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Reconstituting Ugandan Citizenship Under the 1995 Constitution:

A Conflict of Nationalism, Chauvinism and Ethnicity

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Working Paper No.55/2000

ISBN:9970-516-41-4

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Reconstituting Ugandan Citizenship Under the 1995 Constitution: A Conflict of Nationalism, Chauvinism and Ethnicity*

Introduction

Citizenship for any person in the contemporary world situation is a very important concept; a concept that most of the time determines the very livelihood of an individual and of communities.

Citizenship is both a legal and sociological category. In this paper we shall, as shown below, endeavour to use, for different purposes, both categories of meaning.

There are many aspects of citizenship that one may deal with, but this essay confines itself to the genesis, character and socio-political implications of citizenship as was eventually, after a protracted debate in the Constituent Assembly (CA), provided for in the 1995 Constitution of the Republic of Uganda.

This essay is divided into four sections. Section I introduces the concept of citizenship generally, and the context in which citizenship should be analysed in the light of the constitution-making process which led to the promulgation of the 1995 Constitution. Section II deals with the history of citizenship in Uganda, and in particular, the role of British colonial rules and laws in determining the major issues that would arise after independence concerning Ugandan citizenship.

This section also deals with the earlier legal and constitutional experiences in dealing with the question, particularly the 1962 and 1967 Constitutions, as well as the Citizenship Act¹ as amended. Section III, drawing on the background laid in the earlier sections, analyses the struggle over the definition of Ugandan citizenship and the interests that contended during the 1988-1995 constitution-making process. In particular, this section identifies central issues that arose during this process, and attempts to explain why they arose, and why they were resolved in the manner that they were. The major issues concerned:

- 1) the fundamental question as to who is, or should be, regarded as a citizen and why;
- 2) related to the above was the question of tying citizenship *by birth* to membership of, or belonging to, an indigenous community or nationality (tribe) as at 1926;
- 3) the granting of citizenship to foreigners and refugees vis-a-vis the status of aliens;

Laws of Uganda 1964, Cap 1.

*The views expressed in this paper are those of the researcher.

4) dual citizenship

The final section is the conclusion, pointing out the significance of the constitution-making process on the question of citizenship, the socio-political implications, and the changes in the constitution and other laws that may be required. Our major findings are that citizenship is a political category and determinable under specific political conditions. Recommendations for requisite changes are also made.

Section I: The Concept of Citizenship and its Significance in the
1995 Constitution

a) Citizenship and Nationality

The concept of citizenship is essentially legal in meaning. However, this concept has historically been confused, or at times interchangeably used, with that of nationality.

Nationality has both legal and sociological meanings. In some countries, and particularly in the pre-independence days, and in legal terms (especially in British legal and political terminology), nationality meant the same thing as citizenship - for instance, in the British Nationality Act of 1948.² This Act was applicable to Uganda by virtue of Ordinance 21 of 1949 which was later repealed by Act 20 of 1965. However, in sociological terms nationality does not mean the same thing as in law.

Nationality in sociological terms may refer to two distinct concepts. The first one is that it may mean a section of people of the same or similar race such as Arabs, Russians or Jews. It is essentially a *racial* concept and such people constituting the nationality have a common ancestral origin, similar language, colour and culture.³ The second one is that it may be used to refer to an ethnic group within a state or even across states. This concept is narrower than the first one, but refers to a people usually living in a common geographical territory (though this may be across states), sharing a common culture, language, beliefs, etc. In this regard, many African countries, including Uganda are inhabited by several nationalities.⁴

It should be noted also that in popular terms, which is important for purposes of understanding most Ugandans' attitude to and conception of citizenship, it is

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11 & 12 Geo. 6. C.58.

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See, for instance, RU, 1993: 101.

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See infra; section III. 2(b).

difficult to conceive the idea that a person from, for example India or Germany or even any other African country can be considered truly as a Ugandan citizen. Such people believe that a citizen must be a *child of the soil*, whose ancestors have lived in Uganda from time immemorial. They tend to associate citizenship with the country where one's umbilical cord was buried and where one's ancestors lived, died and were buried. It becomes difficult for them to believe that a person may choose to leave his/her country of origin and become a citizen of another country. In their view such a person would be either a citizen of convenience or, for that matter, a temporary one.⁵

This popular concept of citizenship has a lot to do with citizenship *by birth*, a concept that became very controversial during the CA debate itself as will be subsequently shown.⁶ It is also a concept that is informed by people's understanding of the importance and implications of citizenship vis-a-vis the rights, role and usurpation of political and economic power and control of or influence in the Ugandan state by foreigners and, in particular, some categories of refugees.

Put simply and legally, "citizenship is a continual legal relationship between the citizen and the independent state. The fundamental basis of citizenship is membership of a sovereign political community. Citizenship is the major link between the individual and the state. It empowers the citizen to demand from the state both protection and promotion of his /her rights. It involves both rights and corresponding duties on the individual and the state".⁷

Thus though the term nationality was often used in the past to mean citizenship, in this paper, unless the context otherwise requires, we shall use the term citizenship as a legal concept though, needless to say, as developed historically and politically outside Uganda (especially in international law), during the colonial period and after independence.

It is nonetheless apparent that citizenship can only be fully understood by a combination of the legal, sociological and popular conceptions referred to above.

b) Ethnicity, Nationality Rights and Citizenship

During the CA debate it soon became obvious that the most fundamental question on citizenship was who should become or be deemed to be a citizen *by birth*. Related to this issue was the desirability or otherwise of registering as citizens refugees and alien immigrants who have lived in Uganda for a long time, irrespective of whether their stay was legal or illegal. These questions became so vexed because it was, and

⁵ RU,1993:101-102.

⁶ Infra, section III. 2.

⁷ RU, 1993, *ibid*: 102; see also G.W. Kanyehamba, 1975:167-171.

is, a popular conception that citizenship properly belongs, as indicated above, to people born in Uganda *and* whose ancestry can be properly traced in Uganda.

As a result, it became important for different CA Delegates (CADs) of different nationalities (or ethnic groups) to try and have their nationalities recorded in the Third Schedule to the Constitution as "indigenous communities existing and residing within the borders of Uganda" at the relevant cut-off date.⁸

Related to the citizenship *by birth* concept was the idea not simply of rights of individuals as citizens by birth but collective rights of communities regarding themselves as distinct ethnic groups or nationalities. In particular, the demand by Buganda for a federal status was based on the conception of what are legitimate collective rights of citizens when those citizens are aggregated as a collective, a community, a distinct nationality.

In order to understand the struggles in the constitution-making process (and CA in particular) which raged around the question of citizenship *by birth*, as well as which foreigners should be accorded Ugandan citizenship, it is imperative to reconsider the question of ethnicity and tribalism (as identities) as well as the question of self-determination for ethnicities and nationalities or, broadly put, the well-known concept of "peoples' right to self-determination".

(i) Ethnic and Nationality Identities

There are two broad attitudes to questions of ethnic or tribal identity and consciousness. One approach is that it is negative and should be discouraged or fought; the other is that it is positive and should be encouraged or at least managed in such a way that its positive attributes are used for the good of society and even for the advancement of competition and democracy.

A starting point could be to underscore the historical difference in the development of the older European nations and nation-states compared to the African states trying to create nations in the post-colonial project known as "nation-building." In Europe, the state ;'was a response to'the development of ethnic and national consciousness ... and the relative stability of the state and politics (there) can be largely attributed to two factors, one of which is comparative ethnic homogeneity of the nation-states and the second of which is the configuration of class power within
9 the state.

But if national consciousness led to the formation of European nation-states, in Africa the state was a colonial imposition from above and was artificially laid over

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Article 10 (a).

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1. Ssenkumba, 1996:4.

disparate groups of peoples, ethnicities and nationalities. The removal of this artificial colonial state at independence revealed the fragility of this institution. The colonial and post-colonial state had clearly preceded the building of a national consciousness and identity, and this is why the project of "nation-building" became necessary. But more ominously the post-colonial state did not arise from, nor was it necessarily representative, of the economically dominant classes or groups in society. Instead, it became an instrument of capital accumulation through all its institutions, but especially the parastatals and civil service bureaucracy, thus leading

to the emergence of a bureaucratic bourgeoisie.¹⁰

But in the process of competition for the control of the post-colonial state in the absence of strong class basis for political organisation ethnicity, religion and regionalism become the obvious mobilising avenues.

However, those leaders and political organisations which gained access to power in the post-colonial state often after relying on ethnic, religious or other group identity as a basis for mobilisation have consistently argued against the rights of nationalities to self-determination or to a distinct identity. The aim was "nation-building" from disparate peoples or nationalities put together by the colonial state. In their conception of the nation, meaning "national consciousness", "national unity" and "national integration" an ontological primacy is given to state restructures.

They tend to justify and emphasize elitist or bureaucratic centralisation of power rather than the creative initiative of the masses of the African people. The commonality which is viewed as the foundation for 'national consciousness' is reduced to its phenomenal expression: cultural unity, one classless community 'one people, one party, one leader, father figure, father of the nation', etc.

