our door completely open to anybody to walk in. To other refugees who were traders, who refused to go back or as visitors. So, this is the matter. The community factor must remain there. In fact, we had got in our passport - they were asking for the clan. What is your clan? To know that you actually belonging to a community in Uganda because you can be an Acholi of Sudan. You can be a Lugbara of Zaire. To prove that you are actually within Uganda, we want to know the name of your Clan. This is why it was contained in the passport form. *(Applause)*

MR. DIDI (Moyo West): Thank you Mr. Chairman. Along the lines of hon. Nekyon, the baseline point of 1926 is important because nobody is questioning the drawing of that border. So, the first point of reference should be the border of Uganda. Hon. Obua may not be worried because the Langi are inside Uganda. With regard to those of us who come at the border, just like the example of hon. Nekyon, there may be those people who come from the same tribe and are across the border. Like hon. Aggrey Awori had ably demonstrated - even if it is the same family, the very drawing of the border that cuts you into Uganda must have made you a Ugandan. So, that should be the first group we must start with. Thereafter, if by independence, we want to add those who have come or who were found inside, that is why I was giving the example of what we call the International tribes. Today, you find in our schedule, the Kuku are there, you find the Indians are there. Now, if we must add those, it must be to those who are already included within the boundaries of what has been drawn as Uganda, which nobody is questioning. I thank you.

THE CHAIRMAN: Really honestly, I would urge that we have heard a very good hearing on this issue. I will have two final Speakers on this point - hon. Karuhanga and hon. Malinga and then we conclude.

MR. KARUHANGA (Nyabushozi County): Thank you Mr. Chairman. I think the contribution of hon. Nekyon was very enlightening and first of all, I would like to say that this formulation which is in the Odoki Draft came after a long research of our citizenship laws. The members of that commission, many of them prominent and eminent lawyers and the Judge of the High Court did take a serious view to study and come up with this proposal in the Draft. Now as a Member of the Uganda Think Tank Foundation, we hired and recruited professional lawyers to advise us about this provision; because there was a political debate before the C.A. elections about this provision. We were concerned and we wanted to get professional advice about it. We met as members of the board together with the consultants and put the type of questions that are being raised not only by Dr. Magezi, which are genuine questions, because at the time they were really current. We did look in detail at the 1948 British Nationality Act as it defined who was a protected person. We realised that in 1921, there had been the first census of Ugandans before they drew the map of Uganda as they had proposed in 1921. At that time

they established that in Uganda existed 39 ethnic compositions - tribes.

Then, five years later, the final version being the fourth version of Uganda, was drawn five years after the census. The second census was of course carried out five years later in 1931 - also established another 39 tribes. The position that we asked in the Think Tank was - If we keep the 1962 version, do we keep more citizens and if we adopt the 1926, do we have less citizens? We found apparently that was the case. If you wanted to argue somebody out, this version was more strict. At least that we were able to establish. Now, the current Draft Proposal which has been adopted by our Committee - I am a member of Committee IV, Mr. Chairman. Committee IV did take a lot of time to discuss this provision. We came to accept the Odoki version. We only were able to add - a person must reside, must be that membership of the indigenous community should have been residing in Uganda. In the research we were carrying out, we cared very much about hon. Aggrey Awori's concerns about the border tribes. We recommend as a Committee, as a group of citizens who have been interested in this version to solve the problem which was coming up politically that we adopt the Odoki Version which has been also adopted by Committee IV. The new writing by Engineer Magezi is not likely to give us very good legal engineering. Thank you.

