



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 5TH MAY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 4142]

Friday, 5th May, 1995

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

NATIONAL ANTHEM

PRAYERS

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

The Assembly was called to order

STATEMENTS AND
PERSONAL EXPLANATION.

THE CHAIRMAN: Hon. Delegates, I draw your attention to Rule 12, of our Rules of Procedure, which provides for statements by Delegates and also personal explanations. That rule provides in Sub-Rule I that, with league of the Chairman, a Delegate may make a statement on a matter of urgent public importance relating to the functions of the Assembly, or explain a matter of a personal nature. But no controversial matter may be brought forward under this law or no debate may arise upon the personal explanation. Now, Hon. Cecilia Ogwal has approached me with a request that she makes a statement. It is labeled here as personal explanation, but I think her request was a statement of public importance - I think the Clerk's Office did not read her request properly as they prepared the Order Paper. She would like to make a statement relating to some matters in connection with consultations in her capacity as a Delegate and having looked through, I thought it would be proper that, she be given a chance to make that statement. And so, I am giving the Floor to Hon. Cecilia Ogwal to make a statement of Public Importance.

MRS. CECILIA OGWAL: (*Lira Municipality*): Thank you Mr. Chairman. Mr. Chairman and fellow Delegates, you may have read the story that appeared in the New Vision, issue of 24th April, 1995. In it was reported a consultative meeting that was stopped by police on Saturday 22nd April, 1995; at Lira Technical College. Mr. Chairman you recall, that on adjourning the Assembly for the Easter recess, you allowed us this opportunity to widely consult our constituencies, to enable us ably tackle the final stages of the task before us, on return. Like many delegates, I took

your advice seriously, and arranged such a meeting. I had attended other consultative meetings in various constituencies, and I reciprocated by inviting some delegates to visit Lira Municipality. I notified people of Lira Municipality in circulars, by radio announcement and by emissaries. I invited the Lira Dignitaries like the CGR, DISO, RC 5 Chairman, Religious leaders and other Opinion Leaders in Lira and Apac. I personally paid a courtesy call on the CGR, whom I did not find in his office. I was, however, received by his deputy Mr. Musa Eshero who informed me that, he had been recently transferred to the area. He further informed me, that he had been an RPA rebel commander. Eshero promised to attend the meeting and participate in the consultations. The RC 5 Chairman could not honour my invitation because he was out of the station. I then requested the Chairman, RC 4 to preside over the meeting and he kindly agreed. I formally informed the DPC of the meeting and requested him to attend. Invited guests started arriving as early as 9.00 a.m., but due to delay in fixing the Public Address System, we could not start until 11.30 a.m. The meeting was started with the singing of the National Anthem. But as we were singing, a Policeman in full uniform entered the hall, and handed me a letter. Like the rest of the citizens, I was at attention singing the National Anthem, and I ignored the rude intrusion, until the Anthem was over. I could not believe that, in independent Uganda, we still have policemen who are passed out of their Training Schools but were not told to stand at attention and salute when the National Anthem is being sang. The Policeman demanded that I open the letter and read it. Considering his inept conduct, I had no obligation or moral duty to obey him. He took his letter back. We proceeded with the meeting. within about 15 minutes a contingent of 35 policemen each armed with an AK-47 gun, and a club arrived at the scene. They were commanded by the DPC Lira, and led by the Deputy CGR and DISO. The Deputy CGR came on stage and read a letter the CGR had written to me. And at the end of it, he declared our meeting illegal. In that letter, the CGR sought clarification as to why other CADs were in the meeting. There and then, the Deputy CGR, ordered the people to be dispersed. On this order, three policemen cocked their guns and pointed them at me. Other policemen started kicking and beating the guests, as they run. There was such a nasty stampede that, several people, mainly the elderly got injured and a lot of

personal property was lost. An old man by the name of Eliya Tii, is right now being nursed in a Lira clinic. Mr. Chairman, this is not the first time I have been harassed by police and Government Agencies. What is disturbing is that, the pattern is the same. Armed police have all the time been used by NRM/NRA operatives to brutalise the people I represent. When I was declared winner to sit in this august House on the 29th March, 1994, seventy five armed NRA soldiers, were dispatched to the home of Rev. Opollo - Apello where we were celebrating our victory. People were mercilessly beaten up, and I was whisked away, or else I was a target for assassination. You may have read in local Newspapers, that in Mbale, Arua, Bundibugyo and other areas, I was similarly treated. Mr. Chairman, whenever I report these incidents to the Ministers responsible for security, they appear surprised and feign ignorance of Government complicity. I have on several occasions reported to the ISO boss and the Minister of Internal Affairs who happen to be Hon. Members of this House, but they have always constantly pretended to have been taken by surprise. What NRA/NRM Government has almost constantly promised is to punish the culprits. Today, Mr. Chairman, Henry Rwigyemera, who harassed me in Mbale in May 1993 has since been promoted and has remained a powerful political functionary in the District of Mbale. Richard Barigayome who harassed me in Arua in March 1993, is now the CGR Ntungamo. The officer in charge of Bugiri who arrested me in December 1994, is still wearing Police uniform. The Commanding Officer who led an army of 75 Armed Soldiers from Lira Military Barracks, to beat up people and disrupt our celebrations has remained untouched. Kyambogo and Kabale are still fresh in our memories. All these are evidence that, government condones acts of brutality, by security personnel and are therefore not willing to take corrective measures. Mr. Chairman, I am reporting to you that, the NRA Government denied me the right and opportunity to consult with my constituents in Lira Municipality. This has denied my constituency the opportunity to make final input to the constitutional debate. Mr. Chairman, I shudder to imagine what Uganda holds for our future, under NRM/NRA Rule. If anybody with views opposed to government is not to be tolerated. Mr. Chairman I thank you.

THE CHAIRMAN: Thank you. Hon. Delegates, under our rules, any statement other than a personal

explanation, may be commented upon by other delegates to a limited time not exceeding 30 minutes. It is not a must, but it is permissible.

MR. MWONDHA: Thank you Mr. Chairman. The statement of Hon. Cecilia Ogwal, brings to mind the events that happened in Bugiri on the 20th of December, 1994 - November, 1994. Mr. Chairman, you recall that, when Cecilia and I were harassed and arrested in Bugiri, I wrote to you, explaining in detail what had transpired in Bugiri. I did also raise apprehensions and concern of the population, as to the legitimacy of the constitution in the making, especially if elected delegates cannot be allowed access to their constituencies. We did respond accordingly, and you wrote under your hand to the authorities concerned. You gave me a copy of the letter. I would like to assure you that, up to this day, I have not got any response from the authorities. May be they replied to you; but rightly or wrongly, omitted to serve me with a copy. I am of the impression that, over a matter of such serious implications, on the future of this country, the authorities would have responded or at least acknowledged receipt of your letter. Mr. Chairman, I cannot help but put a big question mark on this Constitution making process. I thank you Mr. Chairman.

MR. KITARIKO: Thank you Mr. Chairman. We all like to believe the Constitutional making process is the first step to inculcate a culture of constitutionalism and rule of law in this country. If we enter the next phase, with what has been happening so far, then it will have been futile for us to discuss and pass this constitution. If indeed consultation by candidates is a preserve of a Movement System, adherents, then I believe we are far from achieving the goal set out in the constitution. Mr. Chairman, when I was campaigning for the CA elections, I wrote a letter to the NPC - copy to the President, regarding the activities by James Mwesigye, then a DISO, who was harassing my would be supporters of Kitariko. I never received a reply. Like a Ugandan who is determined, I continued to campaign. Mr. Chairman, surely the soldier should get the facts on the ground and satisfy the Hon. Speaker that, perhaps she was in the wrong. Given the scenario of many people who have harassed her, but are still enjoying Government privileges leads to the conclusion that, government supports these acts of violence. How else would you conclude? I hope, Mr. Chairman, this will stop and will not continue. Otherwise, we are heading for chaos.

MR. ATWOMA: Thank you Mr. Chairman. When I received this copy of the statement in my pigeon hole yesterday, I wondered what was wrong with Hon. Cecilia Ogwal in particular. Why are all these atrocities, I may call them so, always directed against her? Is it because she is a CAD, or is it because she is an Assistant Secretary General of the UPC? What is it all about? I move that, this Assembly condemns the activity of the Police, and calls upon Government to make a public statement to explain these events. Thank you Mr. Chairman.

MR. BASOGA NSADHU: Thank you Mr. Chairman, for giving me the opportunity to comment on the statement. I want to look at this statement in a context of history and I particularly want to draw the attention of the House to one incident that happened sometime back in Germany. The Nazi's lost a war, they had killed a number of people through gas chambers. The Nazis are still available and they have constituted themselves into the right wing, but they have proved to be nuisances in Germany. Although Germany is a Democratic country, those people are usually not allowed even to circulate statements like we are doing here, let alone to call meetings. What I am trying to talk about is that, sometimes history catches up with us, and the activities of the Nazi are still lingering even in the present day generation in Germany. Those who are associated with the right wing in Germany are usually viewed as very, very hostile. Mr. Chairman, if we made a dramatic game and came back here in 1984, I and many other people in Bunyoro were rounded up, beaten, burnt with melting jerricans and others were locked up in cells supposed to house 10 inmates in hundreds. Pregnant women were bayoneted, you know all these things happened and sometimes, Ugandans recall these incidents and associate them especially, with somebody who held a position of Secretary General within the system that operated at that time. So, while I do not know the back ground to the closing of the Lira meeting, since Hon. Cecilia Ogwal has not read to us the contents of the letter, one could imagine that, if a meeting was organised to mobilize people so that they can organise the bayoneting of people around, perhaps it is justifiable to halt the meeting. The atmosphere as you see it today, is good because she has made a statement, she has circulated many statements, the papers have reported several. I may not be in position to condemn what happened until an explanation is given, and I wish she had the courtesy to read to us the contents

of the letter that was written to her. Otherwise, I thought that sometimes it is better to remember history, before we condemn anything or do otherwise. A few days ago, we were in Kabale, with many people of varied views, I was with Hon. Mwandha; my friend from Ayivu, and DP Secretary General Hon. Robert Kitariko. The meeting was a combination of about five to six districts. We had very useful discussions on the resumption of multi party politics vis a vis upholding the movement system in Uganda. The atmosphere was completely conducive. There was police, the CGRs from the five districts also attended. So, I think there must be something more than what the lady has explained to us that, really prompted such an action to take place. Thank you very much.

DR. OKULLO EPAK: Thank you Mr. Chairman. I would like to pick up from the statement made by the Hon. Basoga Nsadh, in the sense, that such meetings are allowed to go on freely elsewhere in Uganda. I, therefore, question not only why denial should be pertinent to Cecilia Ogwal, but why this should be the case in Lango? It goes on elsewhere, successfully, without interference and without disturbance, but it is different for a meeting organised in Lango. Mr. Chairman, soon after the elections, the Lango Delegates organised a similar meeting for consultation because, we would not have time for parish by parish consultations, since assembly was supposed to commence soon after the elections. Mr. Chairman, you will recall, that in May, it was the same venue Lira Technical College, where our meeting was not allowed to take place and we were dispersed by the police. At that time, it was through the specific instruction of the then Prime Minister, Mr. George Cosmas Agyebo, who is also an honorable member of this Assembly. It would, therefore, seem to me, that the zulu cow horn approach of zoning off, is the issue. It seems Lango is an occupied area, where no free activities can be permitted. Mr. Chairman, I must regret, that the treatment meted out to Hon. Basoga has now turned him into some sort of fascist, and I beg him to behave better than those people who treated him in that manner. If he now wants to behave worse than those who meted that treatments on him, he is doing this country, no good. Mr. Chairman, Nazism is a prescribed organisation and activity in Germany, and I think all over the world. Therefore, there is no comparison whatsoever, with what is happening in Uganda. I do not know, of any occasion when UPC or Lango activities have been

proscribed in this country. If it is a secret arrangement, then we are learning it here today, Mr. Chairman. *(Applause)*. Finally, Mr. Chairman, I am ashamed and embarrassed, when some legislators, people who represent others in this country - recently in NRC could turn around to defend such bad practices. This does not auger very well for the future of our legislators and freedom of association under human rights, Mr. Chairman. I would like to condemn those legislators particularly the Members of NRC from Lango who support that kind of bad practice, and I believe that those practices by the Police and the Local Administration were done with their connivance. Mr. Chairman, I would beg the NRM to go by its own record, not by the UPC record or any other organisation. If it does not have any record, then it should ban itself and become UPC. I thank you.

MR. ADYEBO: Thank you very much, Mr. Chairman. Mr. Chairman, it is very sad that, Amin killed most of the able politicians in the North, and now what we are left with, are just a *-(Laughter)-* group, who want to get to power at the expense of others.

MR. ATWOMA: Point of order. Is Hon. Cosmas Adyebo, in order to imputing, that all of us, politicians from Northern Uganda, including himself, are useless politicians.

THE CHAIRMAN: I think he was being very courteous to include himself. Hon. Adyebo, I do not think you should suggest that only the able politicians died, and the ones who are here are not able when they are making this Constitution for the Republic of Uganda.

MR. ADYEBO: Mr. Chairman, with all due respect to Hon. Okeny Atwoma, *-(interruption)-*

THE CHAIRMAN: Hon. Adyebo, we do not have much time, if you could make your point. Because this debate must end within 30 minutes.

MR. ADYEBO: Yes. I regret that, Amin killed many able politicians from the North. What we are left with shows, that within the group of the politicians, there are those who want to get into power at the expense of telling the truth. I did not even know about this meeting which Hon. Cecilia says was stopped by the police. But prior to that meeting, on the 18th of March, we had invited so many Ugan-

dans to go to Apac, for a get together party. I did extend invitation to all my brothers and sisters in the NRC and CA. But they chose not to go to Apac, instead there was a meeting, recorded. I wish I knew this was going to come up, I would have come here with a written document of a meeting attended in Hon. Cecilia Ogwal's house on the 18th of March, trying to plan this Lira meet. Uganda House was supposed to sponsor the meeting. It is on record. Please do not shout, I had that evidence. I have the written record of the evidence. You cannot rule me out of order, because that meeting was attended by Hon. Dr. Okulo Epak himself. Now, in that meeting, they wanted to invite *-(interruption)-*

AN HON. DELEGATE: Point of order. A meeting took place in Hon. Cecilia Ogwal's home in order to plan our consultative meeting. The meeting in Lira was organised by us, financed by us - Delegates. What Hon. George Cosmas Adyebo is quoting is hearsay, and it has nothing to do with the meeting which I attended. Therefore, Mr. Chairman, is Hon. Adyebo in order to attribute an intention to a meeting he did not attend, and of which he knows nothing?

MR. ADYEBO: Mr. Chairman, I had the copy.

THE CHAIRMAN: You do not answer until the Chairman, has ruled Hon. Adyebo. The point is that, it would appear Hon. Adyebo was not aware of those details now you have been informed. But could you please make your comment.

MR. ADYEBO: Mr. Chairman, in fact I do not see, that if Hon. Cecilia Ogwal had just gone for her consultative meeting, she would have been prevented. But there are a group of Ugandans who want to deceive Ugandans. A Consultative meeting of a honourable CAD is acceptable. And, Mr. Chairman, if this is being abused under the guise of Consultative meetings and the intention is elsewhere, then I think the police or the government organs have the right may be to observe law and order. Mr. Chairman, we are running a government at the moment. I am not in the government at the moment, but any Ugandan here, will also in future be running a government. But I think when you are in the government, you should be interested in maintaining law and order. I do not think that, if my sister Hon. Cecilia, with due respect, was in government in 1980s, would have allowed

Semwogerere to just go around. We should be telling Ugandans the truth. I am also a Langi. If this one was a consultation made for all the Langi, why were we not invited? But instead some people from my county were invited. I expected my Chairman, Hon. Dr. Okulo Epak, whom we allowed to chair all CADs of Lango including myself, to have invited me for that consultative meeting, if it was genuine. But to come here and say, the Langi have been terrorised, is not correct.

THE CHAIRMAN: Hon. Adyebo, close your comments.

MR. ADYEBO: But I think the politicians should be patient enough, and they should put their case correctly. The other incident, Mr. Chairman of 2nd April, this year, President Museveni invited all of us - the CADs from Lango to Rwakitura, and we went there including my sister Cecilia here. And if there was an occupation army in Lango, they would have raised it there during that meeting but I never heard a complaint from either DR. Okulo Epak or Cecilia to that effect. We were called for consultation, and they all attended. I will wind up by saying, that it is unfortunate that, my teacher here is bringing something which he wants all the Ugandans to believe that, the Lango politicians are not being listened to, which I doubt is the case. But, it is possible that, some of the politicians just want their case to be heard. Then lastly -

THE CHAIRMAN: I think I have set away the Floor from you, because we have limited time. We do not have to vote on this.

MR. OWINY DOLLO: Thank you Mr. Chairman. Mr. Chairman, the matter which has been brought before this House, by the Hon. Cecilia Ogwal for Lira Municipality is a matter of great concern. I hope one of the most important matters before this Constituent Assembly. The issue of political parties vis a vis the Movement as rival political systems. Mr. Chairman, the Hon. Cecilia Ogwal is a delegate of Lira Municipality, she is not even a nominee of their party - The Uganda People's Congress. Mr. Chairman, each and every delegate in this House, has got an opportunity to go and freely consult his electorate. As far as I know, there are no rules saying, that when you go for consultation, we should consult in a special manner. We have heard time and again that, Cecilia Ogwal has a different fora being prevented from

airing out her views or let me say, the views of her constituency. For all peace loving people of Uganda, to all Ugandans who love democracy, we should condemn anybody, who would stop any member-Delegate in this House from consulting his people, not only in their constituencies, but throughout the country. If this august body is to come out with a constitution that, Ugandans for time to come, respect. This is the only forum where the views of Cecilia Ogwal, can either carry the day or be defeated. It should not be defeated elsewhere. Otherwise, the purpose to our coming here to sit and discuss, would be defeated and God forbid. Mr. Chairman, I ask those in authority to find ways of following the activities of the persons outside Kampala. I say this, Mr. Chairman, Because I had an experience similar to that of Cecilia Ogwal. As you very well know, I was fortunate enough to be appointed to serve in Government, which I have accepted, and I am serving to the best of my ability. Mr. Chairman, you will not believe that at the first consultation I had in my constituency; a government representative attempted to force people to accept the views of the Movement simply because I was appointed a Minister! The question I told him that "I was elected to the CA to ask that parties be returned. Was the reason for voting that, I go and ask for parties to be returned the fact that then, I was not a minister, and now that I am a minister, parties should lie in abeyance, and Movement should continue indefinitely? I explained to him that the people of Agago have every right and justification, either to continue demanding for the return of parties or to accept the decision of the majority or even to change their views if they are persuaded. If they are persuaded Mr. Chairman; but not if they are prevented from continuing to speak out their views. I believe those in the Movement camp and those in the Multiparty camp, for the good of the nation, will all have a stake in this country's future, and allow each one of us to freely speak out our mind, and we use this forum to listen to views of the Multi-partyists or to seek the views of the majority. Whoever carries the day Mr. Chairman, finally in the name of democracy, peace and stability in this country, every Ugandan should accept the decision of the majority in a fair and free decision, either in the Constituent Assembly or by a referendum if it comes to that. But not by dangling weapons of warfare at people who would like to find consult with their Constituents. It is sad, and I hope all of us will take it as our collective responsibility, to go and persuade those who think they support us when

actually they are working against us to desist from doing the type of things that Cecilia Ogwal suffered. Thank you Mr. Chairman.