In this light, in the name of national unity as incarnated by the post-colonial state, decentralisation, many parties and

diversity (culture, language, socio-political organisation, even regions) are seen as a disunifying mortal sin that has to be dealt with at any cost.¹¹

Some of the African leaders went as far as equating national identity with citizenship because, for instance, under Mobutu Sse Sseko in Zaire "every native of Zaire is automatically a member of the state party".¹²

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See I.G. Shivji, 1976; H. Campbell, 1979; J.J. Barya, 1990: Cap.III & IV and M. Mamdani, 1976. ¹¹ E.Wamba-dia-Wamba in I.G. Shivji (Ed):62-63. ¹²

Wamba-dia- Wamba: "Ideology and Class Struggles in Congo-Zaire- The Cost of Authenticity", Mimeo, 1988.

This view has an uncanny similarity with the view of the National Resistance Movement (NRM) (1986-1995) and of the Movement regime (1996-todate) where every Ugandan citizen is automatically a member of the Movement.

The rejection of ethnic and nationality identities and consciousness by the nationalists and post-colonial leaders in Mrica has recently evoked an extreme form of support for ethnicity or tribalism especially from the West. According to Tom Stacey, for instance, the restoration of the Kabaka of Buganda represented "the realities of black Mrican allegiance" and he predicted "the re-emergence of the *tribe* as the only political entity that in the long run is going to work effectively in post-colonial Africa". 13

This view is now propounded in academic circles by so-called social constructionists. It derives from the disintegration of society in the West. It emphasises the fluidity of ethnicity and

with society at the national level seen as abstract and unrealistic the region, province and/or district are viewed as real and pragmatic alternatives. 14

The West, including both conservative and radical forces, is today generally antagonistic to the nation-state and the national in favour of the parochial. This view is popular because "it is more a result of the collapse of institutions, parties and trade unions that people traditionally looked to for both protection and advancement in Europe and the nationalist project in Mrica", is Thus in the West today "the idea that you survive by making swops between identities rather than by joining a movement has acquired the status of orthodoxy" and in the Third World some scholars placed

ethnicity's superiority over nationalism in its ability to provide alternative identities into which Africa could manoeuvre. For (social) constructionists ... ethnic multiplicity - or fragmentation - does not pose a problem but is rather a cause for celebration. 16

These theoreticians even argue that there is no need to define ethnicity as this would be a totalitarian venture, an essentialism that would provide the intellectual rationale for ethnic cleansing. They further argue that tribal rivalry can never be the result of ethnicity but represents its negation; and that ethnic clashes are always the 13

The Independent, London, 3 August 1993 in Aidan Campbell, "Ethical Ethnicity _ A Critique," *JMAS*, 35, 1(1997):62.

14

ibid:

67. 15

ibid:70.

16

Ibid:70.

result of outside, usually political, interests converting porous ethnic boundaries into over-determined enclaves or ghettos to suit their own agenda. They thus argue for the need to separate ethnicity and politics. For instance, Gerhard Mare argues that

democracy necessitates that the boundaries of ethnic groups should be porous, allowing escape and entry. The tighter the definition of membership the more totalitarian an ethnic group comes to be.¹⁷

To them, indigenism is unproblematic so long as it remains above political manipulation. To this end, moral as against political ethnicity has been proffered, for instance, by John Lonsdale, who argues that while political tribalism is motivated by mere selfish intrigue, moral ethnicity is possessed of "civic virtue". Political tribalism arises from political intrigue and external competitions, while moral ethnicity "creates communities from within through domestic controversy over civic virtue".¹⁸

According to Lonsdale, moral ethnicity is useful because "it is the only language of accountability that most Africans have", and it is authentically African "because (being) native, it is a more trenchant critic of the abuse of rights than any Western political thought".¹⁹

Thus the above two positions on ethnicity have different implications for citizenship and citizenship rights. The former conceives the citizenship simply as a national concept, whereas the latter views it either as irrelevant nationally or only relevant in so far as it recognises and separates ethnic groups from one another as the primary basis for identity. Both conceptions, as we shall show, are greatly flawed and could be dangerous for the whole of society.

(ii) The Right of Nationalities to Self-determination

The other positive attitude to ethnicity but whose logic distinctly differs from that of the Western social constructionists is that ethnic consciousness should be positively recognised, and legitimate interests of ethnic groups and nationalities should be a basis for legal and constitutional frameworks that acknowledge the rights of such peoples to self-determination.

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G. Mare, *Ethnicity and Politics in S. Africa*, London, New Jersey, 1993:4. 18

In 1. Lonsdale, "The Moral Economy of Mau-Mau: Wealth, Poverty and Civic Virtue in Kikuyu Political Thought" in B. Berman & J-Lonsdale, *Unhappy Valley: Conflict in Kenya and Africa*, Book 1, State and Class; Book 2, *Violence and Ethnicity*, London, 1992:466.

¹⁹

Ibid., p.466-7.

It should be observed that because the concept of citizenship *by birth* in the 1995 Constitution was predicated upon membership of an indigenous community "existing and residing within the borders of Uganda as at the first day of February 1926 and set out in the Third Schedule to the Constitution", recognition and scheduling of every ethnic group became the form in which the existence and rights of individuals in such a group were taken to be acknowledged. And it is only citizens *by birth* that can enjoy certain rights under the Constitution. Therefore, the question of what constitutes an ethnic group or nationality became critical.

The term "people" is defined b6' neither the UN Covenants nor the African Charter of Human and Peoples' Rights?

There are two competing views on the definition of the concept of a *people*. One group argues that a people must have two separate elements: an objective one of being "an ethnic group linked by common history and a subjective element of the group having a present~r state of mind identifying itself as a people". The community or group should have a distinct character.

The concept of 11 distinct character depends on a number of criteria which may appear in combination. Race (or nationality) is one of the more important of the relevant criteria, but the concept of race can only be expressed scientifically in terms of more specific features, in which matters of culture, language, religion and gl:Qup psychology predominate. 21

This means that the term people refers to and emphasizes attributes of commonality of interest, group identity, distinctiveness and territorial link. These peoples could be several in the same state as is apparent in most of Sub-Saharan Africa.

On the other hand while recognizing the above attributes, the other view is that a people should not be confused with ethnic, religious or linguistic minorities whose rights are separately recognised under the UN's International Covenant on Civil and Political Rights.²² This view appears to be restricted to the conception of self-determination of a people as achieved only through establishing a separate state. In fact, as A.A An-Nairn argues, "an ethnic" religious or linguistic minority are a 'people' entitled to its right to self-determination, whether within an established state or through secession under certain circumstances".²³

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Adopted by OAU on 27 June 1981 and came into force October 1986. See Abdullahi Ahmed An-Na'im, "The National Question, Secession and Constitutionalism: The Mediation of Competing Claims to Self-Determination" in Shivji(Ed.), 1991: 101-119.

21

Ian Brownlie, "The Rights of Peoples in Modern International Law". 9 *Bulletin of Australian Society of Legal Philosophy* (1985), 104 at 107-108, quoted in *ibid*: 107.

22

Article 27.

The latter and more liberal view accords with our conception of the definition of a nationality or *a people*. This definition is even more important for Uganda because in contemporary terms the clamour for district status by different communities before and more so during and after the making of the 1995 Constitution seemed to rotate around distinct ethnic groups or nationalities. It is in this sense, indeed, that such could be seen/interpreted as demands for self-determination for these groups as distinct communities, nationalities or peoples. The opposition to demands for district status by smaller ethnic groups within larger ones has also been based, partly, on the attempt by the bigger nationalities or districts from which the smaller nationalities or communities wished to "secede" to argue that the demands of the latter were illegitimate and aimed at undermining the bigger unit.²⁴

In this paper, therefore, though a distinction is clearly made between the rights of a citizen as an individual and those of citizens as a collective, especially ethnic groups or nationalities, it is our contention that the rights accorded to the individual directly affected the collective rights of a nationality because among other things, the rights of the citizens *by birth* were dependant in the first place upon those persons being located in and identified with a so-called indigenous community existing in Uganda on 1 February 1926. All types of citizens can enjoy all other rights of citizens including the right to own land in freehold (Art. 23 7). This is because non-citizens can only own land by lease which means for a limited term of years and not in perpetuity as only citizens are entitled to own land in freehold.

Therefore, it would appear that while for individuals the difference between the rights of a citizen by birth and that one by registration or naturalisation may not be much (since very few did enjoy the rights by birth any way in practice), for the ethnic group or nationality taken collectively the matter is significant for a number of reasons. First of all, the Constitution recognizes only a finite (specific) number of nationalities in Uganda which are enumerated in Schedule Three. Secondly, certain rights can only be enjoyed collectively and the collective of citizens by birth is one sure way of enjoying such rights (e.g. of communal land, intra-district cooperation, etc.). Thirdly, it becomes clear why there was a fierce debate about granting citizenship, to refugees and aliens who had lived in Uganda "long enough". To the opponents of such automatic grants of citizenship this was a way of undermining the rights of the indigenous peoples in favour of or equating them with those of foreigners. The argument, as will be shown (*infra*) at that moment was specifically aimed against Banyarwanda Tutsi refugees most of whom or whose parents had come

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ibid: 108. 24

For instance, the struggle by Kitagwenda to "secede" from Kabalore and of Sembabule and Buruli to "secede" from Buganda.

to Uganda between 1959-1962, and many of whom had gained high positions in the government, the army and the economy.