MR. MALINGA (Usuk County): Mr. Chairman and hon. Delegates, the people of Usuk considered this provision at our consultations. Article 40 restates the position as of 1962 Constitution that any person who was a citizen at the commencement of this Constitution - which means a person who is a citizen by virtue of the 1967 Constitution which adopts the position as of 1962, that one we have no problem with - that is okay. Now, the problem here with 41 is trying to say that the following people are citizens of Uganda by birth; who according to other provisions of this Draft a citizen of Uganda by birth under Article 105 for example, can become President and I think can become Vice President and there are other places where the status of being a Ugandan citizen by birth is important for you to have a citizenship by birth, otherwise, you are excluded. Therefore, it is important for us to find out, are there any people who were made citizens in 1962 who would be disadvantaged by using 1962 in (a) or not. So, if anybody is arguing for 1926, he should put forward to us and say - these are the people who are going to be disadvantaged if we are not going to

adopt 1926. Otherwise, the situation is, as we have, we should go by 1962 because that is what we have now. *(Applause)* The people who are arguing for 1926 should put their cards on the table and tell us that there are people who are going to be disadvantaged. In fact, we discussed this matter so much in Usuk and then now that matter is losing interest in Usuk because people of Usuk are confident that the Rwandese are on their way back to their country. So, it is not of much concern. So, we really think that we can do without (a) or we can do with it but substitute 9th October 1962 with 1st February, 1926. Now, the thing is this, 1926 - if we go by 1926, this is a *kavuyo* proper. There are no records existing as to *(Interjections)*- I have been to the 9th Floor of Uganda House where the birth and death registry of Uganda is. There are very scanty records of people whose birth are recorded. Very scanty! So, if we try to go back to such a far date as 1926, we are inviting trouble for people to take advantage of the confusion. So, to avoid that, we should go by 1962 where we can get more readily available records. If not, we can remember from living memory the records or the identities of the people who we are dealing with. So, I would strongly urge the members that we should go by 9th October, 1962. That is where we date. When the drawing of our maps and what not - that was something which was not done by us Ugandans. This was done for us. Some people sat in Berlin 1884 and said that Uganda would become British. We are not trying to go back to 1884 nor are we trying to go back - why do we not go back to 1897 when Portal declared Uganda a British possession? If we should decide, why do we go for 1962? It is because that is the day when we became a nation and we should be proud of that fact and we should date everything from that day. I beg Delegates to take 1962 as the date of reference. Thank you.

THE CHAIRMAN: Anyway, hon. Delegates, we have talked a lot about this one. I think hon. Nekyon seems to have summarised the rationale behind this one really. So, it is either we adopt it or we do not because the argument is not that we are looking about the births of the particular individuals but it is question of trying to search who is a Ugandan by birth and we are saying there must have been communities in Uganda as of 1926 and people who belonged to those communities are the indigenous Ugandans - the Ugandans by birth and in fact, as hon. Malinga said it is a re-writing the Uganda way of Article 7 where you are avoiding a reference with the British Nationality Act and British Subject Act and

all the rest. I found, for instance, that when I went to Australia that I could vote because I was a British subject and their definition of a British subject was anybody who is a British subject or a member of Her Majesty's Dominions or a member of a Commonwealth Country. They only changed recently when they realised that many people who are not even Australians were coming in to vote because of the loose definition and they were tying theirs to the British Nationality Act until the British repealed theirs and then they also began changing theirs. But I think we should now reach a stage where we make a decision. Hon. Ogola, you are the last Speaker.

MR. OGOLA (West Budama South): Mr. Chairman, you are very kind indeed to allow me to speak even when you thought we should have ended. Mr. Chairman, I had asked for the Floor for clarification either from you or whoever can help. Before I could make up my mind to support all these attempts to take us back to 1926, I would like to ask for clarification as to whether the decision to have pegged our citizenship as of October, the 9th 1962 had disadvantaged anybody, either as an individual or as a community in this Uganda we are talking about? Is there anybody who feels thoroughly inconvenienced that somehow in 1962 he was either left out or his grandparents were left out or he himself and his children were left out? I do not seem to find this complaint anywhere. Then why are we dragging ourselves back to 1926? Until I get this clarification, Mr. Chairman, I cannot go along very well and my conscience would be very heavy when it comes to voting. I seek this Clarification.

THE CHAIRMAN: Yes, hon. Kirunda Kivejinja - you say you can inform him?

MR. KIRUNDA KIVEJINJA (Bugweri County): Mr. Chairman, I would like to inform the hon. Member through you, that everything has a beginning. Even mankind has a beginning of Adam and Eve and we are descendants of Adam. Even Uganda had a beginning. We were not a nation. Somebody came and bundled us. Now, we say all those who were bundled up into the present boundaries of Uganda form the original historical members and citizens of this country. Everything has a history. Even in the NRM, there are historical members. Thank you very much

THE CHAIRMAN: I think all Members have had a chance. Hon. Wanendeya, what do you want to be clarified?