MR. KATEGAYA: Thank you Mr. Chairman. I have read Hon Cecilia Ogwal's statement, and I also have information regarding what happened in this meeting. This Movement has not done anything to stop delegates from consulting people of their constituencies. Somebody has asked why Cecilia Ogwal is always the victim, and I think she should find out. She is in trouble precisely because, much as she has freedom to consult, she seems to disregard any other norms of operation. Otherwise, we have no problem with her views, because we know them and they are ineffective. In her first statement, she said that you had Mr. Chairman, said we should all go to consult our constituencies, and in her letter dated 19th April, 1995, addressed to - Government Representative Lira, says the following and I quote. "Consultation Meeting: This is to inform you that, I am in Lira to carry out consultation with the electorate. I shall hold a meeting on Saturday 22nd April, 1995; with female leaders, - and others. The purpose of this letter is to inform and to invite you and your staff to attend. Thanking you. Yours in service of the people, Mrs. C.A. Ogwal. Mr. Chairman, CGRs do not authorise meetings of consultations by politicians. That is the first problem. If anybody wants to have a meeting as by law, the best person should have informed was the DPC or the Regional Police Commander but not the CGR. CGRs do not authorise meetings at all, although they can be invited. I think that is common knowledge, particularly to Cecilia Ogwal who has been fighting for so long. It has always been the police to licence or to authorise meetings. It is police which can also close meetings in the Police Statute of 1994, No. 13; under Section 33, section 2. So, the CGR when he got this letter, definitely knew Hon. Cecilia Ogwal was going to consult her constituency in Lira Municipality, and there was no problem, as far as that was concerned. On 22nd Saturday, there was a programme for the Consultation meeting was dropped in the DPCs office. It stated: Programme for consultation meeting for all the CADs of Apac and all districts. And it specified CADs arriving, Chairman RC 4, the RCs, - and the rest. The authorities realised, it was different from what they expected, and according to CGR, he sent the District Police Commander to talk to her verbally and explain the problem. They waited for her from 8 O'clock to 12.00 and she

never turned up to talk to the CGR and the DPC. Now, this question of saying that, they were singing the National Anthem when a Policeman disrespectful to the National Anthem, delivered a letter to her is not correct. That is where the problem arose. As a point of information, this meeting was being turned into a political party meeting, and I will explain that, to help my sister Cecilia Ogwal understand that, we have no problem with her holding meetings provided these procedures are followed. Secondly, Mr. Chairman, Mr. Rwigyemera who is supposed to have harassed my sister, has not yet been promoted since 1993. He was a Deputy DEO, now he is Deputy CGR, and since 1993, it has been like that. These other attacks on the army and police; all I can do is to congratulate her for having survived all these attacks. On the section of these meetings, we have had a debate on how to conduct our affairs in this country. We had a meeting of NRC, we had a meeting of National Executive Committee, in 1992, there was a move to ban political parties, and we said political parties should remain in existence as they are today. They can publish their papers, they can have their headquarters, they can do all sorts of things. But we said, political party activities like putting flags, wearing uniforms; these were to be suspended. This was a jurisdiction of 1992. And this jurisdiction is still in court. If we respect these rules, even Cecilia Ogwal would have no problem at all with her meetings. Under the Police Statute 1994, Number 13, under section 33(2), the Police has still powers to stop any meeting if in their opinion, it may cause a breach of peace. Of course we have improved on that, by saying the Police can be asked why they stopped a meeting if there is a problem. The CA Commissioner inquired on why the DPC had stopped the meeting, but the police had investigated and found many things undeclared. The meeting of the 19th was stopped because it was going to be a political party meeting. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, under our rules, the rule says, the statement made may be commented upon, by the time not exceeding 30 minutes. We have done nearly 40 minutes. And we breach rules, unless we suspend them. Now, let us go on to the next item.

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

CHAPTER - 17 - LAND AND ENVIRON-
MENT

ARTICLE 271 - GENERAL PRINCIPLES AND
OWNERSHIP OF LAND.

THE CHAIRMAN: Hon. Delegates, when we adjourned, we had just completed Clause 2. We are now going to clause 3 and, I will give the Floor to the Chairman of the Committee, to lead the discussion.

MR. BAGUMA ISOKE: Mr. Chairman, I thank you. Select Committee one, recommends the introduction of the new clause 3 to article 271 to read as follows: land in Uganda shall be owned in accordance with the following land Tenure systems. (a) Customary, (b) Free hold or Mailo (c) Lease Hold. The rationale for the above decision is as follows: Mr. Chairman, today, all customary land is public land, and it is therefore not owned, by the citizens occupying it. The amendment seeks to give these people, perpetual ownership of the land which they are at present occupying. The conversion of customary tenure to free hold tenure, should be looked at as a long term gradual process which will take some time. Therefore, there is need for the Constitution to recognise and legitimize customary tenure. Mailo and free hold systems of land tenure, are essentially similar, and therefore need to be considered as the same. Foreign investors who wish to acquire land for setting up development projects such as factories, may do so, through acquiring a lease under the Lease hold tenure. This amendment will also take care of the confusion that could be created if free hold was not mentioned together with mailo, because some mailo land owners could have assumed that, their land titles had been cancelled. I beg to move Mr. Chairman.

MR. AWOR : Thank you Mr. Chairman. I seek clarification from the Hon. Chairman of the committee, first on the definition of customary. In my constituency, land is generally inherited from the parents or close relatives. During the course of my consultations with my electorate, there has been a consensus that customary land is the same as land which belongs to a particular clan, in a particular area. And as such, the clan has the right to establish

taxation or inheritance of the land of the deceased. Mr. Chairman, we are here to make a constitution, that constitutes in all the articles pertained to the equality of gender and all citizens without discrimination. According to our people - my electorate- a woman cannot inherit a piece of land. Children, especially step children, cannot inherit a piece of land from their step father. Mr. Chairman, considering my request for clarification, the way I understand customary land is that it should also include this type of traditional land tenure. And if that is the case, Mr. Chairman, I would like to see in this constitution a clear clarification whereby, no citizen of Uganda is disadvantaged because of his or her sex, or because of parentage. Particularly so, for kids or step children who come from a different clan, and now into a new clan and they are not allowed to inherit a piece of land. In Samia Bugwe, both North and South, we call this piece of land 'eroba disiha'. In other words, the land which belongs to the clan, and they cannot just give it away, without consulting the clan. And each clan has got its own systems of inheriting land. Mr. Chairman, we have a system whereby we say, a kid who comes on the mothers back in other words, a kid who is brought into a new family, if a mother had a previous marriage and now is coming to a new family, that child cannot inherit the step father's piece of land. Mr. Chairman, my electorate particularly the women group, would like to get this clearly, where in the new constitution, the child they come with from a different marriage can be allowed to own a piece of land. And the women for that matter also would like to know if they can inherit a piece of land from that customary land - particularly the widow. I am talking about the widow not ordinary women. I would like this to be clarified. And finally Mr. Chairman, I would like to know also, whether the word mailo is Latin, Luganda, English or Spanish or any of the indigenous languages. And if so, are we now ready to constitutionalise the word mailo and nothing against the concept? I am only asking about the women culture. Thank you, Mr. Chairman.

THE CHAIRMAN: Before the chairman; I think the chairman has taken note of this. But the question of the word mailo, I think you all know it. It was introduced in a piece of legislation, it provided for granting of titles to the people who were allocated pieces of land by the square mile in 1908. And if you read that, piece of legislation it says, a grant made under this statute shall be known as

mailo, and it was put in inverted commas and the system will be known as mailo. It was a Kiganda version of the word M-I-L-E (*mailo*) and they call it mailo for purposes of describing the grants of land given out by the square mile in the 1900 Agreement. And that is where the origin of that word is. It has now become a technical term.

MR. KIRENGA: Thank you very much Mr. Chairman. Before I seek clarification, I had sought an amendment which is actually technical just in the way of arranging the tenures, to begin with the weakest and end with the strongest or vice versa. I think the weakest is customary followed by leasehold and then mailo freehold. They could start with freehold or mailo followed by the leasehold and end with customary, so that there is order.

THE CHAIRMAN: Hon. Kirenga, what makes you believe that customary is weaker?

MR. KIRENGA: Because it has no title. You cannot use it for instance, as mortgage to get money from the bank. Nobody will accept it.

THE CHAIRMAN: Well, it was weak that way because The Uganda Constitution and other laws never recognised it. But if you are putting it in the supreme law of this country, can you ascribe to it weakness?

MR. KIRENGA: Because we are also saying that customary can be converted to freehold. I do not think one can do it the other way round and say that those who have freehold should agree to have it converted to customary. Nobody can accept that. Anyway, Mr. Chairman, my point is, I am asking the chairman of the committee to explain to me the position which we have in Buganda and the lost counties, Buyaga and Bugangaizi in which we have mainly, the position of *bibanja* holders. Those are the people who are tenants who own mailo land. There was a law governing them, that is busuulu envujjo law. They used to pay ten shillings and then deliver some fruits of the soil to the owner. These are called *bibanja* holders. Have they been neglected? They are not mentioned anywhere or are they included in the word customary? If they are included, how come that all customary land is out of public land? So I would like to get that explanation because if they are ignored, then that tenure is not recognised at all and I think it will be unfair. I am seeking that clarification Mr. Chairman.

MR. KULE MURANGA: Thank you very much Mr. Chairman. Mr. Chairman, I know we are here to rectify the mistakes of the past and as far as I know, some land was given to people as mailo land and I do not know whether we shall constitutionalise this issue which we believe was wrongly done. Why can we not leave out mailo and stick to freehold so that we have everything rectified unlike that system of continuing with mistakes. Thank you Mr. Chairman.

THE CHAIRMAN: But I think they are saying that mailo and freehold are equivalent. Essentially they are, in the sense that there is no limitation on the holding under the mailo system and the person who is holding mailo system is as good as one holding a freehold. In fact they have certificates. I think the point you are raising is a different matter rather than the question of title.

MR. KAJARA. Thank you Mr. Chairman. Mr. Chairman, we have already passed an article 211 (1) which has provided that land belongs to the citizens of this country and Mr. Chairman, in deciding the tenure system, we have also agreed in this constitution that there will be no preferential treatment of citizens. In other words, all citizens in this country are equal before the law. In handling the tenure system of land in this country, we people in the CA and politicians should take on the land question on all fronts and in favour of all Ugandans equally. Mr. Chairman, in deciding the tenure system, we should also look at other examples, say like in South Africa where the ANC after taking government, has returned land that was hitherto grabbed by settler boers and has reverted that land to the original owners, the Africans. We are aware Mr. Chairman, that some tenure systems that existed in the past and those tenure systems tended to favour a few people and that land had been acquired in 1900 even in the 1890s being payment for collaboration with the British colonizers. It is that kind of position Mr. Chairman, in deciding the question of land tenure today, we have to address, in deciding the land tenure system.

THE CHAIRMAN: Hon. Kajara, Hon. Malinga's hand is up. I wonder whether he wants to make a contribution.

MR. MALINGA: Mr. Chairman, I need your guidance. What are we discussing right now? Is there any motion on the Floor or is this a general debate?

THE CHAIRMAN: No, there is a recommendation from the committee and it was read out by the chairman of the committee that we accept their recommendation at clause 3 and Members were seeking clarifications of the chairman. Others were making observations. Hon. Kajara is talking about the tenure system that we have set up here and I think he was moving in the direction of suggesting that we should address the question either of mailo land like Hon. Kule Murunga was trying to suggest. Now, those are comments on a matter which is before us now. As you know, we do not formulate the motion on a recommendation like three when there are sub-clauses. We normally take - sorry when there are clauses, we take articles by way of a motion unless it reaches a stage where someone has amended or it is such as creating controversy and therefore requiring that we have to pronounce ourselves on the matter. And so it is on the basis of that Hon. Kajara is on the Floor.

MR. KAJARA: Thank you Mr. Chairman. I am speaking on behalf of the people of Mwenge south and Mr. Chairman, in Mwenge south, we have a tenure system called mailo system. It has existed since the 1900 agreement which was reached between the British and Toro Kingdom. Under that tenure system, people have been enslaved by mailo owners. People have lived on the land for the last 95 years as squatters and as refugees on their own land. When that land was demarcated, there was no regard paid to whether the land was occupied or not. It is that aspect Mr. Chairman, I am trying to highlight here.

THE CHAIRMAN: Order, I think I will limit interruptions otherwise we cannot proceed. Go on. Others, may ask for the Floor as we go along.

MR. KAJARA: The people of Mwenge would like every peasant on that land to be allowed to acquire the land where he lives. They also want to have titles that will enable them to develop and also have access to bank securities and loans. Mr. Chairman, there may be an argument that the land mailo owners have allowed these people to stay on that land for a long time. But that is not completely true because what has happened is, when mailo owners have disposed of that land, the squatters have been evicted by the millionaires who have bought this land thus stripping the peasants, the ordinary citizens of Uganda the only way of livelihood. Mr. Chairman that mailo in Mwenge has denied the common people their basic rights by

making them landless and by making them refugees. Land is not a privilege, it is a right and these people who live on those lands have a right to that land. And Mr. Chairman, the people of Mwenge have said that without a reversion, there cannot be meaningful development on land in which the peasants live and yet they have no rights or interests. In other words, we have said land must belong to the people who actually live and work on it. It is in that line Mr. Chairman, that we need to address this relationship of tenant-landlord on those lands which are supposedly freehold or mailo. Mr. Chairman, I beg to move.

MR. MUSHEMEZA: Thank you Mr. Chairman. I want to pose two scenarios which may help this House understand why some of our people have a problem with the concept of mailo. Although I have a concept or understand that mailo as a concept means freehold, my people have a problem with the concept. Now take two cases in my constituency; You find a piece of land has a mailo title and there are about 200 peasants living on it. Originally they were maybe 50 but they have been multiplying, they are now two hundred. The one who has this title of mailo was a chief appointed by the Omugabe of Ankole. That is one case. Then you have another case of a piece of land also called mailo. It has no title and it belongs to Omugabe of Ankole because he used to get some busuulu from it. So these people on these two pieces of land know that they are all under mailo system and some of them believe that when this land was taken by Omugabe, it was theirs and it does not have a title. Even the other ones who are on a piece of land which has a title on mailo were also there when it was demarcated and the other chief got a title. So when they hear this concept mailo, they relate it as permanently going to allow them to own this land which they believe was theirs. The issue is complicated when other politicians come in and say we had abolished this thing, now it has come. I now accept the clarification.

MR. BESWERI MULONDO: Thank you Mr. Chairman. I would like to clarify on one issue. It is not true to say that land which has no title can be referred to as mailo land. All mailo land is registered and has titles. Any land which is open and has no title today as per the law is public land.

THE CHAIRMAN: Hon. Mushemeza, what the Hon. Ssabalangira is saying is, that you would have no problem with your peasants on the other piece of

land which has no title. If what is recommended here is carried, then they will be entitled to certificates as customary land holders. Then they will not fall into that category of those who are on mailo land with a title. I think that is what he is saying.

MR. MUSHEMEZA. I think that would be fine, but then what happens to the other ones who are on a piece of land with a title? The title belongs to a chief but they believe land was theirs when it was demarcated and given to a chief, a chief who was Omugabe and yet they do not want Omugabe, but do not mind others having their Omugabe?

MR. SEBI: Thank you Mr. Chairman. Mr. Chairman, I seek clarification from Hon. Kajara. There was something I was not clear about when he was discussing the rights of all citizens over land. He said all citizens have equal rights on land. The problem I have here is, that when we go down to categorise these details, for example in terms of sex, Mr. Chairman, I believe that the women do not have equal rights over land like the men. If you look at traditional customs, the women do not inherit land from their deceased husbands and that is a problem because traditionally, it is believed that women perform a custodial role, that they are custodians of fire, water and the earth and that the Almighty God kept the pot and that is custody of the omnipresent heir, and this is what People like Prof. Ali Mazrui call the doctrine of triple custody. But of late, we have seen that there is a move from that position, women are increasingly coming out of this custodial role to a role of ownership of construction. So when Hon. Kajara says that the women have right over land, I think he is making a blanket statement because in an era of affirmative action, we would like to see the women taking an ever increasing role of owning land. Something has to be done in terms of the law of inheritance over issues like land. I am appealing to Members, therefore, when we discuss this system of land tenure, customary land tenure, somehow we have to bring in how we can accommodate affirmative action in terms of women having to come in to own land. Mr. Chairman, we notice that women play a major role in the development of our country. They are the people at the grassroots, in fact they are the producers in the countryside. The issue of rural poverty really,-

THE CHAIRMAN: Hon. Sebi, are you shifting into a debate on affirmative action or are we discussing the tenures as has been recommended to

us here. I think we covered quite a lot of that field when we were doing the general debate. I suggest that you wind up.

MR. SEBI: Thank you very much Mr. Chairman. I am so much bothered about this question but suffice it to say that when we are addressing customary land tenure, somehow, let us bring in the question of the women owning land. Thank you very much.

THE CHAIRMAN: Hon. Delegates, let us do it this way, in absence of a substantive attempt to depart from the recommendation, we should only beseech clarifications rather than making speeches as if we are on a general debate.

MR. RUZINDANA: Thank you Mr. Chairman. I am a Member of committee one and Mr. Chairman, I find that the debate about mailo land which we debated quite a great deal in our committee might be a bit misunderstood. Mr. Chairman, mailo land and freehold are really not very different and when we were debating this issue in our committee, we considered very many factors including the response of the people particularly in Buganda if the word mailo land did not appear. It was assumed that if this word does not appear, the next day, headlines in the Luganda papers would say, mailo abolished and yet we had no intention of abolishing mailo or any other form of land tenure system. And we did agree to leave this word so that those who hold mailo land and so on do not feel oppressed by the decisions which were taken in that committee.

Secondly Mr. Chairman, we also tried to address the issue of the customary tenants who are on mailo land and in the case of the found counties, formerly lost, we did specifically address that issue and equated the peasants on that mailo land to the peasants who are not on mailo land when this constitution comes into force. The other ones which we tried to address, are the Bushenyi peasants which Hon. Mushemeza wanted to address; the Ntungamo, Mbarara and other areas but then we found that we might complicate the situation, and suggested that we leave it to the future Parliament to disentangle some of these issues that are a bit complicated because we were going down to individual holdings if we stretched it to other districts. We, however, dealt with a clear position like that one in Kibale District because it is quite clear that the counties although they were found, they were still actually lost because the owners of the land

were elsewhere other than the actual owners who are sitting on the land and we thought that was a very big important issue to address. But the main thrust of our discussions were on the customary ones but at the end of the day, we did want the customary owners to own the land in a similar way as those who have titles. As of now, we have a situation where the majority of the people are not owning land and we wanted to correct that situation. That is why the opening statement vested that land into those who actually own and in the land tenure system, the customary one. - I hope the lawyers will help us - wanted them equated to those who have freehold titles and thereafter, we wanted to facilitate their getting titles or documents or certificates to show that their ownership was equal to that of freehold owners and we were leaving it to a future Parliament to disentangle this particular aspect of mailo and the other people who are on mailo land but have no titles. I thank you Mr. Chairman.

LT. COL. SSERWANGA-LWANGA: I thank you Mr. Chairman. Mr. Chairman, my problem is similar to Hon. Kirenga's. I think Hon. Ruzindana is avoiding the problem. The problem we have in Buganda is that the majority of the people are *bibanja* holders on the land and this land also was grabbed during the colonial period. You are now solving it in Bugangaizi and Buyaga but you are leaving it in Buganda where the peasants have been oppressed, because they do not have anybody to speak for them, they say it is okay and this House is also saying - I think that one, we can leave to the next Parliament. I wanted to move a small amendment on this explanation of customary but customary includes *bibanja* holders. Mr. Chairman, I beg to be protected from Hon. Ssendawula.

THE CHAIRMAN: Hon. Ssendawula, will you desist from harassing Lt. Col. Sserwanga Lwanga? Order, order. I think what Hon. Sserwanga Lwanga is saying is that the committee one is solving the problem of *bibanja* plus customary across the country except in Buganda. Now, let us first of all get things clear. Hon. Sserwanga-Lwanga, were you trying to move an amendment or making a statement? That amendment will not clearly fit in here.

LT. COL. SSERWANGALWANGA: Mr. Chairman, if you will accept the amendment, I want to move that it may be included in the interpretation

that customary tenure includes *bibanja* holders. Some Members argue that *bibanja* holders are those peasants whose land was confiscated by the mailo land holders, well, that is not wrong information. I request Hon. Ssendawula to listen to me.

THE CHAIRMAN: Order, order Hon. Delegates. Let us first get a few things clear. If you are saying - whatever method that was used land was vested in certain people by virtue of constitutions which were made many years back and that now, you have to make a deliberate decision that you are dispossessing certain people of land in favour of others. Now the question arises, do you want to do that deliberately? Can we first of all get a definition of the *kibanja* holder? Then we can proceed from there.