Section II: From British Protected Persons to Ugandan Citizens 1949-1967

In Uganda, like any other former colony, citizenship became an issue in a legal sense only at the time of independence in 1962. Citizenship is a creature of constitutions and constitutions belong only to independent peoples not the colonised or so-called "protected persons". Colonised peoples are peoples without rights. No one could talk of citizenship and rights attendant thereto during colonial rule. Under colonialism one talked of subjects, dependants, native Africans or protected persons. These were contrasts to the imperial rulers, Europeans, Asians and protectorate officers representing the British Imperial Crown.

However, following the end of World War II the British colonial states enacted the so-called British Nationality Ordinances such as the Ugandan one, the British Nationality Act 1948 (Application) Ordinance 21/1949, which applied the British Nationality Act 1948²⁵ to the Uganda Protectorate.

The British Government on 28 January 1949 had enacted the British Protectorate, Protected States and Protected Persons Order-in-Council 1949, and by this law the Uganda Protectorate was one of the territories to which the British Nationality Act 1948 was made applicable. Regulations made under the United Kingdom Act were also applicable to the territories like Uganda to which the Act had been made applicable.²⁶ What is interesting was that the Act would apply as a matter of course as it was an Order from the British metropolitan government. Secondly, there was absolutely no debate on the matter because the Protectorate Chief Secretary merely presented the bill, and on the same day, in a few minutes, the Attorney General seconded it and the "Ordinance to apply to the Protectorate certain provisions of the British Nationality Act 1948, and to give powers to the Governor to make Regulations for the better application of such Act to the Protectorate" was read a second time and "passed through the Committee Stage without amendment and was read a third time ... and passed." ²⁷ The purpose of this Act was to apply the British Nationality Act 1948 to Uganda. The Act was meant to secure for protectorates and colonies the right to British nationality.

²⁵

11&12 Geo. 6.C.56.

²⁶

UP, 1949, Proceedings of the Legislative Council, Official Report, 26 July 1949:43. See also The British Nationality Act (Application) Ordinance No. 21 1949.

²⁷

ibid:44.

And just before independence, unlike the situation three decades later when the 1995 Constitution was being debated, the 1962 and 1967 Constitutions as well as the Citizenship Ordinance 1962 passed just before independence, on 18 September 1962,²⁸ the central question on citizenship was the status of Indians (a popular reference to Indian and Pakistan peoples) then living in Uganda. This was particularly so because indigenous Ugandan Mricans acquired citizenship automatically by constitutional provision. The issue of citizenship for Indians was raised by Hon. Mehta and Hon D.A. Patel in the Legislative Council. They both wanted an easier application and registration method but a more stringent process before one could lose citizenship acquired by registration including an appeal to an Appeals Tribunal against a Minister's decision to cancel citizenship.²⁹ On the qualifications for registration which included: residence of five years, knowledge of English or a prescribed vernacular language, suitability and good character, Mehta argued regarding a prescribed vernacular language:

... these languages are not prescribed ... and if it is the intention on the Minister to introduce a schedule at a later stage, may I venture to suggest that Gujarati and Urdu be included in the prescribed languages of the schedule because there are many people of Asian origin who are seeking citizenship in this country and even though they cannot speak English and any other language they may be just as suitable to become citizens of Uganda. 30

D.A Patel supported Mehta and added:

I hope the Minister ... will agree with me that the language bar should not be so stringent that a person, even though he lives in this country should not be entitled to acquire Ugandan Citizenship. If a person works here, lives here and loves this country and the people, he must be given an opportunity to acquire Ugandan Citizenship.³¹

The position of the Mricans, including the UPC-KY Government, was diametrically opposed to the above views. The biggest fear was that - as people had expressed to the Wild Committee in 1959 and the Report of the Uganda Relationships Commission 1961 found - many people were not in favour of Europeans and Asians voting, and saw such right to vote as a gateway to owning land. In this context Hon. Munaba argued:

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UP, 1962, National Assembly Proceedings, 18 September 1962:273. ²⁹

UP, *ibid*: 256 & 260, by Mehta & Patel. ³⁰

UP, 1962, *ibid*: 257.

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UP, *ibid*: 261

I am for the people and at the same time I am also not against non-Africans, but I am asking for their cooperation because there are a good number of them up to the present time who want the right of becoming citizens of Uganda but they do not want to associate themselves with Africans in the correct spirit of the word "association". If they can change from the attitude in which they have been involved in the past, they are very welcome to be citizens of Uganda. 32

The Attorney General, an African, Hon. G.L. Binaisa (later to become President under UNLF 1979-1980) argued that the Citizenship Bill would have to conform to what had been agreed by all parties at the London Conference and that

the Government in London made a solemn undertaking to her Majesty's Government that when the stage is reached of drafting legislation for Citizenship this draft legislation must be examined by the Home Office in the United Kingdom for their comments. We undertook to do this and we have done it....³³

Binaisa said that regarding languages, they would have to prescribe several languages unlike Tanganyika, whose citizenship law was being followed in Uganda, which had prescribed Swahili. He argued,

the question here is a question of belonging. A person or a would-be citizen must show ... that he belongs to this community. You cannot show that you belong to this country unless you know or you possess some knowledge of one of the indigenous languages. The question of Gujarati certainly cannot arise neither can Urdu if you are in that unfortunate category of not even possessing a working knowledge of English and yet you only speak Gujarati or Urdu you surely must identify yourself with the people among whom you live by showing that you belong to them. For instance, if you are in Mbarara, a little knowledge of Runyankole cannot do any harm at all, or a little knowledge of Luganda if you are resident in Buganda 34

Thus while the question of registration for non-Africans, particularly Asians as citizens was most prominent in the pre-independence citizenship debate, a few issues which were to reappear in 1995 were raised. One of the African officials, S.K. Nkutu, Parliamentary Secretary to the Ministry of Economic Affairs argued for citizenship for investors! He observed:

I think that as much as we should like to express our nationalism here, when speaking on this subject we have also got to bear in mind that we do need investment, that we do need a very sound economy, and that at the present time our economy is in the hands of those people who may necessarily like to apply, not automatically, but apply for

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UP, *ibid*:259. 33UP, *ibid*:265. 34UP, *ibid*:264.

citizenship, and I think the attitude that we shall show in this House will go very far to give them an indication of where we intend to place them in the Uganda Community when we achieve independence .. ! Very warmly support this Bill and hope it will stimulate further investment in Uganda³⁵

Outside the conditions for registration for citizenship where the whole debate really hinged, the question of dual nationality or citizenship was also raised. On dual citizenship, G.L. Binaisa, Attorney-General, was emphatic:

Once we agree to that sort of thing it will mean that people have divided loyalties ... We refuse; we can't accept this ... we want people who want to be citizens of Uganda, to be good citizens of Uganda, to renounce all their other citizenship, if they want to enjoy the privileges of Uganda citizens. Therefore this question of dual nationality certainly does not arise, and the minute I am holding here says that all the members of the Opposition who were present in the Committee agreed that they would not accept that dual citizenship should apply to Uganda.³⁶

The short-lived 1966 Constitution did not change anything as regards citizenship as it had been provided for in the 1962 Constitution. But the 1967 Constitution did make some significant changes. The main issues surrounding citizenship were the Asian question, still, and the citizenship rights of royalty and former monarchies.

On the former, A.M. Obote, the Prime Minister, argued that even for the pending 14,000 applications (which had taken three years before being processed) mainly for Indians there would be no special consideration for them: He, in fact, opposed the separate Indian identity that Indians tried to maintain. He argued,

if a person takes up Uganda citizenship but still remains Cuban then there is no use in his taking Uganda citizenship. In short I am saying this, that all persons who used to claim India as their place of origin and have now been registered or somehow acquired Ugandan citizenship, those people are not Indians, those people are Ugandans This Indian Association is not something like ... Buganda Students' Association or Lango Students Association the word 'Indian' refers to one definite independent country and we cannot just go about playing with that word and then when you find members of the association who are Uganda citizens talking about other citizens, not Uganda citizens, talking about the interests of British nationals, interests of Indian nationals you must begin to question whether we have one loyalty here when we take Ugandan citizenship. We must question this. 37

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ibid:261. 36

ibid:266. 37

GU, 1967, Official Report of the Proceedings of the Constituent Assembly, 6 September 1967: 1524.