MR. WANENDEYA (Budadiri East): Thank you Mr. Chairman. I want the Chairman of the Select Committee to clarify to us as to how they went about to solve the problem of those people who filled in passport forms at Katonga, then got them to Kampala, then they got passports to be Ugandan citizens. Mr. Chairman, this point is one of those which bothers some of the people even if they do not want to talk their minds. Because you find that at some stage, some of the people have gone back to their countries of origin and yet they still have Ugandan passports. So, I do not know - you find that there are people who - I mean passports were not issued out technically, starting from RC I to know whether those people were born in those places. So, I want the Chairman to clarify as to how they would go about solving that problem so that the minds of some of those people who literally have got dual citizenship are residing in Uganda and also citizenship of other countries. I thank you Mr. Chairman.

THE CHAIRMAN: Maybe I could inform hon. Wanendeya that at some stage I travelled on a Tanzanian passport and I was never a Tanzanian. A passport is not a document of citizenship. It is a document of identity. So, we should not really be delayed to *(Applause)*- make a decision. Now - *(Interjections)*- No, we have now come to a decision - let us make up our minds on this one. Otherwise, we shall go around in circles and never move.

AN HON MEMBER: Mr. Chairman, I have just benefitted from a document here which says that *The adjustment of the Uganda/Sudan boundary in 1914 and 1926* and I think it is important to note that a certain part of what was Uganda was transferred after negotiating with the colonial office - the area was transferred to Sudan in 1926 by order of the Colonial Secretary L.S. Amrey, issued on 17th September, 1926. Now, if we are conferring citizenship as of 1st February, 1926, will these people now become Ugandan Citizen? *(Interjections)* By 1st February, 1926, they were Ugandan Citizens and the document, Mr. Chairman, I can lay on the table.

THE CHAIRMAN: The boundary transferred the other way. Hon. Nekyon has a clarification to make. Just a moment, hon. Omara Atubo.

MR. NEKYON: Mr. Chairman, that document is valid but I want to assure this Assembly that what this provision we are discussing is concerned with, is those who were drawn in Uganda by that date. All

that it is saying is that it took many years to finalise the boundaries of Uganda. It was not drawn in one day. So, what is worrying people which should have been clarified is - which part of Uganda was brought finally by 1926? I do not remember very well but I think the last part to be brought into Uganda was West Nile which was maybe in 1926 because West Nile was first given to King Leopole in perpetuity as an estate. Finally, it was negotiated and brought to Uganda in 1926 and then also Kisoro, now District, was part of The German East Africa which extended up to Rwanda including Tanganyika. Now, it was then brought to Uganda after the First World War. So I think it is either West Nile or Kisoro which is bringing this doubt here but this is final date of drawing the boundaries. Kacheliba was brought to Uganda for administration only which was in return but what happened to Kacheliba - the Kasu but it is now Kacheliba - was that the Karamajong and the Suku were roaming about the area as they are still doing today. During *(Laughter)*- the dry season

MR. OBUA OTOA: Point of Order. Mr. Chairman, is the hon. Nekyon in order to continue to mislead this Assembly when the a document has been produced which goes contrary to what he is talking about? Is he in order, Mr. Chairman? The document refers to a transfer of territory from Uganda to Sudan on the 17th of September, 1926 and here we are talking about the 1st of February, 1926 awarding citizenship to certain people who are now in Sudan and hon. Adoko Nekyon is continuing to confuse this House. Is he in order, Mr. Chairman?

THE CHAIRMAN: You see, you are calling on the Chairman to declare that the evidential proof of the document from which they have read is beyond question.

MR. OTOA: But hon. Nekyon himself says that what the document says is true.