MR. AMANYA MUSHEGA: Thank you Mr. Chairman. Like my good Friend Hon. Ssendawula, I am speaking like somebody who owns mailo land in Buganda on which there are *kibanja* holders. So my legal interest is elsewhere, and my political conviction is against my land holding. Let me define it first in a historical perspective. When the British headed by Lugard defeated the forces of Mwanga, Kabaka of Buganda then escorted by a few local traitors against their king and other foreign forces, the British rewarded the collaborating chiefs with huge tracts of land. That land which was given was not free land. It had people on it. They would by stroke of a pen say from Nsangi via Buddo up to Natete, that is Amanyanya Mushega's mailo. That is how it was given. Subsequently, these pieces of land continued to be occupied by the families which were coming on and who were multiplying because the peasants continued to produce. They did not give land which was free because swamps were not part - I do not think they were protecting wetlands - they were giving land which was utilisable for the peasants to grow cash crops and they pay some tithes to the landlord and the British would take the crops abroad. That is the history of it. Then when they came to Ankole and we also tried to emulate the injustice that was done to the peasants of Buganda. Unfortunately, the peasants of Buganda have not been having a big voice because there is a lot of intimidation by people who own land like myself. So if you buy land in Buganda now, you buy land twice, you buy the title from the mailo land owner and for you to be able to carry on economic activity on the land, you must go ahead and also compensate the *kibanja*

holder if the kibanja holder is willing to vacate. This is the practice at the moment. There are two people who occupy land in Buganda; the man who carries the title but cannot step on the land and the man who actually is on the land but has no legal title. This is the current position and I can take you to my piece of land and demonstrate this to you. Fortunately with my people, they are fortunate that I do not belong to the likes of those who are putting their hands up, who have no respect for the peasants' rights. So what is surprising me there was a gentleman.

MR. SEBAANA KIZITO: Point of order. Mr. Chairman, I rise on a point of order because the speaker on the Floor is giving wrong facts to this House. Is the speaker on the Floor in order to tell the House that those who are *bibanja* holders now or their ancestors were on that land at the time of the colonial rule when land titles were given to I and other owners under the mailo system, when as a matter of fact, at that time, there were only half a million people in Buganda and there are now four million?

THE CHAIRMAN: Well, that is a contentious issue. Whether the half a million were staying in one area or spread across the country, we cannot know or tell.

MR. AMANYA MUSHEGA: Thank you Mr. Chairman, for coming to my rescue. The point I was raising then and I will insist on now and I will suffer no intimidation from -

THE CHAIRMAN: I do not think any Member is intimidating you.

MR. AMANYA MUSHEGA: Thank you Sir. At the time the British took over, there were people occupying land. They have continued to multiply and also people have continued to come on the land from other parts. Definitely they are occupying land, not swamps. If somebody took over ten square miles, nobody can convince me except by evidence that he took only ten square miles which were empty, otherwise, what was the purpose of mailo? The mailo was to reward the person, to use the peasant labour and make an income. I am speaking as a student of history and law. What has surprised me with the amendment of the committee is that this Assembly has been trying very much to do the job of Parliament. We have been trying to

legislate but when it has come to the real job of the Assembly, we have preferred to leave the matter to Parliament. Secondly, when it came to Buyaga and Bugangaizi, we solved the problem. When it comes to Buganda, Toro and Ankole, we postpone it. Abraham Lincoln once said that a nation cannot be free, when half of it is free and the other half is slaves. Does it mean Mr. Chairman, that when my land is grabbed by my brother, the Constituent Assembly can postpone it but when it is taken by my cousin, then they will solve it? Because Hon. Ruzindana has said that in the case of the lost counties, the owners were from far. Were they from mars, from jupiter? We have allowed in this constitution that any Ugandan can own land anywhere in Uganda. That is what we have agreed on. So whether the mailo is owned by Sebaana Kizito from Rubaga or Amanyanya Mushega from Kazo, it does not matter. The question is that the land you are owning, what is the problem? There is a problem, we cannot pretend that there is no problem. For the mailo land owner, there is a problem because the mailo land owner apart from trading a title in the bank, they cannot occupy land. For the peasant who is daily tilling the land, he cannot till it freely because he has no legal right over it and as a result, this has devalued the land and rendered it not optimally usable. So that is why I support my good Friend Lt. Col. Sserwanga Lwanga that his move is bold and realistic. Either we postpone the whole problem to the next Parliament or we solve the whole problem of mailo land. For example, somebody in my constituency owns mailo and the peasants are busy tilling the land but they have no right over it. When they sent me to the Constituent Assembly, one of their messages apart from the many was, we would like to be the owners of the land that belonged to our ancestors without undue interference from the absentee landlord who carries the title but has never grown a single banana tree or even a coffee tree or grazed the cow over the land. That is the message they sent me to deliver and I am glad that my Friend from the NRA and who comes from Ssesse Islands has really seen the point of the people of Igara East. He wants the problem of mailo solved so that we have only one person who has got the legal right and occupation rights over the land not having a situation where somebody is trading in town with a land title but cannot step on the land but the other man who is stepping on the land has no legal rights over it just because of the 1905 agreement in the case of Ankole and 1900 agreement in the case of Buganda. The 1900

agreement was not an agreement between equals. It was an agreement like between the United Nations and Saddam Hussein, between the visitor and the vanquished. It has a lot of clauses in it and one of them was to deprive the peasant of their land and give it to the landlords from whom some of us have had a fortune of inheriting the problem and I am one of the inheritors of that problem. But I would like this problem solved. Either we solve it for the whole of Uganda or we postpone for the whole of Uganda. We cannot solve for half because the Banyoro were lost and found, we all known where we belong. I am not in agreement with this recommendation of the committee solving it in Buyaga and Bugangaizi, leaving it in Igara east and Ibanda. I support the move by Hon. Sserwanga Lwanga who is always equal to the task and I would not like to abandon him at the time of this critical hour. Thank you.

THE CHAIRMAN: Hon. delegates, the situation is rather confused because we are now debating a different clause. Here we want to say what tenures we want to substitute in the country as far as taking out interest in land is concerned. Then there is a recommendation yet to come before us under Item 6 on page 4 which specifically addresses the relationship between the mailo land owners and the people who are on their land. It also deals with Bugangaizi in 8 and then 9 talks about population for Bugangaizi and 10 specifically addresses the relationship between mailo owners and the occupants of those pieces of land. The debate therefore has tended to shift in this direction but I think what we should do is to address the question of, do we accept these tenures in Uganda? Once we go over that, then the others we shall come to later on.

MR. TIGWEZIRE: Thank you very much Mr. Chairman. Mr. Chairman, in my contribution to the general debate, I pointed out the problem of mailo land in my area. This problem has haunted my people ever since the colonialists decided to give land to some Ugandans in preference to others. We still have the problem today and my people are very hopeful that this august Assembly will solve this problem once and for all. The problem is that some Ugandans have been reduced to the status of squatters on mother Uganda and that cannot be allowed to continue. We have a moral obligation to redress the past. Those mistakes were not mistakes of our own. They were mistakes, maybe mistakes not of the colonialists because they were actually reward-

ing the collaborators. What I want to point out is that if we can come up with one tenure system which is uniform throughout the country, we shall have done a very good service to our people more especially the peasants, Mr. Chairman, somebody has already told this august Assembly that you cannot write a constitution for Buyaga and Bugangaizi and leave out the people of Bunyangabo otherwise, I will not have words to tell them when I go back because they are also faced by similar problems like our brothers and sisters in Buyaga and Bugangaizi.

THE CHAIRMAN: Hon. Tigwezire, you are now beginning to debate item six.

MR. TIGWEZIRE: Mr. Chairman, if you can allow me, I am now moving an amendment formally to delete mailo.

THE CHAIRMAN: You see Hon. delegates, I think we have to be very careful, because some situations really exist. Let me hear Hon. Katureebe and then I will come out with a decision on this matter.

MR. BART KATUREEBE: Thank you Mr. Chairman. Maybe I will get guidance from you. I thought Hon. Sserwanga Lwanga had moved a specific amendment to define customary to include *bibanja* holders. If we can dispose of that one, then we can be able to go to the greater principles. And certainly when we reach six, I will have a lot to say on how you can have one piece of legislation in the constitution for Bugangaizi and leave out Bunyaruguru. This is not acceptable to me but I think we should first dispose of the amendment if it was validly moved by Hon. Sserwanga Lwanga.

THE CHAIRMAN: I want to proceed this way, we have three tenures recommended to us, actually four, substantially three but in effect here on paper they are four. Now we have a, b, c. I wanted us to say, whether we accept customary. Agreed? Now, Hon. Serwanga is suggesting that we define customary by extending it.

MR. KATUREEBE: Thank you Mr. Chairman. There are two types of customary holdings and it is important for us to be clear what we mean by customary here. There are people who are holding customary tenure on public land, that which you can easily convert into freehold or whatever you

want. Then there are people holding *bibanja* on mailo or freehold. Now, what customary are you talking about here? We must make it clear whether we are talking of both or one.

THE CHAIRMAN: It is exactly that. When I asked Hon. Mushega to define *bibanja*, he did not relate it to customary and I think I would like us to understand it before we proceed. Can I hear from another person? Does customary include *bibanja* holders automatically?

MR. WASSWA LULE: Thank you Mr. Chairman. The customary does not include *bibanja* holders, because customary is only on *bibanja* on mailo tenure. *bibanja* are on mailo. Please, can you protect me Mr. Chairman.

THE CHAIRMAN: Let him finish, you will get your chance.

MR. WASSWA LULE: We have been confusing certain systems. I do not understand whether in Amanyanya Mushega's place the situation is slightly different from Buganda. The system in Buganda is that they seem to be trying to address, not the question of mailo but the system in Buganda. It is a subject matter and you have got to understand it in view of the laws that were there because the *bibanja* holders in Buganda were protected by busuulu and envujo laws. Those are the ones that gave him an interest in land. Now *bibanja* holders in Amanyanya Mushega's place may not be protected by that law. Now if he wants to deal with those ones, he can deal with those ones. What our people are saying is that you bring back that law which brings back our interests. But it is most unfortunate that as a delegate from Buganda, I hear the people speaking for my people, are all coming from outside Buganda and they are speaking vehemently. But let me tell you exactly what my constituents say. A lot of you pass through that constituency to go home, but do not fool with their land. That message from them is clear.

THE CHAIRMAN: I think let us be very clear on this, I saw Hon. Guma Gumisiriza protesting, when Hon. Wasswa says the people of his constituency, have sent him with a message to this assembly. I do not see why someone coming from Mwenge and other places disputes the bringing of that message. I saw Members from Mwenge, and Igara west protesting to the message. You can disagree with

it, but you cannot protest that he is telling lies because you were not elected to represent his area. Order, the issue I am trying to define before we proceed is, there is an attempt to amend paragraph (a) to define what customary is. Hon. Katureebe gave us a proposition which said that customary has two legs, customary of people who are holding land by custom on public land and customary of people who are holding *bibanja* on mailo land and he wanted us to be clear as to what we mean. Hon. Wasswa Lule is saying, that is not the definition of customary. Customary is customary on public land or land which was held under custom but converted into public land, whether in Buganda or outside Buganda and *bibanja* holders are only those on mailo land. We are, therefore, left with a situation where two definitions have been given. I am seeking to find out so that we can proceed logically whether we need to amend, or if what Hon. Katureebe said is correct and what we do not want is to include this on Buganda mailo land, then we would have to say, for purposes of paragraph (a) customary does not include holding of a *kibanja* on mailo land in Buganda. If what Hon. Wasswa Lule said is correct and you want to extend this customary to extend to Buganda, then you have to say, customary includes holding of a *kibanja* on mailo land. I am only clarifying, but let me hear from someone who made it his job to study land law.

MR. SAM NJUBA: Mr. Chairman, as you know, I am quite capable of distinguishing politics from the profession. I would like to state that a *kibanja* holder or the *kibanja* is not the customary in Buganda. I am speaking from knowledge. It ceased being customary in the year 1926 when the busuulu and envujo law which was a statute was introduced and approved by central government. This holding became a statutory holding. Now what is known to most of us is the busuulu element in the law. But that law is wider than that. It set out conditions under which a *kibanja* holder who is known in Luganda as omusenze as opposed to omutongole and these are terms known to Baganda under which he held this land. So it is from 1926 that the *kibanja* holder or the mutongole ceased to hold land under customary law. He was holding land under a statute, a written law. Unless you want to take it back and define it but the legal definition is that a *kibanja* holder and the busuulu and envujo law ceased to be customary tenure and became tenant under the law. Thank you.

THE CHAIRMAN: Okay, in other words, when we use the word customary here, it will be understood to exclude *bibanja* holders in Buganda.

MAJ. GEN. TINYEFUZA: Thank you Mr. Chairman. Mr. Chairman, I do definitely agree with the submissions of Hon. Njuba and I do not think that it was even a contentious matter as to whether a person who owns *kibanja* on an area with a valid title can be called a customary tenant. It just does not make sense. This is a squatter, that is exactly what it means and a person who is therefore a customary tenant is the person who resides on public land but has no title.

THE CHAIRMAN: Hon. Tinyefuza, according to Hon. Njuba, this statute he is referring to did confer rights on the people who were occupying those pieces of land. How do you call them squatters when they had rights?

MAJ. GEN. TINYEFUZA: Mr. Chairman, under the 1975 Decree and the abolition of the *busuulu* and *envujo* law, these rights were no longer in practice and as a matter of fact as the law stands now, it would be a lie to say that these people are protected under the law. This is not to say that I think the squatters should take over the land. I will bring in that argument later on. But under the current law as it stands now, the *busuulu* and *envujo* law once they were done away with under the subsequent legislation in 1975 Decree, although it has not been implemented in most of its provision, these fellows' rights of protection did disappear actually. They, therefore, hold their land at sufferance like any other person with no land title. This is the legal position today of people who reside on mailo land and Mr. Chairman, I can give you an example today. I may not share the sentiments of Hon. Amanywa Mushega. I will give reasons, mine are more political than anything. But today actually if you are going to buy mailo land and a mailo landlord decides to sell to me, the people there have no right to object. The only thing they can do is to demand compensation from me who has bought them. Now, this shows their lack of rights. A mailo owner is at liberty to sell his mailo. So, a person who has no right to say no, you cannot sell us out has no legal right other than the right for the mere compensation of his developments, like it is on customary tenure and public land. Mr. Chairman, under the current law, I would like to categorically state that really the *bibanja* holders are squatters. It is my

submission Mr. Chairman, that we have more squatters in this country on leaseholds, on public land than on mailo land. Should anybody try to revoke the sentiments of liberating the peasants from the servitude of squatting, pretending to use mailo, we should start with the leaseholds. This is where our people are suffering. We have 500,000 people who are squatters between Buruli and Lake Kagera, Lake Mburo. When is the mailo there? Karamojong are squatters on their own land, the whole land which had water in Kidepo Valley was taken over as game reserve. The Karamojong have to go with spears to look for water, in Lira and so on. Mr. Chairman, I am sorry but I think if we want to solve the problem of land, we better solve the problem of squatters, for all Ugandans and do not hang on this mailo thing. This mailo thing is just a tip of the iceberg.

MR. SSENDAWULA: Mr. Chairman, I thank you. I have wanted to read from the Odoki report page 676, 2529. In the initial part of this report, it acknowledges the statement which was initially made by Hon. Sserwanga-Lwanga and which was also contributed to by Hon. Amanywa Mushega. They were stating that the peasants were deprived of their land at the beginning of this century when land was being turned into mailo. But then this matter was redressed in 1928 when the *envujo* and *busuulu* law was passed. Because as you go ahead to read, you will see and I will read: *Allocation of original mailo land holdings in the early part of the century was made without regard to the existing rights of occupancy and ignored the presence of peasant cultivators whose tenancy rights were recognised under customary system* and I underline *which were recognised under our customary system of land tenure. This led to some of the difficulties of the mailo system and it became necessary to enact the busuulu and envujo law in 1928 which provided the tenant cultivator with security on land and set a limit on the fee which they were required to pay to the mailo owner.* Mr. Chairman, this was watered down by the Land Reform Decree of 1975. Now, within this report, it is stated very clearly on page 79 that the Land Reform Decree of 1975 should be repealed. When you repeal the 1975 Decree, you automatically restore the security of tenure of the person who is now living on mailo land.

THE CHAIRMAN: No. Hon. Sendawula that is not how laws are written, the repeal of the law does

not revive the one which was repealed into its coming back to force. You have to specifically introduce the Busulu and Envujjo Law anew. The mere repeal of the Decree does not itself revive laws which were repealed under it, unless the Repealing Statute so specifically provides.

MR. SENDAWULA: Mr, Chairman, if you may allow me, certainly, the address which has been so far made by Hon. Serwanga Lwanga and others who have supported him attribute all the problems of mailo land on the original allocation of the Mailo land and yet when we talk about mailo land today, if you again read this very report, we are looking at the original owners or the original estate to have been as few as 4,138, that is as far as 1923. But when you go to 1963, the estates had increased to 89,089, which means, over a period, this land has changed hands and I cannot see why when we are talking about mailo land, we are looking at even punishing those who have rightfully bought the land today; so that when we are addressing this matter, we completely ignore the right to property that we recognise within the same constitution we are talking about. So, we must be very serious over this matter, the people of Bukoto sent me to protect the Mailo land even if there are tenants there, they did send me to protect it and I am for that.

MR. KABUGO (NAKASEKE COUNTY): Thank you Mr. Chairman. Mr. Chairman, a lot has been said about this land tenure system, in particular customary tenure system. Customary, land tenure system in Buganda, this was from other areas of Uganda. In this case, unless these people who come from where mailo land tenure system and *hibanja* are non existent and they want to adopt the same type of tenure then I would not have any objection, but the problem is that, those who have come out of Buganda, with the fear of the terminology of mailo land think that every thing that is found on mailo is inferior. But in 1900, the Baganda who received this mailo land were few chiefs and the Kabaka himself including his members of the royal family. But now, if you go to all parts of Buganda, you find various people owning mailo land titles, settling very comfortably and living happily, -
(Interruption)

THE CHAIRMAN: Order, order.

MR. KABUGO: Unless there is something that is different from what our Colleagues want to copy

from us, then, let them say so, rather than to fight on the term Mailo that we cannot dispense with, because Baganda land owners have lived with this for the last Century now. To tamper with it is to invite problems that erupted in 1945. Thank you very much, Mr. Chairman.

MR. WAGIRA (KIBUKU COUNTY): Thank you Mr. Chairman. Mr. Chairman, when this issue came up in the committee, there was a problem which still looms. When talking about Customary land tenure system or a customary land owner, in my view, we are talking about land which has come into the hands of somebody by virtue of custom and you cannot by that definition, call a *Kibanja* holder a customary owner. Mr. Chairman, the problem we have here can be solved by the land tenure systems that we are going to approve in this Constitution. Once, you recognise mailo, it pre-supposes from the on set that the *Kibanja* holder living on mailo is actually an illegal tenant. So, it is at this hour that we go ahead to confront the problem as Hon. Kutesa was contributing the other day, the issue is not to say that this Constitution should try to solve problems of specific areas; because if you say that a *Kibanja* owner on mailo should automatically resume ownership of that land and he at the same time recognises mailo, that is actually contradictory, because you will be violating the rights of the mailo land owner which land tenure system we have already recognised in The Constitution. If you say, let the Status quo revert from the time the mailo land tenure system was not in existence, therefore, making it that the mailo owner had no title to transfer and therefore any transactions which have taken place between the *Kibanja* holder and the mailo owner, are null and void, right from the start that the mailo owner had no title to transfer, then, Mr. Chairman, you will also have the problem of that person who has acquired value, who has acquired a *Kibanja* for value but he is not a customary tenant, that is to say, his ancestors were not the original owners of that land, but he has just purchased it in the course of time. My view is, that if we are determined to redress the problems of the peasants, the only issue is not to recognise mailo as a land tenure system. If we recognise mailo as a system of tenure, there is no way you qualify it by saying that customary land tenure system includes even a *Kibanja* holder, that in itself does not solve the problem and it will just be violating the rights of the mailo land owner. Thank you Mr. Chairman.