The above was, therefore, not simply an argument against dual citizenship; it was also an argument against cultural diversity and the right to separate cultural identity for the foreign (Indian) communities. It was, one could say, the harbinger of UPC-Obote 1's policy of restricting Indians to specific towns and, later on, Amin's expulsion on the ground, inter alia, that Indians had refused to integrate with Africans.³⁸

In fact, in this context even a minor issue became a point of contention. Hon. O.B. Oda with the support of the Indian MPs tried to insert an amendment to read:

Article 4(1). Every person who before the 4th day of October 1964 and within such period and in such manner as was prescribed by law, made application or had application made on his behalf to be registered as a citizen of Uganda shall be entitled to be registered.³⁹

The problem intended to be resolved was that the 1962 Constitution provided that certain categories of people (including most Indians) were entitled to be registered as citizens of Uganda if they made an application before 9 October 1964.⁴⁰ Although about 25,000 people had applied, only 11,000 had been granted citizenship. Hon. D.A. Patel on behalf of the remaining 14,000 stated

I submit that by not accepting this amendment we would be doing a very great injustice, not only to those people who are being refused citizenship but according to the standard of justice I warn the government that there is nothing worse than colour bar. 41

The government's reply made by A.M Obote himself was scathing. He rejected the British criteria for granting citizenship.

Those people who were entitled or had some connection with the British basically they were something to do with the Commonwealth or ... with the British people as such, citizens and nationals or British protected persons who were otherwise not Ugandans. Now this time we are cutting the whole lot - whether they were Australians New Zealanders, Canadians, Indians, Pakistanis, Ghanaians, Kenyans or Tanzanians - the whole lot, we are cutting them out. Where is this discrimination everyone in Uganda who wants to register as a Ugandan citizen should take up this matter on himself or

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See M. Mamdani, 1976: 278-281; 302-312. The Trade Licencing Act was used to restrict Asians from rural trading centres. Before their expulsion in 1972, Amin cancelled over 12,000 applications by Asians for citizenship - accusing them of economic malpractices, sabotaging government policies and failing to integrate with Africans.

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GU, 1967, *ibid*: 1539. 40

See article 8, 1962 Constitution.

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GU 1967, *ibid*: 1541.

herself and apply ... Mr. Chairman, I now understand why the Hon. Dahyabhai Patel is a member of the Indian Association.(Laughter!)⁴²

Consequently, the amendment sought was defeated.

The second issue raised by A.M. Obote concerned privileges for some citizens.

Provisions were made to the effect that

no citizen of Uganda shall enjoy any special privilege, status or title by virtue of his birth, descent or heredity. ⁴³

and also that

no law whatsoever shall confer any special privilege, status or title upon any citizen of Uganda on the grounds of his birth, descent or heredity.⁴⁴

Indeed, Obote made a specific reference to the position of kings in denying them special privileges and heralding their impending abolition:

iLWe think that we can serve Uganda only unless four persons are provided for specifically in the document, namely that the Kabaka must appear there by (sic) the number one citizen followed by two Bakama and the Omugabe and call that entrenched provision on human rights, then I think we have no vision about Uganda and that we must all be slaves to four human beings and not representatives of the 'people'.

Mr. Speaker, I choose to go with the masses and I choose not to go with the Kings and I am sure I will face my opponents in the field on this.⁴⁵

It is very interesting to note that both the mood of 1967 regarding citizenship and that of 1994-1995 were influenced by the specific political context. In 1967, there were growing anti-Asian feelings, feelings that Asians were both exploitative of Mricans and had refused to identify themselves with the Mrican people. Laws restricting Asian business and activity were made. Idi Amin in expelling the Indians in 1972 rode on these populist feelings of indigenous Mrican Ugandans. In 1967, there were no arguments about which Mrican Ugandans could or could not become citizens.

In 1994-1995, however, the question of Asians (some of whom had already returned to Uganda) or non-Mrican foreigners did not feature much. The issues raised focused on Ugandans intense and other African immigrants and refugees and the status that should be accorded to them. In particular, the focus was on the status of Rwandese refugees. This was because government was seen to favour the granting of citizenship to these refugees who had helped the NRAINRM capture state ⁴²

ibid:1543. ⁴³

See article 8(3), 1967 Constitution. ⁴⁴

Article 8(4),1967 Constitution; See GU, 1967: supra: 1525. ⁴⁵

ibid,1537.

power in 1986, in spite of the fact that many of them had returned to Rwanda after the RPF⁴⁶ victory in 1994. The opponents of government strongly opposed the granting, of citizenship to these people. This was particularly the position of the UPC.⁴⁷ From the foregoing it is clearly arguable that citizenship is ultimately a political question and is defined at any particular moment in favour of the social groups in control of the state and state power. The 1995 debate on citizenship was to be one of the most charged, emotional and partisan.

Section 111.1 Who is a Citizen of Uganda?

Under the 1995 Constitution, Ugandan citizenship was recognised or could be attained in the following ways:

- (a) every person who on the commencement of the 1995 Constitution was a citizen of Uganda continued to be a citizen. This was a reference to citizenship acquired under the 1962, 1966 and 1967 Constitutions. In other words this was a retention of citizenship already acquired under the old Constitutions.⁴⁸
- (b) any person born in Uganda one of whose parents or grandparents was or is a member of any of the indigenous communities existing and residing within the borders of Uganda as on 1st February 1926 became a citizen *by birth*. The indigenous communities are listed in the Third Schedule to the Constitution and are 56 in number.
- (c) Several people are entitled to become citizens *by registration* after application to the National Citizenship and Immigration Board.⁴⁹ These are composed of:
 - (i) persons who continuously lived in Uganda since 9 October 1962 (the day of Uganda's independence) and neither of whose parents or grandparents had *diplomatic status* in Uganda and those neither of whose parents or grandparents was a refugee in Uganda.⁵⁰

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Rwandese Patriotic Front. ⁴⁷

See UPC 1994 CA Manifesto. ⁴⁸

Article 9, 1995 Constitution. ⁴⁹

Articles 12 and 16(3). ⁵⁰

Article 12(1).

- (ii) persons married to a Ugandan Citizen for 3 years or other period prescribed by Parliament. 1
- (iii) persons who have legally and voluntarily migrated to and have been living in Uganda for at least 10 years (or other period prescribed by Parliament.
- (iv) person who on the commencement of the 1995 Constitution had lived in Uganda for at least 20 years (Article 12(2)(c).

The 1995 Constitution commenced on 8 October 1995.⁵³

- d) by naturalisation as provided for by parliament 54 Naturalisation means acquisition of citizenship by application.
- e) by adoption for children under the age of 18 or for children of not more than 5 years whose parents are not known, if found in Uganda being presumed to be citizens 55

There was no controversy over the question of recognising citizens who at the commencement of the 1995 Constitution were already citizens under the old Constitutions and Citizenship Acts. Indeed, there was no debate on this question and apart from people who could have, before the commencement of the 1995 Constitution, obtained citizenship by fraud, deceit or bribery⁵⁶ or other reasons for which citizenship could be nullified, the provision that "every person who, on the commencement of this constitution is a citizen of Uganda shall continue to be such citizen" was passed without much ado. ⁵⁷

We suggest that this provision was not controversial because the provisions relating to citizenship under the 1962, 1966 and 1967 Constitutions as well as the

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Articles 12(2)(a). ⁵²

Article 12(2) (h). ⁵³

See S.I 354/1995. Constituent Assembly (Appointment of Date of Promulgation of New Constitution of the Republic of Uganda) Instrument, 1995.

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Article 13. ⁵⁵

Article II. ⁵⁶

Article 14(c). ⁵⁷

RU, 1995, *Proceedings of the Constituent Assembly*, Official Report, UPPC, 1995: 2911.

Citizenship Act had themselves never been controversial in the past. At the time of passing those Constitutions and the Act the question as who should be a citizen was quite straightforward.⁵⁸ It is the new categories of foreigners sought to be added to the citizenship list during the CA debate that aroused emotions and created great controversy. It is to these controversial categories that we now turn.

111.2 Citizenship by Birth and Belonging to an Indigenous Community of Uganda on 1 February 1926

Citizenship by birth in the 1995 Constitution is restricted to two categories of people:

- a) persons born in or outside Uganda one of whose parents or grandparents was at the time of birth a citizen of Uganda by birth;⁵⁹ or
- b) persons born in Uganda one of whose parents or grandparents is or was a member of any of the indigenous communities *existing* and *residing* within the borders of Uganda on 1st February 1926 *and* such Community is listed in the Third Schedule to the 1995 Constitution.

This provision was important for two main reasons. First, it is only citizens by birth that are entitled to certain rights in the Constitution. These rights include: the right to become the President (i.e. the Head of State) and Vice-President of Uganda, symbolising Uganda's nationhood and identity.⁶⁰

Secondly, it was of great emotional and political significance in the light of our post-colonial history. Foreigners have played different roles in Uganda's history but mainly as (immigrant) workers and as political or military leaders at various levels. Most of the immigrant workers were from Rwanda, Sudan and Kenya. Most of the labour immigration took place during the colonial period and was encouraged by the colonial state.⁶¹

However, the most critical arguments against foreigners becoming citizens were premised on the participation of some Sudanese ethnic groups in the murderous and

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supra: section II. ⁵⁹
Article 10(a).