THE CHAIRMAN: No, no he did not say what the document says is true. He says the document is valid. In other words, he knows about it, *(Laughter)*- but I do not think he would vouch for its contents. *(Applause)*

MR. NEKYON: I was saying about the document, if the people had been transferred to Sudan by that document, then they are really citizens of Sudan. There is no way they are going to become citizens of Uganda when they are citizens of the

Sudan. *(Applause)* Then I am saying in case of Kacheliba, it was only transferred to Uganda for administration but all the time it was agreed that Kacheliba was part of Kenya. Even when we were administering from 1962, we knew that part was that of Kenya but the agreement was we would allow these people who are roaming about, freedom to move because all of them are moving about, and blocking the border became a problem. So, the British said, let us give them latitude to move until they get tired. So... *(Laughter)*.

THE CHAIRMAN: I think hon. Nekyon, you are over stating the case. My information was that it was easier to administer Kacheliba from the Uganda side than from Nairobi at that time because of communication difficulties. Yes, hon. Omara Atubo.

MR. OMARA ATUBO (Otuke County): Thank you Mr. Chairman. I think we need to convince ourselves or at least we need to be assisted because I think many people have a similar problem. I have a similar problem. The issue of relating our citizenship to the date of independence when we became a nation or a state for that matter. Mr. Chairman, you know very well that we should look at the 1962 Constitution and the 1967 Constitution which 1967 Constitution really reproduces substantially the 1962 Constitution relating to citizenship. Now, the basic argument, Mr. Chairman, is that when Uganda was not yet independent, we were part of the border imperial citizenship of the British but as soon as we became independent among the *-(Interruption)*

THE CHAIRMAN: Order! Order! Hon. Amama Mbabazi, you are not allowed to address a rally while the proceedings are taking place.

MR. OMARA ATUBO: Now, Mr. Chairman, when we achieved independence, then a nation called Uganda was born with people within those borders recognised internationally and they started having our flag and passports and so on. Now, if you look at the 1962 and 1967 Constitution, they all refer to that specific date - 8th and the midnight of the 9th. That is relevant to the issue of citizenship. Now, Mr. Chairman, when we look at the Article 40 which we have passed, we are saying every person who, on the commencement of this Constitution is a citizen of Uganda, shall continue to be a citizen of Uganda. Now, there is no reference. This Constitution is coming into force I do not know when, next year or this year when it is promulgated. No reference is

made to when Uganda became independent and there are those who achieved citizenship as long ago as the state of Uganda was born. Now, we are saying - docs the commencement of this Constitution affect all that broad spectrum which we have left behind? The 1967 Constitution also talks of the same, the 1962 Constitution talks of the same and we seem to leave this blanket reference; but if you look at Article 40 really, it does not help much. You have got look at various other provisions relating to that. Uganda is not starting on the day that this Constitution is promulgated. Uganda as a state was born on the 9th October, 1962. We should not forget that.

Then, if you go at Article 43 (1) b. Mr. Chairman, if you look at Article 43 (1) b, we are saying now citizenship by registration. That is when we talk about Uganda citizens on the 9th October, 1962 and that will be citizenship by registration. So, Mr. Chairman, I am not very clear on this point. I may not necessarily have this question of 1926 when Uganda was finally defined as the borders was concluded; but this issue of 1962 keeps on haunting many people including myself that possibly we need to say something about this date somewhere; because if you look at the 1962 Constitution, 1967 Constitution, they are only important - that is when Uganda was born, that is when for the first time we started having our own citizenship outside the citizenship of the known British Imperial Global citizenship. So, I think, Mr. Chairman, it is not a simple matter we should brush aside. If we can accommodate both, I have no problem! But we need really to look at the issue of the date of independence, the birth of a nation very critically. Thank you Mr. Chairman.

THE CHAIRMAN: I would like to make a comment just as we wind up. I am making reference to some of these provisions, how I understand them because we have wasted a lot of time on them. We have approved 40 which says "Any person who, on the coming into force of this Constitution, is a citizen of Uganda, shall on that coming into force continue to be such a citizen." This will include those people who already today are citizens and those who the people of Uganda or the government of Uganda will make citizens between now and until this Constitution comes into force.