MR. BANTARIZA (BUHWEJU COUNTY): Mr. Chairman, I belong to Committee I, but I want clarification about this customary ownership, because in my area, the 1900 Agreement made some people own land in Buhweju and, the people who were living on that land, were not even consulted. You cannot call the people who have been living on that land squatters, because they have their demarcations and they have been living on that land for so many years. That is why we want to legalise the customary, I do not speak for Buganda, I do not know how their system operates. But in my area, those people still claim that the land is theirs, because those people who got the titles have never lived on the land, but only acquire the titles for purposes of getting loans from banks. I want to know how you would treat these people? Are they living on that land under customary tenure, are they squatters or they are landless? The land is theirs, because when these colonialists came in, they looked for fertile land where people had banana plantations in order to give Chiefs food. Is this the kind of system you would like to see go on? And if the answer is no, why should these people not be allowed to have to acquire titles for their land, since the land is theirs under customary.

MR. MUKASA MURULI (NAKASONGOLA COUNTY): Thank you very much, Mr. Chairman. I am also seeking clarification from you and may be the Chairman of the Committee about the situation pertaining to Buruli. Before 1900, there were Baruli living in Buruli. In 1900 land lords from Buganda, are given land in Buruli including land where these people used to stay. The land which was given out was normally the fertile land where people used to be, so that these people who were there, automatically, by the stroke of the pen, became squatters, or tenants, so that they could continue to support the chiefs who came. Now that we are trying to redress this situation, don't these people who were there before qualify to own that land which was after all theirs? Now, if we are making a Constitution, should we not take care of that? Why should we now begin saying that for Buganda, it is different, because Buruli happens to be in Buganda, but we can look at it and solve it for other areas, outside Buganda. Does it make sense? I seek clarification over this.

THE CHAIRMAN: What is emerging as a problem is this. The recommendation here, for those of us who have read the entire Chapter runs this way.

Correct, they are saying THE LAND in Uganda belongs to Ugandans whether in a part called Buganda or elsewhere. All the land was taken over by the British. In the case of Buganda and some areas, up country or other parts of the country, that land was then transferred by the British to Ugandans, so they call them friends of theirs or, whatever you call them. But the British transferred that land from themselves having taken it away from Uganda or people who are now described as Ugandans and gave it to some Ugandans. When it comes now to the Constitution making process, we are saying, okay now in the other parts of the country, in areas where land was not given, the natives were Ugandans, were allowed to continue in occupation and only molested as and when the Government requires the land for development purposes. Now, the approach is this, they are saying in those areas where the land remains in the hands of the Government subsequent to independence, and people stay on it as public land, the proposal is that we should now recognise their traditional holdings as if they were freehold and they can transfer to free hold any time depending on their means, and they were saying, there is a different story when it comes to Buganda and other areas, because that land was given to Ugandans and you have to make a decision whether you want to dispossess them in favour of those who were originally dispossessed, taking into account that along the way, other people other than those who were originally given have also acquired interest in that land by purchase. The report is saying, that let us postpone the question involving Ugandans who acquired land from the British or who have since acquired by purchase from those who acquired from the British, and leave it to a future Parliament to resolve the issue. Others say we should do it here and right now. The only difference in the recommendation is that, and I do not think this is because the Chairman of Committee I comes from there, is that Bungangaizi and Buyaga should be treated as a special case for historical reasons we know. So, instead of arguing on minor issues, we have now to confront the question as I have summarised it, that there is no problem with regard to the Ugandans who remained on the land which the British took away from them and gave it to itself and eventually to the State. They are saying no problem, if you have your customary title, you automatically get your free hold as and when you wish, there are those Ugandans who were given land by the British, they held it under title, people were dispossessed they are on that land. The

question is, either you dispossess by Constitutional process those who were given that land in favour of those who had previously been dispossessed and those who were given and have bought and others have bought as between those who are now residing on that land. Of course, it cannot be 100 per cent to say that those who are staying on that land were the ones who were originally there, because I know there are some people who came to work in some of the factories, Lugazi, and other places, eventually settled on some of the land and continued to reside there. I now want to structure the debate, in that direction because I can see there is a lot of sentiment on the Floor, we have to make a decision on that issue of choice between those two sides. Let me hear from Hon. Katenta Apuuli, then I will hear from Hon. Elyau.

MR. KATENTA APUULI: I thank you Hon. Chairman. As a student of history may be I can try and throw some light on what some people have done, when confronted with a similar problem. When James I of England was beheaded, and Cromwell took over, there were two classes of people in England, one group was called the Royalists, the other one was called the round head. The Royalists had held land under the King. When the Round Heads took over under the administration of Cromwell they dispossessed the Royalists, but as you know eventually, the King was restored in England. During the process, when England was a republic, land changed hands many times, but then, the Royalists, because the King had come back, claimed the original pieces of land they had held and it was not possible for those lands to go back to those people because land had changed hands, people who were innocent, who had not fought the King, who had not even supported Cromwell had bought pieces of land. So, a deliberate decision was entered into to Leave the matter as it was, because people had lost land, others had gained it and others had bought and it was really non of their problem, it was not their fault that things had worked out that way. Let me put that in the context of Uganda. In Uganda, here, at the advent of the colonial system, a lot of injustices were committed. One of the injustices that was committed, was that people who owned pieces of land were dispossessed by the colonial administration. I have a very classic example in my home area in Nyamwandara. Many of you knew the late Kamanyire who was the Deputy High Commissioner of Ugandan in Nairobi. His grand father was on a piece of land before

the colonial people came here, that land was eventually transferred to the clan called the Bagumba, and when Kamanyire's grand father lost this piece of land, it became land that is owned by some other groups. Now, Kamanyire's children are tenants on their grand father's original piece of land. I consider that myself as a great injustice, because they were there before the British came. So, that is an injustice, it spreads all over many parts, especially in the kingdom areas. It is there and it should be recognised as an injustice. There are many injustices of the colonial system and other systems before. I represent you in the United States, one of the greatest injustices to that society committed was to transfer our sisters and brothers from Africa into slavery in the United States and other parts of America. That injustice cannot be corrected. No amount of Constitutional provision or legal provision can redress that kind of injustice. So, let me plead with you Hon. delegates that we will not be able to redress all the injustices that were committed under the colonial system, because if you try to correct some of these injustices, then you will create another injustice in another area to innocent people. So, let us try and redress the status quo and find the solution; and I am coming to that solution, if Hon. Amanyu Mushega could bear with me.

Take for example the Kingdom of Toro. The greatest part of the kingdom of Toro now is in Zaire called Mboga and this piece of land was ordinarily transferred in exchange for West Nile. I have nothing against the people who come from West Nile, but it is a fact of life, that part of the Kingdom of Toro was transferred in exchange, it is an injustice on the people of Toro and there is nothing we can do about that. So we have come to live with that kind of injustice and accept it. Let us now look at what other countries have done. Take for example our neighbour Kenya. The Kikuyu who fought for emancipation of people of Kenya in as far as land is concerned, Mau Mau was not so much about independence, it was a land rights war, to acquire and re-acquire land rights. Now, the White Highlands were occupied by white people as they had become to be called. Mau Mau succeeded, Kenya got independence and they had to address the issue of land occupied by the white people. What the Kenya Government did was to sit down with the British Government to find money to compensate the white people and buy back the land. What has Zimbabwe done? A similar thing, not exactly what

Kenya did, but they did a similar thing! They have bought back land from those who occupied large tracts of land; so that land can be re-distributed to other people who are also as entitled to it and had original rights. What is South Africa trying to do? They will have to buy back land from the current owners of that land in order to redistribute it to the people who had an original right to that land. Now, what can Uganda do? Uganda can follow those examples. Let the status quo remain, but let us find some justice to the status quo. The Government and the people of Uganda should make a determination that at any one time land should belong to only one person unless there is mutual agreement between the two parties. So, where land should belong to only one person at any one time, with legal titles, I would like to suggest that we go and talk to the two parties contesting the piece of land, one the land owner, who is the landlord and on the other part, the tenant and let us find out from these two people one who can best use the piece of land for the development of himself and Uganda. This should be by mutual agreement, it cannot be enforced by law. Then, let us compensate one of the two, so that one of those two people gives up the piece of land. Where does the money come from? The people must be prepared to pay the price for this resolution of a historical injustice, do not imagine the people of Kabale do not have a problem, because we were all colonised together and, therefore, we bear the burden together. If you say that only the people in the Kingdom areas bear the burden, they cannot afford it. Therefore, all other Ugandans should come to our aid and we solve this matter once and for all, but no amount of constitutionalism here can solve this problem, because this matter can be challenged in court, and courts will determine as to how the solution should be done. But I would like to appeal to Hon. Delegates not to get very excited over this matter, let us find a humane solution to the problem. I thank you Mr. Chairman.

MR. ELYAU (KALAKI COUNTY): Thank you Mr. Chairman. I would like to distinguish between the custom we can see in areas where there is no problem and the other areas like Buganda. For example, in the committee, we discovered that the people who own the mailo land in Buganda are no longer the original ones, you will find a Muteso there, a Mucholi there, because they have bought this land. This is a problem to examine before we make a mistake, because these people are Ugandans. Now, unlike the land in Bunyoro, where there

is a conflict, because the Banyoro complain that the British fought their king, and took Baganda to occupy their land. So, these people have a different angle when they are looking at the mailo land owners, they think these people went there to oppress them. But in Buganda, it has become a land market, so that any body can buy land. So, we should distinguish these two things, so that we are not really confused. I do not come from Buganda, but the way I saw it in the committee, these people say, that their people say, they are used to the system of MAILO. May be, Mr. Chairman, to settle the matter, we should seek to see whether this matter is contentious, the people of Buganda themselves will be the ones to give us the answer. If we do not do that, then we are going to make a mistake. If fire sets off, who will extinguish that fire?

THE CHAIRMAN: order, order.

MR. ELYAU: Mr. Chairman, I foresee a lot of problems, because I can accept the issue from the other area of Masindi since they were lost counties. The first Governments which went to London to make law did not complete that information, even 1967 did very little. The land matter was left hanging, which I pray should not be the case today. Let us give a solution, if we find out that we cannot give a solution to one side and leave another, then as Hon. Amanyanya says we should not postpone other areas of Uganda. I agree with Hon. Sserwanga Lwanga, who says that the people of Buganda also need land. Really the young people in Buganda question why they have to squat in their mother country. This is a very serious issue, and I appeal to my brothers and sisters who come from Buganda to consider the young ones. The people think that today we might make some fair adjustments to address the plight of land in this area of Buganda, because - *(Interruption)*-

MR. AMANYA MUSHEGA: Point of information. Thank you Mr. Chairman. There is a Kiganda saying that, *Kyenkola banange sagala bakinkole*, that if you have done wrong to others, you do not want it to be done to you. But if I may bring an example by way of information, - *(Interruption)*

THE CHAIRMAN: No, you should be limited to information not to...

MR. AMANYA MUSHEGA: Recently one of our eminent citizens put up a structure on Bombo

road and the owner of the land wanted to repossess the land together with the building, every thing was done to ensure that the developer was not hurt. Are the peasant's potatoes not as important as a building to one of our citizens?

MR. ELYAU: Thank you for information, Mr. Chairman. When we asked the Hon. Members who come from Buganda, to tell us who owns land up to the ground of the *Kibanja* and Mailo land owner, they told us that the *Kibanja* man is only allowed to cultivate on the top, but below, belongs to the Mailo owner. We found a lot of difficulties in getting this thing. Infact, it is the members who come from Buganda who made it difficult. We wanted to make a solution so that today, we would have settled the land problem once and for all. When the British came here, people of Uganda did not sit together as we are doing today, that is our problem. If we are going to come out boldly, we should be prepared to do what Hon. Katenta Apuuli was saying. Ugandans should be prepared to meet the cost, because by then, the colonial Government which took over power and distributed land on our behalf, was acting as a Government. Now, who ever will be in power, should be able to handle those mistakes as we are now paying debts caused by Amin, we cannot reject those, because we are in Uganda. So, if we do that, we should be ready to compensate one side, if we want to favour our population, then we could compensate the landlords who are holding mailo land; so that we do not have problems later on. Otherwise they will say CA delegates caused problems in Uganda if we all ignore the issue, because land is a sensitive issue. If we do not handle it carefully, we shall end up in problems. Now, Mr. Chairman, besides these other problems people welcome the idea of land tenure system like customary. In Teso we own land either communally or individually, but the land has got its entitlement. There are borders known by chiefs, by every body, so it is a matter of getting entitlement and then register it. We have no problem there, because there was no land market. But in Buganda, the people who are now in Buganda are no longer Baganda only, there is a great mixture. So, we must be very careful, if we are doing things thinking that we are going to hurt the Buganda people, who are in here in Buganda. The State should be ready to meet the challenges. Thank you Mr. Chairman.

MR. KARUHANGA (NYABUSHOZI): Thank you very much, Mr. Chairman. Mr. Chairman, I

think finally the CA has come to the crux of the debate, for I know the issue touching land is a very sensitive issue, it involves a lot of emotion, and if we are not very careful with the way we handle the question of the land tenure system in Uganda as citizens who have been charged with the responsibility of solving Uganda's problems and bringing a Constitutional order in our country, we may end up making serious mistakes. I appeal to Hon. delegates to think seriously about the consequences of some of the decisions we may have to take about land tenure system. The ideal situation would be for Uganda to have a uniform land tenure system, whereby all Ugandans can come and own land and live in the same way from one corner of Uganda to another. But you will observe, Mr. Chairman, that the debate in this House over land titles, land issues, is generated seriously in Buganda, in the Western part of Uganda and in some parts of the East. You will find that in areas like Karamoja, areas like the North, members are not seriously participating for one reason, that there, they have a uniform land tenure system of customary holding. It means, therefore, that there is disparity in our country. Mr. Chairman, I have been a member of the Ranch Restructuring Board since 1990, I have studied the situation of land in Uganda extensively, I have also looked at other examples in other countries, Hon. Katenta Apuuli has wisely drawn the attention of this House to the examples of other countries and how they have also suffered with the land tenure system, he forgot only one case, and I agree with him on all the examples he cited. I wish to draw the attention of this House to a very serious situation in a country called El Salvador. I was a student in Makerere in the 1970s, I studied with a citizen of that country at Makerere, he was a refugee; and he interested me in his country since we communicated long after Makerere. Up to now, I still receive information about that country. There has been a big war going on since time immemorial, over the same situation as we have here. The land in El Salvador is owned by about 3% of the population, the rest of the population has been squatting and so they started a guerilla war to drive out the land owners; fellows called the Shining Park. War 'has raged on, the Americans sided with the land owners, because the other Shining fellows were supposed to be called communists. It is only recently when the war finally came to an end and the bitterness has not gone away from that country. In Uganda, when we had the situation on the Ranch Restructuring Board and we went to touch on the

land that was owned by Lease holders, not mailo land owners, my God, I tell you I have never seen emotions, and I am glad to be alive, because in some cases, I was told not to step in some areas in my own constituency. Mr. Chairman, the question of trying to get some land which Parliament had released, from lease holders who were given land 30 years ago, up to today, the Ranch Restructuring Board has had enormous problems trying to solve the areas of the land that was taken away in the Ranch Restructuring areas starting from Buruli up to Nyabushozi. Mr. Chairman, we are in the middle of a very serious exercise trying to get some people to give away land they do not even own, because they do not even go there, many of them, they just got titles, and that was the end of the matter. We have thousands upon thousands of squatters in our land, they have no titles, and they are called squatters and they were customary tenants, they lived there in their traditional setting since time immemorial. Mr. Chairman, we now turn to the mailo land owners. It is true what Hon. Amanya was saying. How can you challenge him when he talks about people who are squatting on mailo land as *bibanja* owners. How can you challenge such justice? What is wrong with us finding a uniform legal system if every Ugandan saw that everybody is happy, and there is no big man and there is no small man? However the reality on the ground, if we want to avoid a serious civil catastrophe coming out of the decisions we are taking here, is that many people who owned mailo land passed on titles to others and these others passed on titles to others and those others, others became holders or purchasers of this land for value, they are called bonifide purchasers of land for value in law and it is very difficult traditionally to upset that setting. Now, the people who represent the area of Buganda in this CA, and I did attend on a number of occasions Committee 1 deliberations, seemed to have been interested in maintaining Mailo land for their people whom they represent. Now, the people who represent the people from the North, seem to be interested in maintaining their customary land tenure system and they do not mind if that finally turns and you want a title, to turn it into free hold.

I then got very interested to find out why it is that the people from Buganda who represent these peasants are interested in maintaining mailo land? Then I found out from an explanation two things. One Mr. Chairman, is that apparently, Mailo land has also become like customary, that their culture

is even now intertwined in mailo land. I also found that in order to transfer mailo land, you must put your totem. After death, the Kabaka must be the one to supervise or the Sabataka must be the one to supervise the transfer. That is the reason they have for the totem. But of course, I can take information from anybody who is more informed.

THE CHAIRMAN: Order, order. Hon. Karuhanga did you say you are taking information?

MR. KARUHANGA: I will take information from Hon. Katerega.

MR. KATEREGA: Point of information. Thank you very much, Mr. Chairman and Hon. Karuhanga to give way. I want to inform Hon. Karuhanga that a lot of people from different parts of the country have bought land here in Buganda and the land has been transferred into their names without putting the totems you are talking about and that one, it cannot prevent anybody from buying land in Buganda, and -

LT. COL. SERWANGA LWANGA: Point of information. Mr. Chairman, I want to inform Hon. Karuhanga (*he is busy with something else, I do not know if he is listening to me*), but I want to inform him and at the same time seek his clarification. I want him to explain to me this culture of Baganda of squatting on somebody's land, because I have failed to grasp it. Squat on somebody's land, and that is a culture which the Baganda are embracing, that they have got to continue being squatters on the landlord's land? I also want to tell him, that while the mailo land lords, have been selling those *Byapa*, those titles, they squatters have continued living on that land and the *Byapa* or the titles have continued changing hands; from Serwanga to Tinyefuza, from Tinyefuza to Maliko, from Maliko but the peasants have continued to live there and Mr. Chairman, I want to tell him, that as one of the sons of the peasants of Buganda and I represent very many in my constituency you know it very well, we are tired, tired of being squatters on land of our grand fathers!

THE CHAIRMAN: Order, order. Hon. Karuhanga, will you wind up please?

MR. KARUHANGA: Mr. Chairman, the point I was making, is that, I am not at all surprised about what Hon. Serwanga Lwanga is saying, and that is

why I want to ask many Colleagues in this House from Buganda, why inspite of Hon. Serwanga Lwanga's sentiments, they still cherish mailo land. I found that obviously there must be strong reasons, because the emotion they attach to mailo land, is not something that this House can easily rub off just like that. We can decide to take a revolutionary step and step on the landlords, who are represented.

THE CHAIRMAN: Hon. delegates, I am not going to be keen on interruptions some of them disguised as points of order.

MR. AMANYA MUSHEGA: Point of order. Thank you Mr. Chairman. Hon. Karuhanga as an NRC delegate for Nyabushozi, and a member of the Restructuring Board participated and encouraged peasants to occupy ranches which had been taken away from them and turned into leaseholds, he encouraged them, they went ahead and occupied the ranches, and they are now being given portions. Is it in order for him to excite peasants in Nyabushozi to cease land which had been taken away from them and here, he pretends that he is not interested in other peasants also getting redressed? *(Applause)*

THE CHAIRMAN: That is not a point of order, that does not call for the Chairman's ruling. It was a mere observation. Hon. Karuhanga, please wind up.

MR. KARUHANGA: Mr. Chairman, I thank you for your protection. What my learned Friend and Friend, the Right Hon. Amanya Mushega is alluding to, is not all that true. I did not excite, entice, encourage, incite, or in any way push anybody to take over anybody's land.

THE CHAIRMAN: No, I am not going to accept points of order, because they are disguised comments, let him go ahead. You finish because we must go to some other

MR. KARUHANGA: Well, the only thing that I did, and which I will continue to do, is to make sure that in my constituency, there are no squatters on land and what I would like this House to know, is not to take laws in their hands and pass laws which are going to be flouted, because if we pass a law that there should be squatters in Nyabushozi, I can assure you that those people will not accept that squatter position in Nyabushozi and I am not saying, and no body in Buganda has told me and

Buganda is well represented here, nobody has come up to say, that the peasants in Buganda who are occupying mailo land are under sufferance. Why? They are represented here, they are represented, why do people not come and say so? Now, my Friend Omara Atubo here, is from Lango, why is he not pushing to get mailo land in his area? He is not, because he is not interested in it. If the Baganda want mailo land, we should give it to them. Why should we have civil war for nothing? *(Applause)* Let me solve the problem of Nyabushozi and I represent Nyabushozi and tell you that when it comes to Nyabushozi, no squatters are wanted there! Let the Baganda say so, if they want squatters, let them go ahead, it is their *shauri*. I do not think we should go ahead and encourage a revolution in some places, in somebody's house, when the man is not interested in having any revolution in his house.