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Articles 102 (a) and 108(4). ⁶¹

See M.Mamdani, 1976; P.G. Powesland, 1956; 1.1. Barya, 1990: Cap. II. In 1965 under the Trade Unions Act (No. 111965) foreign workers were prohibited from being trade union leaders in Uganda (S.4(4)) and this was maintained under the 1970 Trade Unions Act 40/1970 (S.10(4)), and the 1976 Trade Unions Decree, s.9(4).

dictatorial regime of Idi Amin, their return under the shortlived Okello Lutwa regime and, above all, the role the Tutsi Banyarwanda refugees played in the NRA struggle against Obote and Okello Lutwa regimes in the period 1981-1986. At the time of NRA's capture of state power in January 1986, the Banyarwanda in NRA were quite significant.

The arguments as to who should be a citizen by birth centred around two issues: the relevant cut-off date and what communities deserved recognition as distinct nationalities or ethnic groups and were, therefore, to be included in the Third Schedule.

111.2 (a) The Cut-off Date

There were two main arguments about the cut-off date in the CA for determining citizenship by birth, namely, 9 October 1962 as provided in the 1962 and 1967 Constitutions or 1 February 1926. What appeared like the official government line was that the year 1926 was appropriate because

that is when the border of Uganda became formally settled. Before this period Uganda used to extend ... a long distance into Kenya, some distance into Zaire. Uganda before used to the part of the Anglo-Egyptian Sudan and extended into what is Southern Sudan today; the border with Rwanda used to move up and down, but in 1926, on February I, the borders were fixed as they are today, except for a small administrative part of Kenya that used to be administered off Sebei, just to the East Moroto.⁶²

It is difficult to understand why the official Movement position, as represented by the Chairman of the Select Committee was as stated above. The year 1926 did not, in reality, mean anything. People who were already citizens by the time of the CA debate were protected and had been covered, by the 1962 provisions on citizenship. Secondly, if the intention was to include as many people as possible in the citizenship-by-birth bracket the formula of returning to 1926 actually reduced the numbers. Relying on a later date when population had increased would have given more people an opportunity of becoming citizens by birth.

The other question which CA delegates raised was the wisdom of trying to tie the legitimacy of ethnic groups to their existence in Uganda at 1926. The problem of border peoples or so-called "international tribes" was raised as one that would create ambiguity of citizenship where families in the same ethnic groups or community criss-crossed at the borders.⁶³

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Katenta Apuuli, Chairman Select Committee IV, RU, 1995, Proceedings of the CA, 1995: 2913. 63
SeeRU, 1995, Proceedings of the CA 1995: 2915 - 2920.

Indeed, whether by design or default, relegating the cut-off date to 1926 appeared to please those who were opposed to refugees being granted citizenship of this nature or at all. A.A. Nekyon argued that Ugandan communities agreed in 1962 to constitute the state of Uganda. The matter was not one for individuals.

No! we must know who are the people who agreed to become Ugandans. And here they are saying the final border of Uganda was determined in 1926 so that all the communities that were caught in that net by 1926, then should be recognised as the communities that produced the citizenship by birth. Anybody walking in a community from outside would not now be recognised as a citizen. We cannot leave our door completely open to anybody to walk in. To other refugees who were traders, who refused to go back or as visitors ... the community factor must remain there. In fact... in our passport - they were asking for the clan ... to know that you actually belong to a community in Uganda because you can be an Acholi of Sudan, you can be a Lugbara of Zaire. To prove that you are actually within Uganda we want to know the name of your clan. 64

But Malinga put the matter more bluntly, though opposed to the Nekyon position, and instead arguing for the 1962 cut-off date:

The people who are arguing for 1926 should put their cards on the table and tell us that there are people who are going to be disadvantaged. In fact we discussed this matter so much in Usuk and "" that matter is losing interest in Usuk because people of Usuk are

confident that the Rwandese are on their way back to their country. So we can do without (a) (on the 1926 date) or ... substitute it with 9th October 1962 If we go by 1926, this is a *kavuyo* proper. There are no records existing if we try to go back to such a far date as 1926, we are inviting trouble for people to take advantage of the confusion. So, to avoid that we should go by 1962 where we can get more readily available records. If not, we can remember from living memory the records or other identities of the people who we were are dealing with. So, I would strongly urge the members that we should go by 9th October 1962. That is where we date.

He further argued that the Berlin Conference determined where Uganda would fall but

we are not trying to go back to 1884 nor... 1897 when Portal declared Uganda a British possession. If we should decide why ... 1962? It is because that is the day we became a nation and we should be proud of that fact and we should date everything from that day.⁶⁵

The question of tracing citizenship from the day of Uganda's independence dogged the proceedings. Those arguing for the 9 October 1962 cut-off date were strengthened by the arguments about the porous and indeterminate physical nature

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A. Nekyon, Maruzi County, *ibid*: 2923. 65

1. Malinga, Usuk County, *ibid*: 2925.

of the border, and due to some changes that continued to take place. For instance, one delegate argued that an area in West Nile was transferred to Sudan on 17 September 1926. Since this was after 1 February 1926 would those people and their descendants also be citizens of Uganda by birth?⁶⁶

Behind this question of the cut off date was the fear by some people especially those opposed to NRM that NRM was trying to grant citizenship of this nature to Rwandese refugees, although citizenship to refugees was actually granted under another provision in the constitution.⁶⁷ Hon. Wanendeya for instance, though confusing the argument complained:

I want the Chairman of the Select Committee to clarify to us as to how they went about to solve the problem of those people who filled in passport forms at Katonga ⁶⁸ then got them to Kampala, then they got passports to be Ugandan Citizens.⁶⁹ This point is one of those which bothers some of the people even if they do not want to talk their minds. Because you find that at some stage, some of the people have gone back to their countries of origin and yet they still have Ugandan passports ... those people ... literally have got dual citizenship. ⁷⁰

In spite of the arguments in favour of retaining 1962 as the cut-off date for citizenship by birth, the 1926 date was passed even without any division in the lobby. Essentially, the government hoped to include as many people as possible but, ironically, their 1926 cut-off date tended to reduce people in the citizenship by birth category. On the other hand, those opposed to the government, especially supporters of UPC preferred the 1962 cut-off date because they thought this would exclude the Rwandese refugees from this category of citizenship. Besides, by using the 1962 cut-off date which was similar to the 1967 Constitutional provision, the position earlier taken by UPC in enacting the 1967 constitution would have triumphed. And therefore in general this would have tended to show that there was no need for a new constitution if the 1967 'UPC' Constitution could only be amended but a number of its provisions, like this one on citizenship, retained.

⁶⁶ Ibid: 2926. See also Omara-Atubo, p. 2927.

⁶⁷ See Article 12(2)(c). ⁶⁸

A reference to the Rwandese combatants in NRA as NRA had its major battle on the way to Kampala at River Katonga in 1985-1986.

⁶⁹ This is legally not true as citizenship is not conferred by mere possession of a passport. ⁷⁰
Hon. Wanendeya, *ibid*: 2926.

111.2 (b) The Indigenous Communities Existing and Residing in Uganda on 1 February 1926

Once the issue of citizenship by birth had been raised it became necessary to determine how any Ugandan would acquire it. It is worth observing that the Constitutional Commission did not make any distinction between citizens by birth and citizens by registration. It simply made recommendations on two broad categories of citizenship. It recommended the types of people that should automatically be *recognised* as citizens. This included people "born in Uganda whose parents or grandparents are or were members of any their indigenous communities living within the borders of Uganda as of 1 February 1926 and the offspring of such person".⁷¹ It then also recommended that parliament should make provision for the acquisition of citizenship by persons otherwise not eligible.⁷² Further, the Commission recommended, inter alia, that "a presidential candidate should be a citizen of Uganda by birth and should have been resident in the country for a period of at least twelve(12) months prior to the election".⁷³ It appears that *legally* this seemed to be the only reason the category of citizenship by birth was introduced. During the CA deliberations, there was apparently no scientific method used to determine which nationalities or ethnic groups today exist in Uganda or existed in 1926, the cut-off date. When the issue came up for debate in the plenary, Obua Otoa asked:

What is the procedure one uses to get oneself included on this schedule? Because it is not very clear, it seems to me that certain members just ~o to conunittee 4 and say "I want this ethnic group included in (the) schedule " 4

To this question there was no clear answer. Indeed, while the Constitutional Commission had identified only 75 48 indigenous communities, the Select Committee dealing with the matter raised the number to 56 having included: Bafumbira, Basongora, Banyabindi, Baruli, Bagungu, Batagwenda, Bagwisi, Banyara and Bukusu among others.⁷⁶ The question of including Bahima as a separate ethnic group was raised but eventually befuddled and dropped.⁷⁷ The only justification for

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RU, 1993, The Report of the Uganda Constitutional: Commission. Analysis and Recommendations, UPPC, Entebbe: 103 - 104, 113-114.