Those will be various categories as we know from the 1962 Constitution. There were those by the virtue of the British Nationality Act, there were those by virtue of registration, there were those by virtue of

naturalisation and they are all in categories. That is Article 40. It picks up those of 1962 as continued by 1967 and those subsequently granted citizenship by virtue of 1967 - either under the statutes or by virtue of that Constitution of 1967 either under the Statutes or by virtue of that Constitution. But 41 (a) is saying: among that whole conglomerate on that day, the following will be indigenous citizens. By virtue of belonging to those groups which were in Uganda, cutting out certain people. Those people who are children of those ones who are citizens, even if they are in other categories, are also citizens by birth, and other categories where for instance; if my son was not already one, born in Dar-es-Salaam, I am a Ugandan by birth, he too is one, under 41, so that it is catching situations. Those of us who were outside Uganda, children born outside Uganda, suppose there are those who are there now, the children will be born outside Uganda after the coming into force of this Constitution; they will be picked up under (b) and (c) if their parents are themselves indigenous. But what categories are they? There are those by birth then there are those by registration and so no, and then begins to accord special privileges to those by birth. Jobs like those of the President. For instance, my wife can never become the Ugandan President by virtue of this because she is by registration. So, this is by way of a recommendation on a paragraph anyway and we shall have to vote on it specifically. So, I put the Question on the recommendation on Article 41 Para. (a).

(Question put and agreed to)

MR. KATENTA APUULI: Mr. Chairman, once we have accepted in paragraph I (a), we went to trace the Communities of Uganda as contained in the second schedule to this Constitution. I would like to draw the attention of the hon. Delegates to page 142 of the Draft Constitution with regard to the second schedule. The Select Committee No.4 carefully looked at this schedule and our attention was drawn on the a number of mistakes in the schedule which we would like to recommend for correction. Item No. 12 - *Bakonjo*. The correct spelling of that word is '*Bakonzo*'. Item No.34 - *Labwol* and *Nyakai* - We were properly advised that the correct name of both those groups which are one and the same is '*Ethur*'. So, we seek to recommend that 34 and 43 be replaced by one item '*Ethur*'. Item No.45 Sebei - the appropriate name of that item is '*Sabiny*'. Item No.47 - *Suku* - The correct terminology should be '*Pokot*'. So, we wish to recommend that these

changes be effected. After discussion of that schedule, a number of ethnic groups were identified to have been left out of that list and we wish to recommend that they be included in the list. This include Bafumbira, Basongora, Banyabiindi, Baruli, Bagungu, Batagwenda, Bagwisi, Banyara, Bukusu and the Committee was requested to consider an item - Bahima.

This Item was tabled duly and considered by the Committee. We debated it and before the committee could pronounce itself, a decision was taken that we should consult further. So, the Committee did not pronounce itself on this item but it was duly tabled and seconded and debate ensued. So, I would like to hear from the Delegates who tabled this, how much consultation has been done. But the item we would like to be recommended as part of the items that the Committee considered. Mr. Chairman, all these other new groups that we have identified that were not on the original list, are distinct in themselves and in the wisdom of the committee I would like to recommend them to be adopted and added to the original list of the ethnic groups of Uganda. Mr. Chairman, I beg to move.

THE CHAIRMAN: So, you did not finalise on the question of the Bahima. Did you say it was going to be finalised?

MR. KATENTA APUULI: We did not vote. That is where we are at. The Committee is continuing its work, Mr. Chairman, on this particular matter.

THE CHAIRMAN: I think the best decision is that we do not conclude the schedule until you have finalised your consultations so that you bring us one recommendation instead of reopening it.

MR. DIDI: Mr. Chairman, this schedule is very interesting. I do not know whether the Committee could also help us by a chart to identify whether some of these nationalities exist. For example, I do not know who are these *Bwonoma*. I think it is good that they could bring the compressive list and indicate where these groups exist because this is a historical process.

MR. KITAKA GAWERA: Mr. Chairman, this is information and clarification. The second schedule - it is fitting that *Banyara* have been recommended by the Select Committee 4 to be included in Schedule

2. *Banyara* including me, are an indigenous ethnic group of Bugerere County now divided into Baale and Ntenjeru. The *Banyara* are very hospitable ethnic group. They have accepted all of you here.