THE CHAIRMAN : Order, order. Hon. Karuhanga, have you finished? Order.

MR. KARUHANGA: Mr. Chairman, I think what committee I has done, it has recognised the situation in our country, it has been wise enough to know that in our country, there are three types of land tenure systems: there is a customary one situation which we should improve to a free hold at a stage. There is a free hold and mailo land system which exists today and there is public land which we can use for Government. I think we should use our wisdom to recognise the current situation, and ask that Parliament, by the time the Serwanga's come to want a revolution on mailo land in another 10 years or 20, to change the laws. If they want the revolution in five year's time, let us not bring the revolution forward. Thank you.

THE CHAIRMAN: Hon. delegates, it is past 1.00 O'clock. Now, we adjourn for lunch. We adjourn until 2.30 p.m. Thank you.

(The Assembly adjourned and resumed at 3.00 p.m)

THE CHAIRMAN: Order! Could Professor Nsibambi not hold a lecture there please. When we adjourned for lunch we were debating a proposition which rises from the various recommendations made at item 3 on the tenure system and Members, instead of discussing the merits and demerits of the tenure system, quickly jumped on the discussion of whether or not we should have land which was

taken away by the British returned to the original owners and it became quite clear that the debate really is now what we do about a situation where it is recommended that in the rest of the country where people are occupying what is called public land now, they can even when still continuing with their customary titles, hold an interest except for conveyancing purposes, the equivalent to a freehold, but that in Buganda the situation should be left as it is where the colonial administration granted freehold titles called mailo to Ugandans who have held and in many cases either continue to hold or have sold to other people in between. What do we do about that scenario? There is one view that we face the matter squarely and say that even the *bibanja* holders should be given a chance to register their interests like those on the customary side. Then there is another view that we should retain the status quo as it is and let the relationship be regulated at some future time by the parliament to be put in place by the constitution. That is where we were; and I think it would be good if we debate that and dissolve this question because once we resolve it, then we can be able to put down things like the recommendation at Page 3 - Freehold/Mailo so that we know that it has got the blessing of the House after a thorough debate. I had given the Floor to Hon. Dr. Nakyanzi.

DR. NAKYANZI (Ntenjeru South): Thank you Mr. Chairman. I have observed the debate on the Floor and it appears like the emphasis is being put on the mailo land tenure system rather than on the general principle land tenure system and yet the arguments being brought about are trying to solve the plight of the peasants or what is commonly known as either a tenant or a squatter. Mr. Chairman, I would like to use my personal experience of what is on the ground to draw the attention of the House to some anomalies. Mr. Chairman, some delegates have described the whole issue of mailo as a Ganda culture. It is not true that the Baganda have a culture of ensuring squatters. Nobody in Buganda or anywhere else would like to be a squatter. However, again nobody would like to grab another person's land I am sure. Mr. Chairman, I represent an area which is mainly non Baganda. The Baganda in Ntenjeru South are just 30 per cent of the population. So, what I am saying - I am not speaking for Baganda but I am rather speaking for the people in my constituency and I am sure those are the very people in other parts of the country. Mr. Chairman, in Ntenjeru and I think

other places, we have several land tenure systems; we have the leasehold, we have the mailo, we have the freehold and we have public land. On all those lands, we have those who have the legal right on that land, those who own the titles and we have people who occupy that land without having titles but they occupy and utilise it. Those are the so called tenants or squatters. The plight of a tenant or a squatter on mailo-land is the same as the plight of the squatter on freehold land; the plight of another squatter on leasehold and is the same as that of a man who is on public land. So, if we are seeking to solve the problem or to look into the plight of a tenant, let us not concentrate on mailo land as such. We should look at the general relationship between a squatter or a tenant and the landlord but let us avoid putting emphasis on either mailo-land or freehold or public land and so on because the question is not whether mailo land or public land or whatever the question is, how do we deal with the tenant? Mr. Chairman, it is true when the parceling out of this land was being done, some people were already on that land but again it is true that most who now squat on land came in after the 1900 Agreement which parcelled out land. So, if we are to address the issue, you will find the person who occupied that land before 1900 probably has more rights and moral claim over that land than the person who came in say in 1980 or 1990 and to me I feel that this Constituent Assembly is not in position to dissect the details and find a single panacea which will be a treatment for the entire problem. Mr. Chairman, I beg fellow delegates to first accept one thing. Regardless of how the systems came about, this mailo land, freehold and so on are legal entities. I do not think it is proper or our intention here to go delegating legal entities. I think what we should do in this particular article or Clause, is to recognise mailo land, freehold, and leasehold as a legal entity because indeed it is. After recognising that, we can then proceed to say - now, what do we want? How do we deal with these peasants who are occupying this land and how do we deal with them without being too unfair to the people who own titles for the said land, at the same time liberating these peasants but otherwise sitting here per se and we declare that now there is no more mailo land, there is no more freehold land, I think we will just be missing the issue. Mr. Chairman, some people have gone ahead to state that when you have mailo land, you cannot build a permanent house, or develop. But this thing actually is not true. As I have told you, I am on freehold land, my neighbours are on mailo land but I can

assure you, for those who have been to my constituency, we have permanent houses there and nobody has ever stopped us from building. Now, *-(Interjections)-* Mr. Chairman, I beg to be protected from Hon. Guma because he is about to jump on me. *(Laughter)*

THE CHAIRMAN: Order! Order! I will call upon Hon. Komakech to keep law and order at that point. Hon. Komakech will protect the Member on the Floor from Hon. Guma. Please proceed.

DR. NAKYANZI: Mr. Chairman and fellow delegates, I would like to request the House that when we are debating this issue, let us avoid being emotional and very sentimental because quite often sentimentality and emotionalism is not based on facts and when I speak here as a delegate from Ntenjeru and tell you what is on the ground, please have the patience and the honour to believe me because I am not a liar; and if you want, I could actually take you there, you consult yourself, you could come up with something. Mr. Chairman, my view as Dr. Nakyanzi, this time not as a delegate for Ntenjeru, because what I am going to present to you I presented to my constituents and they rejected it; but as Dr. Nakyanzi who is a tenant, I was of the view that one way of solving the relationship between the squatter or tenant and the landlord would be - let us recognise these legal entities or recognise ownership as the right to own. I f we say somebody owns this, it is his. Then, we either ask the Constituent Assembly or the Parliament passes a by-law whereby it is enabled for the various tenants or squatters to acquire their pieces of land at a reasonable fee. Now, several people have tried but then there have been problems here and there and I was of the view that government could maybe set up a committee which would do the pricing. Whereby, for example, it could say to somebody in Ntejeru, that after taking various issues into consideration, we think this is a fair price. If you want to get that land of yours, pay 5,000/= per acre. That is my personal view. I want it to go down. It is not the view of the constituency. However, what we must recognise is, that even if by now, we stood up and declared that as of now, everybody owns the land which he occupies or gave out titles to each and everybody who has a piece of land which he occupies, in twenty, ten years' time, again the problem will come up whereby somebody will come wanting to get some land to cultivate. You may not want to sell it completely, but at

the same time you do not mind him using it somehow. Now, since, we are looking forward to that possibility and I am sure it is going to happen, even if we decide today that now whoever is a squatter is a landlord and that land is yours, whereby we quash all the current titles, and give new ones to those who are squatting or tenants, the problem will come back. Therefore, if we are making a constitution to stand the test of time, we have to provide for such a situation, whereby other people who do not have any land, or do not occupy any, like children who may not have much land to inherit. They will want to get land from those who have it, and they will not be ready to sell it but they might accept to enter an agreement with them of the so called *Kibanja*. We have to provide for that, whether we want it now or not. Even if we do not want it now, we should still provide for it in the constitution because we know it is going to happen as the population increases and, therefore, fellow Delegates and Mr. Chairman, I am really begging you that in this particular clause we are dealing with, we should recognise the tenure systems as they are and in our Committee, that is, Committee I we did that - we deliberated it at length. We realised the problems present, we realised the concerns of all the delegates. Our concern is the peasant, that peasant who does not own the title but again the peasant's intention is not to grab anybody's land, and I think it will be wrong for any delegate here to say that his peasant sent him because they want to grab somebody's land and make it their own. No, they sent us here to resolve that conflict so that their interests could be protected and at the same time, the interest of that person who owns the land is protected. I, therefore, request that we pass these land tenure systems and when we come to Clause 6 of the same article which talks about in Article 8,9 and 10, the issue of the tenants and squatters. We could improve on them and I think that is the best solution. Otherwise, when you begin tackling them in this particular article, it is going to confuse us and we might end up with what we do not intend to have. Mr. Chairman I thank you.

THE CHAIRMAN: Mr. Chango Machyo.

MR. CHANGO MACHYO (Samia Bugwe South): Mr. Chairman, the issue is one of equity. Now, we passed Article 271 and said land belongs to the people. Here we are again saying that there are some people to whom land should not belong.

I think let us not contradict ourselves. My quarrel with mailo land tenure is based on the fact that the system was the greatest broad day robbery of the peasants of Buganda by the British imperialists who wanted to use that land to bribe the chiefs who overthrew Mwanga. That was the condition of the mailo land. My authority on that is based on a book written by a former Commissioner of Lands - a White man called West. If you want to read this book (*Interjections*) The book is entitled *Mailo Land system in Buganda*. It was not written by an African, or by a Muganda or by a non-Muganda. It was written by a colonial official who was an Assistant Land Commissioner of Land in Uganda. He is called H.W. West. I knew him personally. Now, according to him he says the British Governor of Uganda at the time Johnstone, his land settlement was a practical attempt to create an aristocratic class in Buganda. That was the aim of Johnstone. It is a historical fact that before the colonial rule, neither the Kabaka of Buganda or the chiefs had any power over land. The Kabaka, like any other African monarch, was only a trustee. That is why for the Baganda, as they say about the chiefs; the chief does not control land, he rules people - *Tafuga taaka, afuga bantu*. According to West, Johnstone looked upon land settlement as an extremely useful instrument to achieve political objectives, I am, therefore, saying that to try and justify a robbery a crime which was committed against the peasants of Buganda in the name of legality is being associated with that crime committed against the peasants of Buganda. Now, what was the effect? According to West, even the Secretary of State in Britain recognised the serious weakness in the mailo land settlement. That is that it had one grave injustice - I am quoting him - the majority of the peasants were occupiers. The fact, Mr. Chairman is that by the stroke of the pen, Baganda peasants were converted into surfs on their own land. According to West, Johnstone frankly pointed out that he bargained with the ruling classes to the detriment of the majority of the population of Baganda. Now, what was the result of this? The result is what I said yesterday - The Bataka Federation Movement and people were talking about the 1928 *Busulu and envujo* Law. It came not out of the sympathy of the British or Baganda Chiefs for peasants but because of the struggle to restore the traditional land system which was controlled by the clan leaders and not by the Kabaka. Then, Mr. Chairman, as far as I am concerned, the perpetuation of mailo land tenure

system, is nothing but a perpetuation of colonial injustice against the peasants of Buganda. It, therefore, means that for the Baganda peasants, independence did not mean decolonisation. It is also important, Mr. Chairman, to point out that mailo land did not actually, as some people may want to argue, lead to economic development. Instead it led to the development of underdevelopment of the Baganda peasants. The fact is that the Baganda peasants are the most degraded, the most despised, the most exploited peasants in Uganda. I have always said that a typical Muteso peasant is far better off, has got a far more human dignity than a Muganda peasant. Therefore, Mr. Chairman, as far as I can see and for your information, the Bateso peasants ended up being the biggest producers of cotton; despite the fact that they did not have mailo land system. That is on record. If you want read a book by Ringley. The perpetuation of mailo land system - (*Interruption*) What I was saying Mr. Chairman, is that as far as I can see - the perpetuation of mailo land system, and if we heard properly what Hon. Lt. Col. Serwanga was saying, can be regarded as a time bomb. The so called squatters will not forever resign to their underdog status. They will have to rise up one day in a struggle to achieve their independence and human dignity. Whether we like it not, as long as, the peasants of Buganda are kept as surfs, or slaves on their own land, they will one day rise up to grab back the land which was grabbed from them. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Lagada.

MRS. LAGADA (Women - Apac): Thank you Mr. Chairman. Earlier in the day when this debate started, I was perturbed when I heard statements to the effect that the peasant in Buganda is comfortable with the status quo but this afternoon I must say, my mind is slightly relieved after listening to Hon. Dr. Nakyanzi who said the situation on the ground is definitely not comfortable. Mr. Chairman, somebody is saying she is a tenant and I know there are very many tenants on this land in Buganda and from her explanation, I think this House is right to conclude that the Muganda tenant is definitely not comfortable with the status quo. Therefore, it is incumbent upon this Constituent Assembly, if we are serious, and if we want to do the job we are supposed to do, to settle that question. Earlier in the day, there were comments that somebody like me from the North where there is no question of mailo

land should not involve myself in this debate but Mr. Chairman, the question of where one comes from does not arise in this House. We are Ugandans, we have been sent here to make a constitution for this country to try to solve the problem of all the areas in Uganda. Therefore, I am here and I am going to speak on the question of the tenant on mailo land in Buganda. Mr. Chairman, you - (*Interjections*)- Can you protect me?

THE CHAIRMAN: Order! Order! Hon. Delegates Order! Hon. Delegates, you did listen to Mr. Chango Macho who spoke about the Mailo system in Buganda without booing him and I do not see why you are being unfair to Hon. Lagada. I think you better give her equal audience and let us respect each other. Order!

MRS. LAGADA: Thank you Mr. Chairman for that protection. I would like to submit that we should find a solution to the problem of the squatter on the land, not only in Buganda but everywhere in Uganda and I would like to suggest as an Hon. Member suggested before me that (*Interruption*)

THE CHAIRMAN: No, I am not going to encourage any more interruptions because the Floor is being unruly. Hon. Delegates, let us behave responsibly.

Let us give the people on the Floor a chance to make their points. If you disagree, you seek the Floor and make your views but with interruptions and talking on the side and laughing; we sort of fail our seriousness. So, can I have silence and ask Hon. Lagada to continue.

MRS. LAGADA: Thank you Mr. Chairman. I would like to suggest that this government of Uganda finds a solution which is acceptable to the landlords and which solves the problems of the peasants. I cannot imagine that there is a citizen of Uganda who should not have any piece of land which he calls his own. Hon. Katenta Apuuli said that the solution should be to ask the landlord and the tenant what they prefer and therefore who should be compensated, whether it should be the landlord compensated or the tenant depending on who is best able to use the land. Mr. Chairman, I would like to disagree with that suggestion because when you put the question of the person best able to use the land, then obviously, the landlord with his economic capacity will be the one best able to use

the land but this peasant with his incapability is still entitled to that piece of land. Today he may be so poor that he is not able to use the land very effectively but what about his son who may have the financial capacity? Mr. Chairman, if Committee I had not come with the recommendation of saying customary land should be recognised as a system of tenure, I bet this House you would have heard the Delegates from the North and East rising up in arms to protect the interests of their people and I can assure you the peasants there right now are not able to use that land economically, but we are saying let the system be there. Eventually, they will be able to have the capacity or we shall educate them so that they know how to use that land maximally. So, why should the same system not apply to the peasant who is on the *bibanja*. Therefore, Mr. Chairman, my humble appeal is that let the government find means of rectifying our historical mistake. Let us make sure the peasant has his land and we compensate the landlord who we cannot hold responsible for a historical mistake and we liberate the peasants of Buganda like the peasants of everywhere else in this country. I thank you.

THE CHAIRMAN: Hon. Professor Nsibambi.

PROF. NSIBAMBI (Presidential Nominee): Thank you Mr. Chairman. I must assert that we cannot proscribe because the problem we are discussing has not been quantified and therefore, at best we are speculating and that is extremely dangerous and let me give you several examples to illustrate what I want to say. First of all, Mr. Chango himself said that the peasant in Buganda is worse off than a peasant elsewhere. He does not have figures. He is merely speculating. Another ill informed marxist wrote in a learned journal that in Kitende every landlord has four square miles. When I went to Kitende where the major land owner is Mr. Bulega, I discovered that even Mr. Bulega has been selling his land so much that he does not even have one square mile and I told this friend of mine who is a marxist, and he was in the department of political science to write a public apology but upto now he has not. This is Prof. Mamdani. So, the problem I want to put to you squarely is that you cannot proscribe when you have not quantified the problem.

Who are these *Kibanja* holders? How many are they? That must be quantified. How do they feel with regard to their relationship with the landlord?

Are they having reciprocal or antagonistic relationships? We need hard answers to these questions. Some of us have done some research but since we are interested parties, some of you might say these are not valid pieces of work but the point I am making here is that it is wrong in a forum of this nature to try to proscribe when you do not even know the nature of the problem. If for example, you are to compensate these people, what amount of money are we talking about? It may be much ado about little. There is that statement *much ado about nothing* but you can also talk about much ado about little. It may be therefore, a small problem in which case it can be easily solved. So, we have to be careful and I want also to point out that the market forces have been working. They have indeed. If you take for example, the original major land owners in Buganda; many of them have disappeared economically. Their children have sold this land and you will find that there are many people who have the military muscle, who have also the political muscle and who are not necessarily Baganda now holding this land. Are these the people whom you are going to deprive of their property? Do you have the capacity to handle them? (Applause) How many wars is Uganda going to fight? Especially secondary wars. Do you have the capacity to handle these problems? Are you not infact, creating greater problems than those you are trying to solve? So, anybody who is serious and who wants to keep this country united, must have her data before you make wild statements and you create unnecessary pressure for the people. I want to point out that the state, especially in Africa, has to be very cautious because it is already overloaded with many functions and when it intervenes in all these relationships it simply damages itself. In most cases, it is better when you leave market forces to operate. I had for example, a tenant - myself and this tenant, actually he should be a *Kibanja* holder, I want to call him a *Kibanja* holder because it is a better term; perhaps a statutory tenant if you want. It might be a better term especially if you take into account the 1928 *Busulu and Envujjo* Law. He behaved extremely well to me. When he died and his children were digging all over my place. So, I called the man in charge of the family and we talked it over. Here we have reciprocal relationships. You are a stranger you have just come to this area. You may not understand that there is a reciprocal relationship between the landlord and his tenants and you have no right to violate these arrangements. Your children have served me

well, what is the problem? So, I gave him one tenth of the ten acres I had just bought from another friend and we are enjoying amicable relationships. What I am really saying is that some of these issues are better solved between the landlord and the tenant but if the state had coerced me, for example, to give him that piece of land, I would have struggled. I would have not allowed that. But since, the state did not try to intervene, we sat down and we found a very reasonable relationship and it is persisting and it is in my interest to have a reciprocal relationship because I cannot keep my dairy herd safely when I am antagonizing people. It is unrealistic. They can poison your herd for example. They can do all sorts of things. It is in our interest to have a reciprocal relationship and not an antagonistic relationship and yet people come here and they simply speak when we do not have hard data and therefore, in summary and I do not want to repeat a lot of things which have been said. I would like to suggest that we leave the status quo and we leave some of these issues to be worked out later by the Legislature so that we formalise the relationship between the landlords and the tenants. I thank you.

THE CHAIRMAN: Hon. Kamuron.

MR. KAMURON (Kongasis County): Thank you very much Mr. Chairman. I am sorry that our colonial masters left us with several serious problems, and one of them is about the land ownership in this country. When the colonialists came, they introduced a Feudal Order which was similar to that one of Britain and created classes in some societies in this country and one of the societies which was an experiment is Buganda, and as you know very well the 1900 Agreement and other subsequent agreements had to parcel land first of all to the kings or the King of Buganda, then the Aristocratic class hence creating the land owners and the landless. So, we have about three classes when we talk specifically about the Land Tenure system in Buganda. We have the Aristocracy, the land owners and the surfs, the customary land owners and also the squatters. Now, what we have not known is that agrarian reform has been going on very quietly within Buganda and as Prof. Nsibambi has said some landlords have disappeared and some of the surfs probably having educated their children and acquired knowledge, have accumulated money and even bought land. Some of the landlords are even now surfs or squatters. So, what is happening now is a very serious problem of land ownership.