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ibid: 114. ⁷³

ibid: 323. ⁷⁴

RU, 1995, *Proceedings of the Constituent Assembly*, 1995: 2929. ⁷⁵

RU, 1993 Draft Constitution 1993, Second Schedule, p. 142. ⁷⁶

RU, 1995, *Proceedings ...* 1995: 2928.

tion and did not see the use of including his own people the *Banyaruguru* as a distinct people from Banyankore stated:

since the *Banyaruguru* did not go to the committee to try and claim a different ethnic composition, they should not be added there .. I am saying that there are some who do qualify to be considered by this House and there are others who may be just appearing to bring in⁸¹

Bwambale was supported by Sakwa Nanywaka (Bungokho South) who argued that however long the list may be it should be made to ensure that no nationalities should be made stateless or thrown out of the category of citizenship by birth.⁸² Muruli-Mukasa strongly argued for the minorities. He was of the view that:

This issue of citizenship by birth is indeed very important. It is a correction of a historical omission which was made on that date - 1 February 1926. Mr. Chairman, I do not think the list here is just a concoction. The communities referred to on this additional list are there, the people are there they have languages they speak and even some of these communities ... have representatives. So ... it would not be right to say that maybe people are trying to form up new groups ... or that people have not been mentioning what they are. Even that is a very important point why they have not been mentioning what they are. It would be very interesting to look into it.

These groups might be very small but I think that should not prejudice anybody, that should not stop them from being put on this list of indigenous communities of Uganda. 83

The matter of citizenship by birth thus ended up being a major emotional issue.

At stake were two opposed strategies. One, the minority nationalities sought to carve out a separate identity for their people from the bigger nationalities under which they had hitherto been subsumed. This strategy was, for instance, taken by the Baruli (as against Baganda), the Basongora (as against the Batooro), the Batagwenda (also as against Batoro) and the Bafumbira (as against the Banyarwanda, though Bafumbira in Uganda may be more than other Banyarwanda in Uganda), to mention only a few.

Among the minority nationalities, some did not attempt to carve out a separate identity such as the Banyaruguru vi-a-vis the Banyankore. The Bahima tried, through Col. Pecos Kutesa, to record a separate identity from Banyankore but failed. In either case the reason seems to have been that in not trying (for Banyaruguru) or

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Mrs. Loice Bwambale, *ibid*: 2934. 82

ibid. 83

Muruli-Mukasa, *ibid*: 2934.

in trying but being frustrated (for the Bahima) from acquiring a separate identity, the political forces at play preferred the bigger Banyankore identity to remain unsplit.

On the other hand, delegates representing bigger nationalities especially from Buganda tried to stop or discourage the "proliferation" of small "tribes" or nationalities. The same attitude could be detected from Bagisu delegates who did not support "splinter groups".⁸⁴

In this debate one of the most telling issues and the way it was treated was the Bafumbira and the Bahima "nationalities". The inclusion of one and exclusion of the other shows how politicised the question of citizenship, and citizenship by birth in particular, turned out to be. They deserve separate treatment.

111.2(c) Indigenous Communities in Uganda on 1 February 1926: The Cases of Bafumbira and Bahima

i) The Bafumbira Identity

The Bafumbira who live in present-day Kisoro district of Uganda have for quite some time sought to have a separate identity from that of the Banyarwanda. This issue became critical under the NRM regime and during the constitution-making process itself. One of the clear signs of this struggle was when Bafumbira fought tooth and nail to have on Radio Uganda different programmes from that of Runyarwanda. After a bitter struggle, they succeeded.

During the CA, some people raised the question whether there was a difference between Banyarwanda and Bafumbira. What was known but left unsaid was that among the Banyarwanda, whether of Rwanda or of Uganda, there are two ethnic groups or strata: the Bahutu and Batutsi. These groups are similarly differentiated as the Bairu and Bahima of Ankole. The overwhelming majority of the people in Kisoro District are Bahutu. Thus when one delegate asked:

I would like to get some clarification as to the difference between Banyarwanda and Bafumbira who are going to be included in this schedule. If somebody could give me that difference I would really vote with a clear conscience".⁸⁵

the reply by Dr. Philemon Mateke the supremo and guru of the Bafumbira who delivered the response was:

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See the contributions of Major Katerega, Chango Machyo, Kulany and Wanendeya, *ibid*, pp. 2932 - 2933.

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Bateganya, RU, 1995, *ibid*: 2935.

it would seem some of the members have not done enough research about the historical origins of the peoples of Uganda. As regards Bafumbira who live in Kisoro district, they have been there for very many centuries. Some centuries back, this area was conquered by the King of Rwanda. In 1911, the British made effective occupation of this area. From that date onwards ... the *Bafumbira* were under the British rule up to the time we got independence. And the people who live in this area have been evolving their own culture, their own values, their own traditions so much so that it is really an integrated community, an integrated ethnic group. So the people who try to mislead others that because at one time the Rwandese Kings ruled *Bufumbira*, therefore, we are Rwandese, is wrong. Bafumbira have always been there, will always remain there, and they are not Banyarwanda as some people are trying to claim. Those who are claiming to be Banyarwanda we do not object, let them be called *Banyarwanda* and they are already in the schedule, but all we are trying to say is that history was distorted, the *Bafumbira* were not put in the schedule. So we are trying to correct this error which was made. 86

The Bafumbira did not face much opposition and therefore recorded their identity in the Constitution. Because they had earlier on won the same battle for language separation it became difficult to oppose their inclusion in the schedule. What is clear however is that their language is not very different from that of Banyarwanda in Rwanda (Bahutu or Batutsi) or those in Uganda. But while the Bafumbira were able to claim a distinct identity for themselves, the Bahima failed. Why was this?

ii) The Bahima Identity

It was Col. Pecos Kutesa (Kabul a County) who requested Select Committee IV as others had done for their nationalities, to include Bahima as a separate nationality from the Banyankore.

The Chairman of the Committee Katenta-Apuuli, however, reported to the plenary that "the Committee did not pronounce itself on this item. It was duly tabled and seconded and debate ensued. We did not vote. The Committee is continuing its work". 87

When a few days later the Chairman of CA called upon CA delegates to vote and pass the schedule without the Bahima, some delegates objected. He then asserted:

we agreed that the question of Bahima would be left to be resolved through various circles until the matter comes back to us.⁸⁸

The most interesting point about the Bahima issue was that it was the only one subjected to a process of consultation "through various circles". The question is: what happened and what were these "various circles"?

On 13 February 1995, the CA plenary was about to finalise the whole debate on citizenship when the Chairman of Committee IV reminded the CA Chairman about "the matter of Bahima which was deferred and we had a debate in the committee and we somehow recommended that Bahima be included in the schedule".⁸⁹ The CA Chairman refused to re-open the matter and once again argued that the matter hadn't been agreed and that:

If it is ever agreed upon after consultation however long it may take, it can come up during our reconsideration stage.

But the person who had raised it at committee stage in the first place Col. Pecos Kutesa was infuriated. He declared:

I want to know what is behind all these delays. Because when it was raised in Committee 4, we sat down and the majority after our explanation found that it should be included among the other 50 tribes that they have been going on (sic). Now, what is it they are saying? What is so special about Bahima that is not there with other people?

Again CA Chairman James Waphakabulo refused to heed Kutesa's appeal and the Committee Chairman's report while insisting that he would not re-open the matter. In despair, Kutesa declared:

Mr. Chairman, then I would rather move it here now and it be defeated as the Committee ~Fd on it and it is resolved because I am in a dilemma. I do not know what to explain.

At this point, no delegate came to the defence of Col. Pecos Kutesa and without much ado the CA Chairman just closed the debate on citizenship by declaring, "Hon. Delegates, tomorrow we will be proceeding with another Chapter.,,⁹¹

The issue of the Bahima as a separate nationality was thereafter never raised again openly and formally during the CA proceedings. Thus the 1995 Constitution came to be passed without Bahima in the Third Schedule. Nonetheless, a minor debate ensued in the press over the matter. Three views came up.

The first one was that several groups and not only Bahima, had been left out of the schedule, and ought to be included. One writer revealed that he had raised the

⁸⁹ Katenta Apuuli, *ibid*: 3064. ⁹⁰
ibid.

⁹¹
ibid.

issue of the need to include Bakenye in the schedule with the CA Chairman, Mr. Bidandi Ssali and Col. Pecos Kutesa himself and argued that "Col. Pecos Kutesa whom I have told about the Bakenye and their disadvantaged position on recognition should have talked not only about the Bahima, but also for Bakenye."