AN HON. DELEGATE: Point of Order. Mr. Chairman, I thought you were guiding us as to whether we can debate this before the Committee has finished its schedule. Now, is the hon. Member holding the Floor in order to start debating and advancing reasons for this great tribe before we reach that position, Mr. Chairman?

THE CHAIRMAN: You see, my concern was the Chairman says they were not fully concluded on their deliberations. I was encouraging Members to come up with clarification so that when the Chairman goes back into his Committee, he has them. So, I would ask hon. Gawera to wait for the Debate when the Chairman brings it back.

MR. OBUA OTUA: Mr. Chairman, the point of clarification I am seeking is small actually, but I still would want it clarified. What is the procedure one uses to get oneself included in this Schedule? Because it is not very clear, it seems to me that certain Members just go there to the Committee 4 and say, "I want this ethnic group included in Schedule 2", and others go and say they want that done. Mr. Chairman a certain man who *(interruption)*

MR. KIYONGA FRANCIS: Point of Order. Mr. Chairman, is it in order for hon. Obuga Otoa to presume that we did not do a lot of discussion over this issue as to include this list of these other ethnic groupings. Is he in order?

THE CHAIRMAN: His question was that how does one have his ethnic group added to the list?

MR. OBUA OTOA: Thank you for that ruling. The example was of a man called Kabala, a Mugishu, and does not agree with certain practices of Bugishu. He decided to form a different tribe. How would the case of such a man be handled?

MR. WANENDEYA: Mr. Chairman, first and foremost before I go to Kabala, I happened to have written a small booklet which I hope to publish and therefore, I would like to inform that, some time in the 50s, I set about to make a study of ethnic groups in

Uganda and Tanzania and there is this Book which exposes most of these people who are here. So, it is not a question of somebody or individual going to the Committee 4 and saying, 'I want my tribe to be included'. In the case of Kabala, this is a man who feared circumcision and therefore, he thinks he can get people in Bugisu and thinks he can get a separate tribe by mentioning it in the Newspapers. But so far I doubt whether he has gone to Committee 4 to get his tribe to be registered. I thank you, Mr. Chairman.

MAJ GEN. TINYEFUZA: Mr. Chairman, I would like to inform hon. Obuga Otoa that there is actually documentary evidence as to some of these Ugandan Ethnic Communities. I would advise you that there is actually Uganda Map of 1923 concerning Uganda Ethnic Groups and it does specify all those ethnic communities which later on are being referred to in 1926.

MR. KIWAGAMA: Mr. Chairman, I would like to add in attempt to clarify to hon. Obuga Otoa who asked for the procedure as to how an ethnic group can be introduced on this Schedule. Mr. Chairman, every corner and inch of Uganda is represented in this Assembly. If there is a demand for any Ethnic Group anywhere in Uganda, it has got representation here. Now, should there be an Ethnic Group which wants to be identified on this Schedule, there was ample time for Members to bring Amendments and Additions for the consideration in the Committee. I would advise Mr. Obuga Otoa if there is any such group and indeed Committee 4 is still discussing this Schedule, can you please come up with an Amendment? We shall discuss it please. Thank you.

MR. AWORI: Mr. Chairman, the matter of procedure I move that we invoke Rule No.9. Thank you.

THE CHAIRMAN: I take note of the observations you make.

MR. KARUSOKE: Mr. Chairman, I would like to draw the attention of the Chairman of this Committee, to the fact that in the recommendation there is a tribe called 'Babwisi'. The reason they give is that their language differ from that of *Baburabule* in Bundibugyo. Now, the two Ethnic Groups make up a tribe called *Bamba* in No.3 of the Schedule. So, if we are going to put No.55 as *Babwisi* then No.3 in the Schedule should change to *Baburabule* instead of *Bamba*.

THE CHAIRMAN: The Chairman of the Committee, I am sure, has taken note of that and will come back with the appropriate position with regard to Bundibugyo District as well. Hon. Delegates, with that we come to the end of today's business and I wish you a good weekend. We stand adjourned.

(The Assembly rose and adjourned until Monday 6th February, 1995)