What this Assembly is now charged to do, is to address this anomaly and in my opinion, I would like to advise delegates to approach this question of land in this country very seriously. I am from Kongosis and in Kapchorwa District we have our own way of owning land. Ours is purely customary. In other societies which were stratified, which were centralised like in Tooro, Buganda, in Bunyoro and probably Ankole and some areas, the land tenure system is different. When we are addressing issues of land, we must be very careful. We must know what is on the ground because you can easily get into serious problems if you generalise the ownership of land in this country like other delegates have proposed. It is very dangerous. *(Applause)* So, what the committee has done is exactly to address itself to land. Now they have said because there are different land tenure systems in this country, they have recognised customary, they have said there should also be freehold which some people call mailo and they have got what they have called leasehold. In subsequent clauses they have also addressed the issue of the customary tenants and even probably squatters. Because in (4) if we have to look into it seriously, it says on the coming into force of this constitution, all Uganda citizens owning land under customary tenure may acquire certificates. So, really even squatters - I mean the customary tenants will now be free to acquire land. If we want to avert trouble, let us try to scrutinise the committee's report. It did a very good job and it has addressed itself to the problems of land in *(Applause)*- this country. I am trying to caution some elements with radical minds to try to examine their position very carefully before they erroneously address themselves to the land question in this country. Thank you very much.

THE CHAIRMAN: Hon. Mulindwa Birimumaso.

MR. MULINDWA (Bukoto West): Thank you Mr. Chairman. I appreciate most of the delegates who have shown concern about the peasants in Buganda, but I also appreciate that we should know the facts on the ground before you take a decision. If we move out from here and you go to those peasants you want to protect, they will fight for mailo land and defend it as the case may be with federal. So, we need to know how this concept of mailo land came about. Here in Buganda, even before the colonialists came, there were classes. They were not created by colonialists and there were people with land though, not originally the

chiefs. The clan heads, were actually the landlords and every clan had what we call *Ebutaka*. If you are of *Enkima* Clan, you know where your land belongs, if you are Ente clan you know where your Butaka is. So, the question of classes did not start with colonialists but one important thing with mailo land when it was introduced here in Buganda, it transformed land from - being solely for subsistence use to an economic asset that it can be transferred from one person to another and that one should be appreciated because here in Buganda land being an economic asset with value that can be transferred from Katumba to Mulindwa if you have the means, it had made it possible for us to develop. I even wonder why some delegates here are crying for customary system for other members; where they can not even get titles to get money. We should not be emotional about this mailo. Originally, if you were chief, the Kabaka would give you your square miles. Many preferred land with people, because the more tenants you had, the more *Nvujjo* you got and there was a relationship between this tenant and the landlord. This relationship was formalised during the 1928 *Busulu and Nvujjo* Law and the relationship was not so bad because at that time, the landlord could not evict the tenant by any means but after 1975, when this system was abolished, there was anarchy because someone comes he actually pays 3 million for a piece of land but he remains a tenant. He does not get a title, but originally for someone who you call a tenant, a landlord would like to attract as many, then you see Guma's Son, he will say - why do you not come and settle free. So, by settling freely, you are supposed to give in something and that relationship was there and it was a class relationship but now when you come from far, and you come with your 4 million and buy a *Kibanja* it does not make any difference, you remain a tenant. So, we have to know what is actually on the ground to see who we are trying to protect. The situation on the ground is that now the holder of the title, that maybe the landlord; not necessarily the 1900 landlord; the title has passed through many hands. We should recognise that the two classes will remain. The Landlord will remain and the tenant will remain. In my place I tried to suggest that all the *bibanja* owners, if they have the means, let them have their titles processed. Many of them said, even if you give us free titles, we cannot accept them. So, even if we decide that all the *bibanja* tenants are free to get titles, unless the government is going to facilitate that and even if it does it today, tomorrow, the tenants will be there.

So, what are you going to do? I think the most important thing is to recognise the fact that the mailo or freehold owners are there and are going to be there because today if you have freehold, tomorrow I will be having money and buy and then I become the landlord. What we have to do, is to define the relationship between these two people; putting into consideration that it is the user of the land that we are more interested in. The peasant who tills the land, who produces the wealth. We should try to define that relationship in protecting him because now someone comes from Kampala with his title goes to my place, he sells 300 peasants and he gets the money. We cannot abolish this ownership. Otherwise, what are you going to do if some other people become landless. Are you again going to abolish that? The fact that the mailo land came, actually gave legal ownership - you people should appreciate it because now there even people who have a tenth of an acre, yet he is a mailo owner. It is because I can transfer a piece from land and we acquire title. Members, I want to appeal to you. You have to realise that there are land owners. They were there in 1900, they are going to be here and even more are going to be created because even now, if you look at the list of UCB, there are some people who can get a Shs 900 million loan which I cannot get. So, some people got land the same way people are getting loans. So, the situation is not going to change. We have to define the relationship between a tenant and a landlord. These two will remain now and forever. Thank you, Mr. Chairman.

MISS BYANYIMA (Mbarara Municipality): Thank you very much Mr. Chairman. I am very pleased to have listened through this morning because almost everyone, every Member here seems to recognise that there is a grave injustice that was committed against our people. I think this acknowledgement is very important that we recognise that many of our people were done an injustice. Like Lt. Col. Serwanga Lwanga has put it, our people are tenants on land that was their grandfather's land. This is my beginning point. It is indeed our historic responsibility to liberate our people who are squatters on their own land. I think this is something that we should accept as a responsibility to our people. How we fulfil this responsibility, then, is the question. One suggestion that was made that we should find a solution for certain parts of Uganda and not for others, I find unacceptable. We need to apply a solution uniformly to all parts of

Uganda that are affected in this particular way that we are discussing. In fact, Mr. Chairman, I sat here feeling personally insulted by the radicalism of my own brother Hon. Elly Karuhanga, who in Nyabushozi, in Ankole could incite squatters, encourage them to go and occupy and destroy the property of others who had worked so hard but was now feeling shy to encourage the other squatters in other parts of Uganda. I do not care for such double standards. Mr. Chairman, if it is information from Hon. Karuhanga, I do not want to take it.

THE CHAIRMAN: Anyway Hon. Karuhanga, I do not think this observation is different from the one which was made earlier by another Member. I am saying, I do not think her observation is different from the one you answered this morning. *(Interjection)* Okay, on a point of Order.

MR. KARUHANGA (Nyabushozi County): Thank you very much Mr. Chairman. I am disturbed by the remarks of my sister Hon. Winnie Byanyima who is accusing me of inciting squatters to riot especially since she is an interested party, being a rancher with squatters on her land, accusing me of having incited people to go and acquire what she now says is rightfully theirs because they were customarily there and she had grabbed that land. Is it really in order for her to say that I have been inciting people in Nyabushozi, and I am not inciting others in other areas to do what those in Nyabushozi did, when in fact, it is my duty and as I said in my main argument, I will not tolerate squatters in Nyabushozi. But if the delegates from the other areas, especially Buganda, who were voted for by the squatters in that area have the instructions that the squatters there want to remain in that situation, they are free to do so, why should I be the one to impose a system on them when they are represented. Is it in order for my Hon. sister to really push words of incitement on me when I am only representative of my people?

THE CHAIRMAN: Well, I do not think you are disagreeing with regard to Nyabushozi, because you are agreeing that it is your job to make sure there are no squatters which seems to suggest that you helped them to go to Hon. Byanyima's ranch and, therefore, she has actually stated a fact.

MISS BYANYIMA: Thank you Mr. Chairman. Hon. Karuhanga did not only help them to occupy a certain Mr. Byanyima and other people's land but

they did so illegally. They destroyed the property, the investments of all these people which they had put there over 40 years. They caused a lot of havoc, some lives were lost. I really think that Hon. Karuhanga does not have moral authority even to speak on the question of land having behaved in the manner that he did, when he did. Mr. Chairman...

THE CHAIRMAN: Hon. Byanyima, I think you better come to the debate. We are not discussing what happened in Nyabushozi.

MISS BYANYIMA: Mr. Chairman, I recognise that what we need to do now is to provide for a land tenure system where those who want to use land and those who have the ability and also have the ability to develop the land, can do so easily without bureaucratic hindrances. I think this is our aim. Mr. Chairman, land is our primary asset. It is the backbone of our economy and it will remain so for a very long time. So, we must be able to create the right frame work to develop that land and use it optimally.

THE CHAIRMAN: Order! Could the Hon. Members please not indulge in disturbing the proceedings!

MISS BYANYIMA: Mr. Chairman, I also recognise that when we look at mailo land, we are not looking at the original inheritors of that mailo land. I recognise that it has changed hands a lot like so many speakers have said. I recognise that many original landlords have faded out and other people have invested all their savings in buying this mailo land from the original mailo land owners and they have put their sweat in this land and they have brought it to some level of development. I recognise like Hon. Tinyefunza who is the son of a peasant but now owns maybe 20 miles of land. He is probably also a beneficiary of mailo land and does not want this mailo land taken away from him and we also have enshrined in our constitution the sacred right to private property. The titles these people have are guaranteed by the government. If we revoked them, we would undermine that principle of owning private property and having it protected. We would set a bad precedent that would threaten the confidence of progressive Ugandans who want to invest in land under the property. I think that all in all I like the statement that Hon. Katenta Apuuli made this morning. What we need is a policy which will penalise absentee landlords

say in the form of taxation or in another form so that they do not have an incentive to keep land which they do not use. We also need a fund which will enable the *kibanja* holder to buy himself or herself out of that situation that he or she finds himself in because of reasons of history. I think that it is the burden and we should put it here in this constitution that future governments set up such a fund. It will not be the first time that the government is paying for a historic mistake made by predecessors. Today, our own government is still paying back the debts that were borrowed by Idi Amin who used that same money to buy guns to kill other Ugandans. But we pay the debt. Why? Because a government has succeeded another and takes on the historic responsibility of settling those debts. Similarly that mistake made in the past, should be the burden of the new government to ensure that a *Kibanja* holder is encouraged to buy himself out. That, the landlord is penalised for holding land that he or she does not use and he is not allowed to use that land to speculate. So, let us strengthen the security of a *Kibanja* holder. Let us use this opportunity to ensure that the *Kibanja* holder does not live at the mercy of a landlord. Let us also make it difficult for a landlord to continue to hold land which he does not use but which he only uses to hold others in a kind of bondage. Let us put it in the national objectives here in the constitution that the government will report to us every year and tell us how far it has gone to use these other measures to achieve that objective of correcting the historical mistake. Mr. Chairman, therefore, I support the land tenure systems as presented here in the constitution, and also would like the help of our lawyers here to draft a very clear objective in the section on objectives that will oblige the governments to report as I have requested. I thank you Chairman.

THE CHAIRMAN: But Hon. Byanyima, do we need to have it in the objectives, or you could have a specific transitional provision if you so wish? Hon. Magezi.

DR. MAGEZI (Jinja Municipality East): Thank you very much Mr. Chairman. Mr. Chairman, I am a member of Committee I and I associate myself fully with our report despite what has been expressed in this Plenary Session. Mr. Chairman, I want to recognise that today there are several existing customary land tenure systems in Uganda. I also want to recognise that we need some reference date to qualify some of the statements we are

making in this House. If people say that my father was born in Kamuli because his grandfather was there and, therefore, that is our land, we are going to miss the boat, because how many people are going to claim they were born in Mulago? If, therefore, they will use that in the year 3000, to be squatters in Mulago, we can already foresee some problems. Mr. Chairman, in Committee I, we have said that when this Constitution comes into force, there will be three land tenure systems as outlined in Clause 3. My reading of the situation now in the Plenary is that we need now to qualify the type of customary tenure even after the Constitution has come in place, because the customary tenure in Busoga after this Constitution has been promulgated, will be different from a customary tenure on my land in Buganda or on some land in Mwenje District. So we may have to request Committee I to specify that customary tenure, we agree. But definitely it cannot be one customary tenure embracing the whole of the country, because even under customary tenure there is clan land. In Busoga there is customary tenure, but also there is land which is not owned by any one individual but by the Clan. So, I do feel that not to divert too much into a general debate we really need pre-qualification remarks. After we have defined that type of customary tenure for as many as they are customary tenure systems, we can then say that in the long term, we are trying to get one tenure system if possible, but it may never be possible. But then we must specify how each customary tenure system can be converted into free hold because the way you convert a customary tenure system in Busoga to free hold is different from when you come to talk of the *bibanja* holders in Buganda. I feel that if we can define this, it will re-assure everybody who has a matter which concerns customary tenure, which I think should be addressed by this august House. He should give the Committee I a statement to that effect. I see ourselves being able to define our Clause 3 (a) - Customary Tenure. We should then also see how we envisage to try and address the issue of squatters. But Mr. Chairman and Distinguished Delegates, Uganda cannot pretend to say there will be one solution and it will be done once and for all to solve the problems of squatters. Uganda is not fixed in size; the population is growing day by day. So, soon the land-lords of today will have grand children who are going to be squatters on their own land. That is a fact of life. Consequently, we can only attempt to address this matter but given that there must be some references on which they are guided.

I would like to conclude my remarks by requesting Hon. Members to submit to the committee I perception of customary tenure systems we have existing, and then the Committee can synchronise to see how those can be adjusted to fit into the accepted principles as defined in new Clause 3. I conclude Mr. Chairman.

PROF. SENTEZA KAJUBI: Mr. Chairman, I entirely agree with Hon. Magezi that there are many customary land tenure systems in Uganda. Land held according to the customary system is in accordance with the rules of the tribe or part of the country where the land is. The system therefore, varies from one area to another in Uganda. It would be wrong to try and impose one system on every part of Uganda, in this Constitution, because under the Article 66, the old Article 64 of the Draft Constitution we have already said that every person shall have the right to enjoy practice, profess and maintain the culture of his own area. Now, land is part of the culture and there is no way we can impose, at the moment one culture throughout the country. We have heard that in some areas women are not allowed to inherit land, while in others women do so. So, a person who comes from an area where women are not allowed to inherit land, and comes here and argues about traditional land tenure as though this practice of women not inheriting land was uniform, definitely this will derail us. Mr. Chairman, a point has been made here that under the mailo system, the *Kibanja* holders are squatters on land which belonged to their fore-fathers. Mr. Chairman I would like to put it here that bonifide *Kibanja* holders in Buganda, are no squatters. If in Buganda there were so many squatters, there would be a Luganda word for the notion "squatter". Now, I challenge anybody who knows the Luganda word for squatter to tell it to me.

MR. LIIGA: Mr. Chairman, I would like to inform Hon. Senteza Kajubi that the land on which I live in Buvuma Islands was given away by the Kabaka to a man I have never known, but I understand he is called, 'Makamba' as far back as 1945, and since the day I was born, and I believe my father too, we are just squatters on that land. We are just squatting there; *batuuzi*, and the word, '*Mutuuzi*' simply means a fellow who came and is sitting on somebody's land without a title. Thank you.

PROF. SENTEZA KAJUBI: Mr. Chairman, I thank Hon. Liiga for that information because definitely this has demonstrated that if this phe-

phenomenon of squatting was a matter of great concern to the common people, there would be a word to describe it. Now we are using English notions, strange ideas to describe something which does not exist in Buganda. In Buganda land was held according to certain systems. Obusenze - this is when you settle on someone else's land with his permission mutually agreed and your status is guaranteed. There is a *kibanja*. This one you must have a house on the land with the agreement of the land-lord and your rights are protected, you cannot be easily evicted.

Now, the phenomenon which is being described of the plight of the peasants, is a recent phenomenon particularly since the 1975 land reform decree. This phenomenon is very much associated with people who come from outside Buganda, they buy land here, and they evict people and then come to this House and then shed crocodile tears. If you read News Papers, it is people who have come from outside Buganda, they have completely ignored the local customs and they have evicted people and then they come to this House and begin to shed crocodile tears by talking of the plight of Buganda peasants.

in Buganda we have got great respect for the *Kibanja* owners, great respect for people's burial grounds. In our customs it is not heard of for the person to come and evict a person, who has got his grandfather buried there and you tell him to go away. It is people who are strangers in this area, who have taken advantage of the mailo land system to come and torture our people. Mr. Chairman, I entirely agree with what Hon. Karuhanga said and I support him in this that although the mailo land system has not been here since 1900, it has become part and parcel of the traditions and customs of Buganda. The people in Buganda whether they are mailo land owners or whether they are *Kibanja* owners, they all support the mailo land system and this is the mandate I have from my own Constituency, Kyadondo North, and I detest people from outside who are not even aware of the customs of Buganda to come and tell us that they know better the needs of the people of Buganda.

Mr. Chairman, we have already guaranteed in this Constitution the right of ownership. It is in Chapter 5. It will be wrong as Hon. Katenta Apuuli said to try, and through this Constitution, dispossess people who have already acquired mailo land legally

through their sweat. Now one would ask, why is it that people will stop talking about land in their own areas and concentrate on Buganda? I have an answer for it. In Buganda it is very easy for people to come and settle here because the Baganda are very welcoming. We do not drive away people. So, those who have settled here with the agreement of the landlords, now want to use this Constitution to take over the land of the people who have extended hospitality to them. I know people who have been speaking this morning here, some of them have already even bought land but others who came to work and are settling on the land want to use this Constitution to describe themselves as customary holders. You get a person who has come from Rwanda settling in Namutamba and he describes himself as a customary land holder. So, Mr. Chairman, I want to support the proposal of committee I that we agree to the three land systems. The customary land tenure; let it be land held according to our custom in accordance with customs of the people where land happens to be. In Buganda, please, forgive us, for we do not have squatters. Mr. Chairman, with these few words, I beg to support the proposal made by Committee I that we have the three land systems customary, mailo and lease hold. Let me also say that if people are so anxious to redress the wrongs of the past, I should warn, that the land on which the High Court is and the land on which this Building is belong to some clan in the past. So, it will not be returned to the owners.

MRS. KABIRISI LUBERENGA: Mr. Chairman, we have finally in this C.A come to the crux of the matter, and that is land. We sat in this Assembly and told the people of Uganda that all power belongs to them, fine. But then giving them power without giving them land would not make much sense because land happens to be the economic life-line of this country. We have people in this country who are living on land which they cannot economically put into good use, because they do not hold titles to that land, therefore they cannot go to the Bank to get the Loans to develop that same land. Yesterday we sat in this same Assembly and in Article 271, (1), unanimously agreed that all land in Uganda belongs to the citizens of Uganda. Now today, we must decide who, which citizens we are talking about. Are we talking about some few citizens who happen to hold titles to the land or are we talking about citizens who happened to be robbed by colonialists who came here, grabbed land and gave it to a few

collaborators or are we talking about citizens who are going to be born tomorrow? What we must bear in mind in this Assembly is the fact that we are making a Constitution for generations of Ugandans to come.

Hon. Senteza Kajubi has said that in some parts of this country, women are not allowed to inherit land while in some parts of the country they are free to do so. But this did not stop this same Assembly from passing Article 56, (1), where we said, 'every person has a right on his own property'. So, likewise, even if some parts of this country have a system which is free from the *bibanja* holders, we have an obligation as the representatives of the whole country to decide what to do with the *kibanja* holders of this country. Mr. Chairman, Hon. Nakyanzi asked a question as to whether peasants want to grab other people's land. I do not know about the peasants of Ntenjeru, but the peasants of Bushenyi have no intentions of grabbing land that is not theirs. All they are asking for is to be given land that has been factually theirs for generations. The Muzungu came here, and found land which he decided to grab and give as a token to a few individuals. Some people have argued that the original people who got that land do not hold it any more. That they are supposed to have sold it. In my personal view, if you buy stolen property and you give it to somebody else when eventually they catch up with you, that property reverts to the original owner. So, if the muzungu stole the property of our people and passed it to some few favourable chiefs, which chiefs went ahead and sold to the generations of other people, and today we have title holders who actually bought, but then they bought property that was stolen. So, if we are to address a problem, we must face the fact that the muzungu, much as he might have been the Government at that time, did not actually have a right to grab land on which our fore fathers lived to give it to other people. So, what we are here to decide is, if the muzungu stole land and decided to do two things: 1. Either he kept it as public land, which Committee I is telling us that those who got the stolen land which happens to be public land are free to keep it. But the same Committee is telling us to ignore the other half where the muzungu got the land, gave it to a few collaborators which few collaborators went on selling it that those *bibanja* holders are supposed to be squatters in their own country forever. I think we must not bring ourselves to a situation where the representatives of the people of this country have

been entrusted with trying to solve the problems of this land to be allowed to let that system to persist. So, Mr. Chairman, in my view we should go ahead and not shy away from the problem. Lt. Col. Sserwanga Lwanga said this morning, it was repeated by Hon. Amanywa Mushega, if we cannot fit it here then we are merely avoiding the problem. Let us confront the situation and not leave it to future Parliament or anything else. Mr. Chairman, to me it does not make sense, for example, as Committee I put, to say that we tackle the problem of Bugangaizi and Buyaga and then we leave the problems of the people of Bushenyi.