The second view was that the Bahima should have been included in the schedule as "good riddance" from Banyankore. One M. Byaka argued that Bahima and Banyankore (or Bairu) should be separated because the former despised the latter. Comparing the Ankole ethnic differences to those of Rwanda and Burundi, he asserted that:

A few reactionary Bahima celebrated Ndayaye's death reasoning that it was wrong to give power to a "non-ruler". In Rwanda and Burundi, it's barbaric genocide when the Banyarwanda (call them Hutu) take the law in their hands to eliminate injustice which they have endured for more than three centuries, while its justified killing when the Tutsi eliminate the wrong species.⁹³

The above view was related to the Ankole monarchy controversy in which Bairu (or majority Banyankore) generally oppose the restoration. Byaka argued that:

The best way of saving the Banyankore from this Hima arrogance is to recognise them as a different ethnic group. Perhaps the Banyankore will then have no problem with the coronation of Barigye as a Bahima King.

But the other view which supported the distinct identity of Bahima did it for the opposite reasons. This group saw the scheduling of Bahima as genuine and legitimate. These included Elly Karuhanga, CA delegate for Nyabushozi, a county apparently dominated by Bahima. For instance, M. Baine contended, in reply to M. Byaka that, "gone are the days when certain ethnic groups were superior to others" and that:

Pecos' amendment...is meant to help the Bahima who geographically live outside Ankole and are therefore not Banyankole. Inclusion of Bahima in the Constitution will develop an identity, but this does not make them a superior tribe.⁹⁴

The third opinion was outright against the separate Bahima identity. This view opposed the "creation" of the Bahima nationality because it would destroy "the

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H.B. Magino, *New Vision*, 13 February 1995. ⁹³

M. Byaka, "Good Riddance, let Bahima be Bahima," *The Monitor*, 1 March 1995. ⁹⁴

M. Baine, "Kutesa's Bahima amendment good, but let it drop", *The Monitor*, 3 March 1995.

current unity existing among the Banyankole". Odrek Rwabwoogo, a Muhima journalist, was of the view that:

like language, it is improper to imagine that one can sit in the International Conference building and legislate a tribe into existence.⁹⁵

He further argued that because of living outside Ankole, some Bahima did not thereby require a separate tribe in order to maintain their identity. He even suggested that if a breakaway was inevitable it needed to be "a popular people's demand". To him,

a breakaway of the Bahima as Kutesa seems to suggest makes one wonder whether it will enhance the tribe's chances in a wider Uganda or make them one other tribe that does not believe in unity in diversity".⁹⁶

From the research carried out by the author it became clear that a number of NRM leaders from Ankole, and President Museveni in particular, were weary of the separation of Bahima from Banyankore. For this reason in one of the CA NRM caucus meetings attended by Museveni himself, Col. Pecos Kutesa was prevailed upon to withdraw his amendment to have Bahima in the Third Schedule. Reluctantly, he never raised the matter again. ⁹⁷

The inclusion of Bafumbira and exclusion of Bahima from the list of indigenous communities existing in Uganda as at 1 February 1926 has a number of implications.

First of all there was a deliberate effort on the part of the CA Chairman J. Waphakabulo to stifle the debate on Bahima. He insisted, in spite of a report from Committee IV, that the matter be resolved outside the CA itself. It seems he had instructions or influence from outside the CA, the so-called "various circles".

Secondly, the debate outside the CA itself showed that this issue went beyond the simple question of identity for a people. While one group saw it as a legitimate demand similar to those of other nationalities, the other group interpreted it as another way for "setting apart" the Bahima as a superior ethnic group vis-a-vis the other Banyankole, the so-called Bairu. In this regard the monarchy question was revived. While the anti-monarchy groups saw the separate Bahima identity as a way of delegitimising, marginalising or ghettoising the kingship as a minority and sectarian

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O. Rwabwoogo "Debate on National language nears referendum" *New Vision*, 5 February 1995.

⁹⁶

ibid ⁹⁷

Information obtained from 5 former CA delegates who attended NRM Ankole caucus meetings during the CA days.

concern of a few Bahima, those leading Bahima including the President saw the move as a dangerous one for Bahima in the long run as it would remove the general cover and identity of wider group of Banyankore. This was particularly important because when accusations are levelled against the NRM or movement government as a Western or Banyankore domain more detailed questions are not asked as to who among the Banyankore themselves is dominant. Bahima as a separate ethnic group would be more open to scrutiny as far as their role in the government, the economy and the army is concerned.

Thirdly, the other groups in the CA did not join issue on the matter because they saw no political gain from it either way. Those groups that would have expected to be concerned were: the so-called multipartyists, the Buganda group (or federalists) and most CA delegates from the North. Instead, the multipartyists and CA delegates from the North concentrated on opposing "foreigners" and refugee "Banyarwanda" from being granted citizenship.

Fourthly, at the centre of the citizenship by birth debate and the recognition of specific nationalities or communities by specifying them in the Third Schedule was the unspoken concept of who a true Ugandan is. Because any person in the world is, theoretically, eligible to apply and become a citizen of Uganda provided she/he fulfils certain formal requirements, such citizenship by registration or naturalisation, in popular understanding, does not make such person a true Ugandan. This is why when Amin expelled Asians in 1972 including many of those who were citizens most Ugandans did not appreciate the difference. To them, they were all Asians or foreigners and therefore not true Ugandans.

111.3 Citizenship for Foreigners and Refugees

Within the general question of acquisition of citizenship by registration was a particular question of people who had been living in Uganda for a long time without applying to be registered as Ugandan citizens. There were two categories of people, namely, those who had come as refugees and those who had not come as refugees but had (whether legally or illegally) "overstayed" in Uganda.

The relevant provisions in the 1995 Constitution provide respectively as follows:

"The following persons *shall*, upon application, be registered as citizens of Uganda:

- (a)
- (b) every person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years or such other period prescribed by Parliament;

(c) every person who, on the commencement of this Constitution, has lived in Uganda for at least twenty years." 98

(a) Foreigners: Voluntary and Legal Immigrants

The problem of refugees, legal and illegal immigrants who had lived in Uganda for a long time was treated as one and the same by the Constitutional Commission (RU, 1993: 121-127). However, during the CA debate the two were clearly separated.

In the CA there was not much objection to granting citizenship to people who had voluntarily and legally migrated to and lived in Uganda for at least twenty years (RU, 1995: 2965-2971). The arguments only revolved around the meaning of "voluntary" and "legal" immigration. One of the distinctions that delegates sought to make was that between legal aliens and refugees, and they proceeded to treat them differently. For instance, Ambrose Atwooki observed:

the word "voluntary" here is trying to avoid certain fugitives who might seek asylum here meanwhile they are leaving their countries after being unlawful. The best example is some of the Burundi soldiers (who had killed President M. Ndadaye - JB) being held in Lubiri Barracks ... These people came here involuntarily and they had become fugitive in their country.⁹⁹

Indeed because there was not much contention on this matter the residence requirement for this category of foreigners who must be registered on application was reduced to only ten years.¹⁰⁰

However, the question of granting citizenship to refugees was much more contentious in the whole constitution-making process.

(b) Citizenship for Refugees and Illegal Immigrants

Uganda has had a long history of receiving and maintaining refugees in the country. The majority of these have been Rwandese Tutsi refugees and refugees from Southern Sudan.

Indeed, Uganda's law on refugees, the Control of Alien Refugees Act defined a refugee as:¹⁰¹

98

Article 12(2), 1995 Constitution. 99

Ambrose Atwooki, RU, 95: 2969. 100

ibid, 2971 and Article 12(2)(b), 1995 Constitution. 101

Laws of Uganda 1964, Cap. 64.

- (a) any alien being an African of the Batutsi tribe ordinarily resident in Rwanda who entered Uganda between the 1st of November 1959 and the 10th of July 1960;
- (b) any alien who enters or has entered Uganda from Rwanda, Burundi or territories formerly comprising the Belgian Congo on or after 10th July 1960; and
- (c) any alien who enters or has entered Uganda from the Republic of the Sudan on or after the 20th day of December 1960.

Thus apart from the Tutsi Banyarwanda who fled to Uganda during the 1959-1960 uprising that removed the Tutsi monarchy and hegemony in Rwanda, all Banyarwanda, Burundi, Congolese or Sudanese who came to Uganda after the relevant dates could technically be referred to as refugees (RU, 1993: 122). The Constitutional Commission, therefore, recommended the amendment of the Control of Alien Refugees Act which provides that the period spent in Uganda as a refugee does not constitute residence in Uganda. It further recommended that "refugees who have live in Uganda for a minimum of 20 years and wish to become Ugandan citizens, should on application, be granted citizenship" and more importantly that "government should ensure that this exercise is undertaken efficiently and completed within one year after the commencement of the new Constitution." ¹⁰²

Those in favour of granting citizenship to longstanding refugees argued that these people were now part and parcel of Uganda. Jack Sabiiti was of the view that

these people should be given a chance if they want to be Uganda citizens to apply and be registered ... if one has lived in this country for 20 years as a refugee and he has been a law-abiding person, I see no reason why such a person cannot be considered ... Secondly ... if they are people who have lived here for 20 years, and they have been here illegally and not voluntarily ... surely it is not their fault; government should have detected where these people are ... These two categories of people having stayed here for 20 years will have fully integrated in the Uganda society, they will have married with other Uganda ethnic groups, they will have contributed a lot to the national development and certainly the state will have injected a lot of money and other facilities in these people.