THE CHAIRMAN: We shall be coming to those Clauses which provide for Bugangaizi and the rest.

MRS. KABIRISI: Yes, Mr. Chairman, I was only referring to it to illustrate my point. The point being that we should not leave some parts of this country un-tackled while we tackle others like Hon. Senteza Kajubi has said that we should leave Buganda alone. But then the same problem that exists in Buganda happens to exist in Bushenyi for example. So, what are we going to do with the people of Bushenyi if he is to decide that we leave the *bibanja* holders alone? That is why I brought it in.

Mr. Chairman, we have heard one Hon. Member here saying that even if we gave these tenants the rights to get titles they could not afford it. But that does not stop us from doing the right things because, Mr. Chairman, while the tenants of today might not afford to get titles, their sons will, or their grandsons will. We must realise that we are making a Constitution for generations of Uganda to come. So, do not let us put a few road-blocks in our way and stop ourselves from doing the right thing just because we think the people cannot afford. If the tenants in Buganda are comfortable being squatters in their own country, I want to put on record that the tenants in Bushenyi which happens to have the same problem are definitely not comfortable with being squatters in their own country. Therefore, if the Delegates of Buganda can stand here and tell us that we leave Buganda alone, I do not want this Assembly to say we leave the *kibanja* alone, no. Let us say, *Kibanja* holders in Buganda want their *Kibanja*, they want the squatters in their own country. But *kibanja* holders in Bushenyi want to own the land on which they squat. Mr. Chairman, we must not leave this problem for tomorrow. Let us do it today. Thank you.

MR. LIIGA: Mr. Chairman and fellow Delegates, as you have noticed, since morning the issue of land is so sensitive that it could keep us talking and talking for the rest of the months. However, given the task ahead of us, we must find a quick solution to this problem.

Essentially, the issue before us now lies in Buganda. Here the word, 'mailo' has been taken to mean, possession of land indefinitely at the expense of some other people. These ones are exactly the majority on the land whom I know as squatters, people who came either as workers for the rich Baganda in this sequence of classes. We have the Baddu in Buganda; we have the Bakopi; we have the Balangira and eventually the Abaami who own big chunks of land in Buganda. Now, the Baddu particularly are the equivalent of slaves. When they grew up, they were left on these lands and *-(interruption)-*

MR. SAMNJUBA: Point of order. Is the Member in order to tell lies that in Buganda there exist Baddu or slaves, which is not true?

THE CHAIRMAN: It is really a difficult thing to rule on. He is asserting that there are and you are saying there are none. It becomes his against yours. Can I get someone who is an expert on Buganda History.

MR. NGOBI: Mr. Chairman, I want Hon. Liiga to justify his belief that baddu are slaves in Buganda. As far as I know, although I am from Busoga, the question of saying Baddu - Slaves, does not exist now, they used to in the past.

MR. LIIGA: Mr. Chairman, I can put it in this way that during the wars between Buganda and other nations around them, the Baganda would conquer into Buganda people from other tribes these ones came in as a Baddu - slaves, and those ones have today acquired Kiganda names. Mr. Chairman, if I may continue, it was not correct for Hon. Prof. Senteza Kajubi to state to this House that Baganda in Buganda have not evicted some of their fellow Baganda from pieces of land here. We have a High court case where the late Kawalya Kaggwa took a Bull-dozer in Bukoto, and they just run amok and broke down houses of people from this very part of Buganda.

MRS. KALEMA: Mr. Chairman, I would like to inform the Hon. Member holding the Floor that from what I remember Hon. Senteza Kajubi said, that generally here in Buganda there is no eviction of people. Now the example he is bringing of Late Hon. Kaggwa. Correct Michael Kaggwa evicted people, I am not defending him, people were not happy about it. He was condemned for having done it. So it does not mean to say that this is a general practice in Buganda. So, Hon. Kajubi's statement is still correct, Mr. Chairman. Thank you.

MR. LIIGA: Mr. Chairman, at the moment we are trying to solve a problem which makes some Ugandan citizens strangers in this very country as Prof. Nsibambi put it. If you own a piece of land within Buganda over which you have no titles, you are as good as a stranger. It is this situation which the people in the country side are trying to say we should find a solution for. Thank you.

PROF. NSIBAMBI: Is the Hon. Member in order to distort the essence of my rendering soon after I have articulated what is obtaining accurately in Buganda? Is he in order to suggest that I suggested that people did not belong - I said there was a sense of belonging and there was reciprocity. Is he in order?

THE CHAIRMAN: I take it that he misunderstood you, and now you have corrected him.

MR. LIIGA: Mr. Chairman, it was in the spirit of trying to solve this seemingly small problem within Buganda although it keeps spiralling even outside Buganda. Hon. Serwanga, sought to amend Clause (a) of Paragraph 3, by putting in the word, 'Kibanja' to protect the rights of a person on somebody's land without any rights, say, just emutuuze - squatter sitting there at the mercy of this land lord who tomorrow will come and say, "look when the Nvujjo and Busuulu law was in existence, you were paying Shs.80/= per year to squat on my land, you can now find your way out". Mr. Chairman, I think the House has now got a full picture of what problems the landless in Buganda are facing. I fully support Hon. Sserwanga Lwanga's Amendment or insertion to Clause 3 (a), by adding the words, 'Kibanja Holders' within Uganda. Thank you, Mr. Chairman.

MR. SSEBAANA KIZITO: Mr. Chairman, I wish to correct a few impressions which have

been erroneously made on the Floor of this Assembly. First of all I want to state that when the Europeans came to Buganda first and Uganda later on, they distributed only part of the land which was in Buganda 8000 sq. miles was made mailo land and 9000sq.miles remained crown land.

Secondly, I want to state as many, have already stated that it is possible for any one to buy mailo land in Buganda. Therefore, a man who is a peasant can be a land owner tomorrow. When we say this, we are talking with practical experience. My father did not have any land. My grandfather was not one of the people who were near the people who were given land originally. So, my father had a kibanja. I grew on a kibanja. But when I grew, through hard work, I earned some money and bought that piece of land, not only that piece of land. But I bought other pieces of land. Right now I have some bit of land which I can sell to any one who wants as long as he has money. I must also say, Mr. Chairman, that on some pieces of land which I own there are some *bibanja* holders. They are there, and they are happy. We are friends with them and therefore, it is wrong for people coming, especially from outside Buganda to come here and assert that *bibanja* holders or squatters or people in Buganda particularly come here and they acquire a kibanja, if they do not have enough money, just to sit and grow whatever they want on this kibanja. So let us not imagine that there is a problem.

Let people not mislead in this Assembly that every piece of land which was in Buganda at the time 1900 agreement was owned by someone somewhere. Even at the moment we have very big tracts of land to which nobody has a claim. Therefore, it is wrong to say that the land which somebody bought should belong to somebody and so on. We know also that clans in Buganda owned some land under customary tenure but when the system of acquiring land came, some clans, for example, the Mamba Clan bought some land for the Clan. So, that mailo land which is customarily owned as well. So we have a land title to that one. Many land-lords would like to sell their land and if they want to sell their land to any willing buyer, they can do so. So, it is wrong to say that we have squatters here and there.

Now, therefore, I wish to say that the issue which has been recommended by this Committee, the land system which exists in Uganda at the moment,

that is customary, free hold or mailo and lease hold should continue to be recognised in this Constitution and if you want you can also revert from one system to another. For example, you could have been a customary land owner and you can turn that into a free hold.

I want to make a general comment namely that we Delegates from Buganda are specifically asked to articulate somethings by our constituents, we come here and articulate these things. But it is very surprising that we are being opposed for imaginary reasons by the people who would not live with people we represent and they do not know what they asked us to say in Buganda. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, we have got to make a choice. Since morning we have been debating to find a consensus on the issue which you all know. The recommendation from the Committee is that we take customary as one of the land tenure systems to be constitutionalised and given, as I said except maybe until arrangements are put in place, but more-or-less at the same level as free hold, by putting it in the Constitution and later on providing for certificates. Hon. Sserwanga Lwanga attempted to amend, but then we had a problem of interpretation. It was said, customary does not necessarily include kibanja holders. But really the whole issue eventually resolved on (b) as it stands.

So, I will put the question on (b) so that those who agree with the recommendation will be the ones to say 'aye' and those who object and therefore want mailo knocked off will say, 'no'.

(Question put and agreed to)

MRS. BWAMBALE: Mr. Chairman, I rise on behalf of some Members who circulated an Amendment this morning, on Article 271, Clause 3, by inserting a very important Clause. To guide the Members this is the Amendment which was proposed by Hon. Etuku David, seconded by Hon. Bidandi Ssali, Dr. Okulo Epak, Hon. Baguma Isoke, Wagira Moses, myself and the rest. Unfortunately, Mr. Chairman, Hon. Etuku and Bidandi Ssali are not here. Before they left, they asked me to move this amendment on our behalf. With your permission, Mr. Chairman, I beg to move that the Constituent Assembly does amend Article 271 Clause 3 by adding after (c) the following words,

'except that only citizens by birth will qualify for ownership of land as free hold or mailo tenure.'

THE CHAIRMAN: But hon. Bwambale did you take trouble to consult on the possibility of this having problems with implementation? Anyway it is seconded.

MRS. BWAMBALE: Mr. Chairman, I thought this would be an obvious Motion because during the debate it was very clear that very many Ugandans wanted land to be vested in the citizens, but it came out clearly through Hon. Bidandi Ssali's contribution and many of us shared his fears that if we give non citizens free hold ownership of land in perpetuity, there is a danger that some of our peasants maybe tempted in future sell off most of their land to people who may be rich, powerful, well connected and posing around as citizens. But as we recall we have already put categories of citizens in our earlier consideration and among them we have citizens by birth and then citizens by registration. The Members of this Committee have a fear that if this free hold is opened to all categories of citizenship then this danger of some citizens, some people acquiring the citizenship of this country, for the purpose of acquiring land in perpetuity may go especially to the rural areas where people are stricken by poverty and buy out large chunks of land and then dispossess our people on that land. This expression is very strong especially for those who may acquire citizenship through registration. So we felt very strongly, that to protect our peasants from these powerful people who may merely register to come and acquire land in perpetuity that this free hold be limited and be exclusively provided in this Constitution only for those people who are citizens by birth. This is not on grounds of discrimination, Mr. Chairman, it is on grounds of protecting a certain category of citizens in this country. And I want the Hon. Members to take it in that faith. Mr. Chairman, I beg to move.

MR. MULENGA: Mr. Chairman, I have followed with interest the submission by Hon. Bwambale and I think there is some misconception. She has said in conclusion that the intention is to protect the peasants. But what is being proposed is that only citizens by birth may own land by free hold tenure. I wonder if they thought deeply to know what generation that prevents. If I understand the intention behind it, the effect is that if a European comes to Uganda and acquires land, he should

not be allowed to acquire a freehold title to land. But his son who may be born here can acquire it because he will be a citizen by birth. As of now we have a Law which has been used effectively that prohibits selling of land that is owned by an African to a non-African without the Minister's consent. The effect of that law is that you may have a leasehold owner and mailo owner of the same land at the same time. There is a lot of that in this area. If the lease holder is say, an Asian who took a lease from an African mailo owner, and he wants to sell his lease hold title, he does not have a right to do so except with Minister's consent. That is the protection that was given by the land transfer act. Now if we want to give that type of protection to Uganda citizens, we should do so on those lines rather than the formulation that has been suggested. Mr. Chairman, in view of our having decided that there should not be first hand and second hand citizens, I do not know whether we should encourage discrimination of this nature. Because if you have accepted that citizens are to be treated equally, to distinguish between the two citizens would be a contradiction and I would like us to avoid too many contradictions in this Constitution. Mr. Chairman, I beg to oppose this Amendment. Thank you.

ANHON. DELEGATE: Mr. Chairman, suppose I am a citizen by birth and I marry a non-Ugandan who eventually becomes a citizen by registration and I die without getting a child from that lady. What would befall her then, that she is a citizen by registration. Suppose I had a big portion of land, what will happen to that land and property? Will it be taken away from her, because she is not a citizen by birth? This Motion, Mr. Chairman, is very defective, I oppose it.

MR. RWOMUSHANA: Mr. Chairman, the rationale behind is that after you have used the land and your lease expires, the land reverts to the Uganda land commission if you should not apply for another lease. And Mr. Chairman, if an investor comes with a plan for investment we need to check to see whether he falls in the implementation of that plan of investment or development; if he diverts from that, he could be advised or stopped. So if he comes with the intention of purchasing land and he is given a lease, and he does not follow the regulations then we may have withdraw that right. But if it is given to him in perpetuity then we shall have a problem. Mr. Chairman,

THE CHAIRMAN: Hon. Rwomushana, I did not want to interrupt you, but you are debating a different matter. You are debating a non citizen who has come to get land here for development. Here we are saying, a person is a citizen, but because he is a citizen by registration, he should not have a free hold. Of course, you know that there are provisions which set out the methods of becoming a citizen by registration, And I think Fr. Gaitano was saying there could be a problem with regards to (1). What we are looking at is, should a citizen by registration have access to land by free hold or only by way of a lease.

MR. RWOMUSHANA: Mr, Chairman, to those who argue that we shall be carrying out discrimination of creating 1st class or 2nd -class citizens, I would ask, why have we done so on the issue of Presidency? That one does not become a President unless he is a citizen by birth, and to me I think that even land-the land which is enclosed within the borders of Uganda makes it Uganda, I am a Ugandan because I am on the land which is enclosed within the borders of Uganda. Mr. Chairman, since we regard land as being, very important, let the holding of land, for security purposes, be only Ugandans who are citizens by birth.

MR. BAGEYA: Thank you very much, Mr. Chairman. Mr. Chairman, when we were discussing citizenship we agreed to make certain classes of citizens and in essence, it means, these people are proper Ugandans, and when we passed Clause (1). we clearly said land in Uganda belongs to the citizens of Uganda in accordance with the tenure system provided for in this constitution. We did not put any exception at all. (*Applause*) When we come at this point and start putting exceptions, it will be mainly for purposes of Probably those people who are not exposed and they are looking only inward because by the time somebody decides to become a citizen of Uganda he has given up all his other sovereignties, he has committed his life or her life to Uganda. Now to come at this point in time after we have accepted him or her as a citizen of this country, and then we turn round and say that this particular person is not entitled to enjoy the privileges of a citizen by birth, that would be a double standard in law. (*Applause*) I was only surprised, and when I was talking to my neighbour who is the chairman of committee (1), I was wondered why he had accepted to be party to this one. He only told me he did not mind it. But he did not actually

contribute to it. Therefore, I would rather we do not support this kind of Motion because it will start off something that we may not be able to stop. I suggest that you put the question and we discuss this bad law. I thank you.

MR. MULASSANYI: Mr. Chairman, we have already passed a Clause to the effect that all citizens will be equal whether they are citizens by birth or by registration. When we were discussing the chapter on defence and national security which is a very sensitive area, attempts were made to limit recruitment to the army and to police to only citizens by birth. That was rejected on the grounds that we did not want to create second class citizens. Mr. Chairman, this amendment to limit the ownership of land to only citizens by birth is contradicting these decisions we have already laid and passed. And, our rules, Mr. Chairman, do not allow this. For that reason, I oppose this proposal. Thank you, Mr. Chairman.

MR. BAGENA: Mr. Chairman this amendment may sound attractive for whatever reason, but it is completely inconsistent with most of the principles we have so far committed ourselves to. In Article 50 Clause (4), we said men and women shall be equal under the law in all spheres of political economic social and cultural life. I do not foresee any citizen not falling under man or woman description. When we identified who the citizens of Uganda are, we did not grade them, they are all first class citizens of this country. When we were pronouncing ourselves on the three (3) tenure systems we did not say (a) is superior to (b) or (c). We intended them to be equal because we want all Ugandans to be regarded as equal in whatever they possess. Now when you introduce this element of discriminating between citizens and non citizens, you are implicitly saying, one system of land tenure is superior to another otherwise why should you necessarily say one may have this one but not the other one. So. Mr. Chairman, I think for consistency, I would like to oppose this amendment. Thank you.

DR. KAKUNGULU: Mr. Chairman, I oppose this proposed amendment. First of all in our previous discussions we have prohibited dual citizenship. When someone manages to acquire citizenship of Uganda he becomes the same whether by birth or by registration except for aspiring for the position of the Presidency. We have placed in the

new constitution such rigorous provisions, already which are to vet someone prior to being granted citizenship. Why further discriminate against that individual? For your information Hon. Bwambale, certain lease hold tracts of land may be valuable in wealth or of strategic importance than the free hold. So your question of wanting to protect free hold may in fact serve to the document of the security or economic exploitation of this country. Rather than go for such a backward anti-developmental and selfish amendment, I think we should leave this amendment and a question be put. Thank you, Mr. Chairman.

MRS BAGARUKAYO: Mr Chairman, I oppose the Motion. I feel so depressed to find that the Motion has been brought by an Hon. lady who is trying to struggle for the women's rights in this country. When we look at citizens by birth, we already have ladies in this country who have become citizens by registration because they have been married in this country. We even intend to have our daughters marrying non citizens, and coming to this country by virtue that we actually passed an article saying that if you are married to a Ugandan citizen you can register for citizenship after three (3) years. Therefore we expected our daughters to get married to foreigners and if these foreigners, their, men want to come and live with us here they are actually very free. And women having told them that they are also allowed to bring in men in this country, they are very happy to see that for the first time we can settle down with our men in our fathers' homes. Now if it comes to land, when the lady passes away and leaves the husband here where will the children and the husband go? It will mean that the man will have to live some time after the land has expired. Now, Mr. Chairman, I would request Hon. Louis may be to withdraw this amendment because (*Applause*)- because it is against the women of this country. Thank you very much.

MR. NSAMBU: Mr. Chairman, as the amendment stands at the moment, it does not take into account the already given out free hold land to different non Ugandans or companies owned by non Ugandans. If this amendment was to be adopted, it would mean to deprive those people of their property probably without compensation, something we have all along been fighting against, that no property should be taken from somebody without being compensated.

Secondly the amendment has been cowardly brought because even the major proposers have not turned up to support the Motion. They can see that it is discriminatory because it is sectarian, but remembering that when I brought here a Motion for the khadi's court which was rejected, I would not have expected the same people to bring a Motion of this nature. But as man commits errors it is enough to remind the august assembly that this amendment be peacefully withdrawn so that anybody reading the Hansard will respect this House. Thirdly, we failed to put degrees of citizenship, we treated all the citizens as equal, people before the law, and since we did not do that to divide them among classes you find whatever law we make, with little exception of the President, must cover all the citizens of Uganda. Thank you very much, Mr. Chairman.

MR. ABALIWANO: Mr. Chairman, I oppose this Motion because it leads to discrimination and if we continue discriminating against other people I do not think this would do us any good. You know, sometimes we worry about things that are not there. What figures can we give as to how many people that would fall in this category will make the 17 million people worry. I mean even if they were girls registered as citizens in this country and they owned a certain portion of land, what would it really matter to this country -to this nation. The other point which I would like to give also is this, that the more riders we give on this question of land, we will never have any, land reform in this country, and without land reform I can assure this nation that we shall never be able to develop economically. We need this land reform if we need an agricultural revolution in this country. The more problems we put in the way that should not be this way, or that way, and more so, as we discriminate against our own people who are citizens of this country, then we will end up having no revolution in this country in terms of agriculture and in term of economic development. So I think as a nation we have to be very careful. I would like also to point out is that this mistrust for what we term as foreigners is not good. Because what we are having is, we make you a citizen of this country but we do not trust you. Consequently what is happening even as we are discussing matters regarding land here, it is mistrust even among ourselves. This is going through and through as we do not trust ourselves we do not trust foreigners, as we do not trust foreigners we are now coming to a stage where even if you married somebody, you cannot trust even to leave that land

to her or to him. I think this is going too far and I think as a nation we have to be very careful about this, and it is I think against this background that I oppose this Motion.

DR. HIGIRO SSEMAJEGE: Mr. Chairman-

MRS. BWAMBALE: Mr. Chairman, as I said earlier, I rise on a point of procedure. That this was a group sponsored amendment and if the Members remember very well Hon. Bidandi Ssali was really very strong on this point, and it is in honour of his strong feeling about it, and his absence here that I have taken this long to enable Members to deliberate very strongly on this. But I note that most Members in the House are not in favour of the Motion.

MRS. BIKORWENDA: Point of order. Is it in order to continue deliberating on a Motion which was not even physically seconded.

THE CHAIRMAN: We have a written Motion here being seconded by many Members so that is not a real serious point. Hon. Bwambale, we can't let you to answer when there are still some Members on the Floor unless you want to withdraw the Motion.

MRS. BWAMBALE: Mr. Chairman, there are a few impressions that have been created in this House that I would not like to go on record. For the purpose of that, let the Members contribute and I beg that you give me a chance to wind up.

THE CHAIRMAN: Okay let us do it this way. There is a point she said she wants to clarify which may be in relation to her personal standing as a politician, and once she has finished we put the question.

MRS. BWAMBALE: Thank you Mr. Chairman for that wise ruling. Some Members, especially Hon. Bagarukayo contributed that perhaps this Motion was not in the interest of protecting women's rights. In fact this Motion in some instances is precisely for that. It is protecting women who may be married specifically by men trying to acquire citizenship, acquire this property and after three (3) years dispose of them in one way or another, and there they are with the property. So it is not, that I am against the women's rights to propose this Motion. In good faith, it is for the protection of some women's rights and also to allow the children

that are born and acquire citizenship by birth to inherit such leased land. Now, Mr. Chairman, David before he left he corrected this impression also created by Hon. Mulenga-

THE CHAIRMAN: We gave you the Floor, in relation with the statement about yourself, but we are not going to answer all the issues which were raised on the Floor. Because it is not necessary really.

MRS. BWAMBALE: Mr. Chairman, this is also about myself because the contributors some of them have imputed that the Motion was brought in a sectarian spirit. I am saying it is based on facts. For example, the 1908 land act says, one was supposed to own free hold land or mile after the vetting of three members of the Lukiiko and a minister. This was partly to protect loss of land to non citizens by birth. It was on strength of this that we brought up the Motion. But since members, have not bought the idea, I would like to respect the views of the Members on behalf of my colleagues who are not here except Dr. Okullo Epak who has kept quiet, and Atwoma that we withdraw the Motion, Mr. Chairman. *(Applause)*

THE CHAIRMAN: The Motion has been withdrawn with honour and dignity. Now we go to Clause (4) and I would like to give the Floor to Hon. Baguma Isoke the chairman of the committee.

MR. BAGUMA ISOKE: Mr. Chairman, select committee (1) recommends the introduction of a new Clause (4) to article 271 to read as follows: On the coming into forth of this constitution, (a); all Ugandan citizens owning land under customary tenure may acquire certificates of ownership in a manner prescribed by Parliament. And (b); Customary land ownership maybe converted to free hold land ownership by registration. Our reasons are, that the process will provide documentary evidence of ownership to the people owning land under customary tenure, and thereby guarantee their security of tenure. We had in mind that the district land boards that will be formed and as proposed in this report here after, will issue these initial certificates at sub-county level, and registration will be handled by the ministry responsible for land registration. I beg to Move, Mr. Chairman;

MR. OMARA ATUBO: Mr. Chairman, mine is really a matter of details, I fully support (A and B), but I would like a form of clarification which may

improve on the content of the Clause. Mr. Chairman when you say all Ugandan citizens owning land under customary tenure may acquire certificates, are we saying that all Ugandans collectively are going to apply to own land and be issued with certificates of title? Or are you saying that a Ugandan citizen owning land under customary tenure may acquire certificates.

THE CHAIRMAN: I think that is correct drafting so, that one will be changed by the technical team I think they take note of that.

MR. OMARA ATUBO: The idea in (b) is that, customary land ownership may be converted to free hold land ownership by registration. But, Mr. Chairman, we have already said that land in Uganda shall be owned in accordance with the following land tenure systems. Customary, free hold and lease hold. My interpretation is that customary tenure is already customary land currently owned under customary system by virtue of this provision Clause (3) is constitutionally now recognized as in its own right a land tenure. But we are saying in (4) that you are going to convert this customary land ownership into free hold. Now I seem to think this is not very clear. The idea in (b) is that, customary land tenure is in its own right a land tenure system, and actually free hold. So do we intend to have this customary land tenure, as a tenure but to be converted into a free hold or are we saying that customary land tenure is a free hold in its own right without conversion. Thank you Mr. Chairman.

THE CHAIRMAN: I think the chairman has taken note of that.

MR. MUSUMBA: Mr. Chairman, I just want to make small amendment to develop (b) further. You see,, Mr. Chairman, customary land ownership may be converted into free hold. But we should also allow it to be converted into lease hold if some one so wishes, and mailo so that this system whoever is occupying customary land can transform it to any of these other systems if he so wishes and if he realizes that they are advantages under any of those systems.

THE CHAIRMAN: Are you suggesting that someone who has a piece of land in perpetuity can go and give it to him 49 years?

MR. MUSUMBA: He should have the freedom to do so, Mr. Chairman.

THE CHAIRMAN: The only thing he can do is give someone a piece of share by way of a lease. But he retains the free hold title, but I do not see how he could convert it from one - I mean from a larger title to a smaller one.

MR. DIDI AGARD: Point of information. Mr. Chairman, it is my belief that where I hold customary title, with the rest of my clan and my brother decides to get a title to the piece that he has to ensure that small piece of his is now held by him in perpetuity his title could as well describe that now it is exclusively, and I think it is only clarification to say, therefore, the customary nature has converted. Because the essence of customary land holding is the collectiveness. So I think it is inconsistent that the committee has decided to provide for a clarification. I hope you will guard me there, Mr. Chairman.

THE CHAIRMAN: No. What you are saying is that you are looking at it from a collective ownership and then curving out smaller interest, but I do not see how if you hold as you know under our present law in conferring titles be they lease hold or otherwise, you cannot give a title equal to or greater than what you have. So if already the clan has got as a collective entity a customary title they can translate that into a free hold or if it is a Buganda mile which is equivalent to free hold. But when they decide to share out in smaller pieces, I presume the clan will continue to hold the head title which is free hold, and the only thing they can hand out to the Members would be leases which is provided for here, and so there will be no problem. But if an individual has got a customary title, he can convert that directly under this to free hold, but having done so, he can then hand out smaller titles by way of leases to other people. But he can only transfer if he wants to sell part of his, he can of course sub-divide and transfer the equivalent of his title fully, if he wants to sell and divest out completely he can't continue holding the title, and then at the same time also give out the same. He only divests from himself.

MR. OMARA ATUBO: Mr. Chairman I want you to guide me further. If you come down to the situation on the ground, most of the Northern Uganda where formal lease system did not apply, a number of development minded people took out pieces of land. This is even in areas where the community could claim that the whole range of area was customarily held, and I would like to look

at a situation whereby although this customary land system exists, how can we protect the developers. But I did not expect that customary law holding would stop them from taking land which they have to develop, because some of these developments have long term programmes. Is it not good to be discriminatory to the able developer who would like to take, if the idea of a free hold is to give him unlimited confidence to develop that piece. But he happens to be in an area under customary land holding, but by the nature of the customary title being communally held, if he can only get a lease, I have a feeling that he is being discriminated by the oppression of the constitutional provision. Can you guide me on that one.

THE CHAIRMAN: Is he a member of the clan?

MR. OMARA ATUBO: Yes.

THE CHAIRMAN: Then there what is happening is that the Parliament is going to prescribe the manner of acquiring certificates. And if they prescribe that clans through either trustees or whatever, they can hold particular land unto themselves as clans, then they can make a choice if the trustee deed, or the certificate so allows for them to choose whether to grant unto their sons and daughters only leases out of our head title which is free hold or customary, and they are equivalent. Or they may choose to say that because he is going to put in a lot of money we shall sub-divide and sell that particular portion to that person and therefore, the clan will divest itself if your customary rule so allows, but if they do not, then you have to find ways of handing out smaller interests than the interest of the clan. Which means they may give the person 99 years in accordance with the manner in which Parliament will have prescribed.

DR. KABERUKA: Mr. Chairman, mine is just a point of clarification, I would want to move a new sub-Clause under (4) so I do not know at which point I should move that amendment if -

THE CHAIRMAN: Can we first of all sort out (b), unless you are saying that what you are going to move affects (a and b).

DR. KABERUKA: No it is not, Mr. Chairman.

THE CHAIRMAN: I think if you could wait we sort out (b) (a) is okay, we have changed the

wording but that is for the technical committee. Now on (b) it was pointed out that the way it is written, the customary land ownership I think the technical committee will have to be consistent and use language that we are taking that customary or land held under customary tenure, because we have said customary tenure and so on may be converted to free hold. Hon. Omara Atubo did raise a question. Is it necessary since this also is a separate tenure recognized by the constitution? But I presume the intention of the committee was that progressively we should move towards having two systems Free hold and the inevitable lease hold because even if I hold my land I can hand out lease and if I am to hand out a lease, I do not know whether it is really necessary to say it here, but it can be arranged by way of statute or by common law. So we can polish (b) but the concept can remain the same.

MR. BAGEYA: Mr. Chairman, I am under the impression that by the time I walk out of this Constituent Assembly customary land tenure would be just as good as the other systems. Because the people in Kigulu North where I come from gave me the instructions to seek the recognition of a customary land tenure system such that, they do not have to labour with the costs of converting to lease hold and free holds. Now this (b) presupposes and, it may be saying that actually although customary tenure system has been passed as we have already done, it is good enough, in future it will be necessary to move yet to another step. This will be defeating the desires of my people in Kigulu North. Because they want it to continue with their system the type of tenure which they are used to for them to subdivide their land, they have a plant they call *Ekiioowa* which they use and all they wanted is for that system to be recognized under this constitution such that when they go to bank to borrow money, it is not thrown out of the window.

THE CHAIRMAN: But isn't it what has been achieved here. You have achieved the recognition of the customary title, I think you are wasting a lot of time. They have achieved the recognition of the customary title on top of that you have just approved (a) which says, certificates will be issued in a manner prescribed by Parliament. Because you can't include all details, and I presume this can go to the same extent as saying if you are going to get a certificate the piece of land must be ascertained, whether you are going to use those boundary

markers still someone must be able to say that, that is a piece of land if you are going to go to a bank. Now all those are going to be set out in the statute by Parliament. We do not have to put those in the constitution. What you achieved is lifting the customary title from the inferiority position it used to have, because the land was public land to a level where except for certain attributes is equivalent to free hold. Because it has no limit, it is in perpetuity unless your custom does not allow perpetuity in which case- (*Interruption*)- so really I think we do not need to argue too much about this one, the details are going to be made by Parliament. But the enabling provisions to me apart from drafting are adequate. What worries Hon. Omara Atubo is, the saying that customary title is inferior to free hold and that is why you say it must be converted. May be the chairman of the committee can, answer that.

MR. BAGUMA ISOKE: Mr. Chairman in guaranteeing constitutionally the three (3) tenures select committee I was of the view and a very well known view that the three tenures are not the same and are not equally important even in value. For example that, a lease is a temporary holding for some years according to the agreement between the lessee and the leaser. But a free hold and lease hold, this is the absolute ownership by an individual or a group of individuals in perpetuity. I could say for good. Now customary according to our custom, this system falls short of certain international systems of holding land. Because the system we are operating, the system of registering these interests exists elsewhere in fact it is an Australian system, and as we said in our different nationalities, our customs that relate to holding land are not similar that is why we are leaving this popular subject of recognizing this tenure by a certificate to a local land authority. I have already said in the rationale, that such a certificate will not be called a title deed, because a title deed that qualifies a free hold or a lease hold has got a deed plan arising from a cadastral survey indicating in approximate units the area and geographical location and more specifics, as most, delegates here know. Therefore, what the committee wanted was, as the Hon. Chairman has already said, to elevate to a secure and recognized tenure this customary holding and also to designate the government or the state from being the owner or the residual owner of the customary holding. Since free hold is a greater tenure a superior tenure even the banks recognize this. The banks recognize that a free hold is greater in value than a lease hold.

THE CHAIRMAN: Hon. I think you are absolutely correct. Because if you have one square mile of free hold in the country side somewhere, is it equivalent to the value on which Uganda House is, although that is smaller in town and could be a lease hold. So the value aspect of it is - (*Interruption*)

MR. BAGUMA ISOKE: But in reality, Mr. Chairman, else where I have dealt in this subject for some years, this is the reality on the ground that two customers approach a bank or any credit facility or an institution one with a lease hold title and another one with a free hold, the free hold title is more respected by our financial institutions. And here as I have described, the now elevated customary value is in relation to a free hold we wanted by this provision-by this Clause (4) (b) to further elevate customary to free hold.

MR. BASOGA NSADHU: Mr. Chairman, I think I am getting rather confused. My thinking is that we have two systems available, there is a system that is foreign to us. This system involved putting small stones underground because they are not eaten by termites and they use certain instruments to measure them. But before these people came, we were using a system of trees because for us that was the land mark that we knew. But as we developed a little further these people introduced their banks and they said for us to lend you money, you must give us a paper certificate which we will recognise. This is part of their custom in Britain where they came from. So we were forced for want of money to do what they do in Britain. So we carried out the cadastral business and the trees. Now our intention here is to say that as a citizen if I have my land marks I must have this land for good. So the certificate which you are going to give the Musiki must be a certificate which says that this is free hold customary land. We do not want to be given anything short of that. Customary land must have that held there. Now should the Musiki want now to go to the bank which follows the English culture, I must then comply and have the cadastral thing taken to Busiki to do the thing, the thing is properly now written out into a map that this man recognizes. Because he may not recognize the *hiloowa*, which I will plant in Busiki or the *Mukone* which is planted in Bugisu. This is our thinking. I want to say that this Clause (a) should be Ugandan citizen owning land under customary tenure may acquire safer certificates which have the word "*Free hold*" on them, that is what I am talking

about. Let the man have it there and the man who does not want to have the paper as they have indicated that they will not need them should be contented enough that this constitution protects him. Now should the need arise for him to get a paper, because he wants to borrow money a bank or any financial institution then he will have to dance to the tunes of that foreigner, because the foreigner has got his own conditions. In other places when we marry daughters you take a goat, in other places they want turkeys. You take them to meet the demand of the person who has dictated. So as far as we are concerned we must give sufficient protection in this constitution to the customary land owner that what he has is in perpetuity and it should be transformed into a paper certificate. That paper certificate must have the English word "Free hold" on it. That is my submission.

MRS. KALEMA: Mr. Chairman, When Hon. Basoga, was explaining the difference between what I would call a registered plot of land where one gets a title, he kept referring to it as the English culture. I wanted to know what he was talking about. Is it just an English culture or is it land law. I would like him to explain because it seems that he was trying to confuse this House, to make us believe that it is just the culture which we will discard and then go ahead with our own. I do not see how land can be securely obtained if it is not properly registered. Registration is the only way you can ascertain ownership of anything.

THE CHAIRMAN: Anyway the thing is this I think we are just arguing in circles. The position is, it was a simple issue raised by Hon. Omara Atubo why they need to create free hold out of a title which the constitution or tenure has recognised. My understanding was this, that while the land on which many of your relatives are, continues to be public land; they are secure to the extent that the said land is not required by the state. But if the land is required by the state, the mode of compensation is not the same as would be the case to a person holding a mile land title of a free hold title or a lease hold. And what is being achieved here is lifting that customary aspect to that level so that when you have your certificate issued under (4) (a), and someone wants to come and build a hospital on your land on behalf of the government, then they should not do what they have been doing merely compensating you for your crops and your ramshackle house, they should actually buy the land

itself. This is what I thought was the reasoning behind here. Now, in the event that financial institutions do not recognise as Hon. Nsadhuh has said, the certificate, issued under (a) on the ground that the land was not fully surveyed in accordance with the modern methods of doing it, the person concerned is free under (b) to convert that into a freehold but should the system develop that even that is recognisable or even Parliament can require that some form of survey can be done, then many people may not have to move to (b) because it is not a requirement that you have to move to (b). This is how I understood it. If we are together really I do not see why we should go on discussing this matter. So we adopt 4 as it is subject to drafting by the technical Team to change a few things. (a) and (b) agreed.

DR. KABERUKA: Mr. Chairman, I wish to introduce a new sub clause under 4 which I want to call (c) and to read as follows: "*That on coming into force of this Constitution (c) holders of mile/ freehold land shall within a period not exceeding two years agree with their land occupiers on a permanent solution equitable to both parties*". I beg to move.

THE CHAIRMAN: I think Hon. Kaberuka you are jumping the gun. Here we are discussing the status of recognition of customary title, but there is another provision which specifically addresses that question. You can either be polishing that one when we come to it, or you can make alternatives to it but I do not think it really fits here, it does not. So I think you better wait until we come to the appropriate place. I think Members want me to put the question on 4. I put the question.

(Question put and agreed to)

THE CHAIRMAN: Now, we have covered two very important issues today. Tomorrow morning we continue with 5 and see how we go. Hon. Delegates you recollect that when we adjourned for Easter we agreed that we shall work on Saturdays thereafter, and on the basis of that formulation and understanding our Committee on programming came up with a programme that makes us finish the consideration stage sometime this month. I think it will be 24th and I am anxious that we do that, so that we keep within the time limits we have given ourselves and so let me expect a quorum tomorrow morning at 9.00 - from 9.00 up to 1.00.

Hon. Medi Kaggwa - *(Interruption)*. No, there is no debate on that, may be he is raising something else.

MR. MEDI KAGGWA: Thank you very much, Mr. Chairman. While I agree with what you have just told us, I want to request that since this information was not passed to Members before many of them left, the Clerk puts a radio announcement because this is a matter we agreed upon but many Members left and they may not turn up, yet we need to come. So I suggest that an announcement be made on radio for people to come and work tomorrow. Thank you Mr. Chairman.

THE CHAIRMAN: We shall put it on the News item, on T.V. and Radio. Hon. Omara Atubo.

MR. OMARA ATUBO: Mr. Chairman, it is true we agreed that we shall be meeting on Saturdays but I beg your indulgence that possibly if we are meeting on Saturday sufficient notice could be given - *(Interjection)* but, Mr. Chairman, I just want to save you the embarrassment tomorrow, because you may announce on Radio, others have already gone a hundred miles away, there was no sufficient notice; I am just pleading with you that next time we are going to meet on Saturday you may have to give us some two or three days notice, because you know what Saturday means in this country.

THE CHAIRMAN: Hon. Omara Atubo, I know you are being very fair to all of us but I think we did agree. The other reason why we did not meet last Saturday was, as you know, we were so fast that the work which had been programmed to take a week we did it in two days and then the committees were still processing their papers for the Technical Committee, and the Technical Committee worked on Saturday and Sunday and we were able to have what we are doing in the pigeon holes by Tuesday. So I do not think we should say that we have never had good notice. The notice was given on the day we adjourned for recess. So I do not think we should debate this one.

MR. SENTEZA KAJUBI (Kyaddondo North): Mr. Chairman, in view of the fact that the confirmation was not made earlier that we shall meet on Saturday, I propose that we meet now until midnight, so that we complete the work.

THE CHAIRMAN: Hon. Delegates I like that sacrifice, but I think we shall take that as we get later and later. I think not to waste any more time we stand adjourned and we resume tomorrow morning at 9.00 a.m. Thank you very much.

(The Assembly rose and adjourned until Saturday, the 6th of May 1995 at 9.00 a.m)