But the arguments that looked reasonable were opposed on the basis of actual historical experience. William Wanendeya, for instance, referring to the Rwandese desertion of NRA and attacking Rwanda from Uganda in October 1990 asked:

¹⁰²
ibid: 127.

I would like the Chairman of the Committee to clarify to me in connection with persons who have lived in Uganda and could have become Uganda citizens, but later decide to leave the country. Are those people supposed to have taken their property just anyhow, without the permission of Government? ... especially when some of our military hardware was taken and also cattle which had consumed quite a lot of Uganda's foreign reserves. ¹⁰³

However, though the above concern was different from the question of granting citizenship, it showed how risky the whole issue of granting citizenship to refugees could be. Indeed, at the time of the debate in February 1995 the RPF had already taken power in Rwanda. Since then, it is doubtful that those Rwandese refugees who chose to remain in Uganda have even attempted to apply for citizenship! This is why some of the delegates, though NRM supporters like Captain Babu, sounded a cautions note:

Madam Chairperson I, wish we should not commit ourselves and enshrine a clause in our Constitution which puts there a perpetual determination for people to be illegally in this country and ... after 20 years, be given amnesty. I would therefore like to move a motion that this particular Article should be totally deleted. ¹⁰⁴

He further proceeded to explain why much caution was necessary in matters of granting citizenship to refugees and illegal immigrants:

Since this Constitution is not only a spur of the moment, because of the failure of our immigration system over the years to contain people who immigrate to this country. I do not think we should put something in our Constitution that we are going to pay for in the future. I think we should leave our posterity with a clear slate, so that they have the power to decide on who should become a citizen of this country this to me looks like a clause which has been brought because of a symptom of our history. I would like to propose very strongly and request all of you ... to vest all the powers of this immigration in the future Parliament of this country and let that Parliament, at that time decide, if people should be allowed to stay in this country or not. I do not agree that our Constitution should have an Article that is going to allow amnesty every 20 years. ¹⁰⁵

In fact this very argument against such detailed provisions that were dependent on political circumstance had been raised by Professor Tom Farer who had written a commentary on the Draft Constitution.¹⁰⁶ Captain Babu argued that citizenship

¹⁰³

William Wanendeya, RU, 1995: 2572, ¹⁰⁴

ibid, Captain Francis Babu. ¹⁰⁵

ibid: 2974-2975. ¹⁰⁶

T. Farer, *Final Report: Commentary on the Draft of the Uganda Constitution*, Chechi & Co. Consulting, Inc., July 1994: 19

categories were mainly two: one by birth and the other by registration, and anyone was free to apply to register as a citizen if one qualified.¹⁰⁷ This argument against a blanket grant of citizenship was similar to that made by Obote in the making of the 1967 Constitution against the demand of Asians. 108

Aside from the arguments in the CA the Constitutional Commission had identified a number of reasons why people were apprehensive and some downright opposed to the automatic grant of citizenship to long-standing refugees.

First of all, it was contended that land in Uganda was gradually becoming scarce. As population grows, "it is the duty of the state to reserve and develop it for present and future generations of citizens.¹⁰⁹

Secondly granting citizenship to one category of refugees may create an impression among other refugees that if they stay long they will be granted the same status. "Instead of planning to return to their countries of origin they may simply choose to stay, even when political stability has been achieved in their home countries".

Finally, it was argued that a number of refugees played a clearly negative role in Uganda's past dictatorial regimes.¹¹⁰ Specifically for Uganda it had been pointed out that past regimes from 1971 started to recruit non-Ugandans in the army and in other security services, and offered them political posts and high positions in the civil service. 111

It was partly a result of this realisation that the delegates, instead of giving a continuous option to every refugee and illegal immigrant every twenty years the right to be granted citizenship, gave it as a one-off privilege for those who were in that category only at the commencement of the 1995 Constitution. However, the proviso in the Draft Constitution that such citizenship should be limited to people who had "not been previously convicted of an offence which carries a sentence of not less than six months imprisonment without the option of a fine" 112 was dropped. The amnesty was a *carte blanche!*

Apart from the issue of citizenship for legal and illegal aliens and refugees, the other major issue the CA had to resolve was that of dual citizenship.

¹⁰⁷

RU, 1995:2975. 108

Supra, Section II. 109

RU, 1993: 126 110

ibid

111

ibid. 123-124. 112

Article 43(2)(c) of the Draft Constitution.

III. 4 Dual Citizenship

Like both the 1962 and 1967 Constitutions, the 1995 Constitution also prohibited dual citizenship for Ugandan citizens of any category. It is provided that, "a Uganda citizen shall not hold the citizenship of another country concurrently with his or her Uganda citizenship".¹¹³ A citizen of Uganda ceases to be one on attaining the age of 18 years if he or she by a voluntary act other than marriage acquires or retains the citizenship of another country.¹¹⁴ And once any person acquires the citizenship of Uganda by registration he or she must renounce the citizenship of another country, take an oath of allegiance to Uganda and declare his intentions of residing in Uganda.¹¹⁵

But whereas in 1962 and 1967 the question of dual nationality or citizenship was dismissed very quickly, not so in the making of the 1995 Constitution.

The question of dual citizenship was more interesting than other questions on citizenship during the CA debate because it did not polarise the people and the Assembly on government (Movement) versus opposition (multiparty) lines. This particular issue was debated from the point of view of the actual interests of individual CA delegates as well as groups they considered themselves to be representing.

It is important to consider the arguments on both sides in order to make an assessment of the significance of this issue.

(a) Positive Aspects of Dual Citizenship

During its research the Constitutional Commission discovered several reasons some people favoured dual citizenship.

One of the foremost arguments was that

dual citizenship would assist Ugandan citizens living abroad to acquire citizenship of their countries of residence while at the same time allowing them to remain Uganda citizens. This would enable them to contribute, from where they are, to the development of Uganda. It would also ensure that their children and grandchildren born abroad can enjoy dual citizenship. ¹¹⁶

¹¹³

Article 15(1), 1995 Constitution. ¹¹⁴

Article 15(2), *ibid.* ¹¹⁵

Article 15(3). ¹¹⁶

RU, 1993: 115.

This argument was particularly pushed by "many groups of Ugandans living abroad, both when they met with members of the Commission, and in the memoranda they submitted to the Commission". 117 Indeed, in the CA itself several delegates raised the same argument. Leading them was Dr. Odur (Dokolo County). He argued:

the clause prohibiting Ugandans to hold dual citizenship (is) not fair to some category of Ugandans ... those Ugandans who migrated and are living abroad since the early 60s. Many of these Ugandans and their children have since taken up citizenship of other countries ... these Ugandans who are now working in Europe and America are very useful members of our society and we stand to lose them for good if we do not make provision for them to hold dual citizenship. These Ugandans took up those citizenships) for convenience and for economic expediency. They have been useful to this country and will continue to be so. Why should we lock them out?

And against the argument that the provision could be abused by our neighbours committing crimes freely in Uganda and "dashing off to other countries," he observed that all that was needed were "competent immigration administrators and people who are committed to Uganda as a state". 118 He also argued that rejecting dual citizenship would not ensure loyalty because, he contended:

I have witnessed full grown Ugandan citizens who have sworn allegiance to this country looting billions of shillings thereby causing misery to fellow Ugandans. Are these people supposed to be loyal? 119

Kweronda-Ruhemba who was Presidential Advisor on Returnees, argued very strongly in favour of dual citizenship for Ugandans in Europe, America and Canada. He argued passionately:

if they were allowed to hold their citizenship of the countries wherever they are, and their right of birth in this country, one of the advantages was that they are earning quite a lot of money, and they are remitting good monies to this country.

Secondly these people are tied down by mortgages that is why some of them are actually still clinging to American and Canadian citizenship ... (Thirdly) ... this gentleman who wants to come here ... may invest here thus again causing resources to flow in. 120

117? ibid. 118

RD, 1995, Proceedings ... 3031. 119

ibid: 3032. 120

ibid, 3040 - 3041.

Although at this stage it is reported that the question was put and defeated, strangely the debate resumed. 121 On being re-opened one of the foremost supporters of the motion was Prof. Senteza Kajubi. He argued that Ugandans who are citizens by birth should not have that citizenship artificially taken away. He contended:

Mr. Chairman during the thirty years of our independence we have passed through a very difficult time which has meant that many of our citizens including our leaders have been dispersed all over the world ... they have been circumstances which have made it necessary for them to acquire citizenship of other countries. This does not necessarily mean that they are any less loyal to Uganda .. These people the moment this Constitution is promulgated with a view that they cannot hold dual citizenship we shall have declared them straightaway non-citizens ... that would be a very great disadvantage to them and also to us because ... they support our economy quite greatly and I think it would be wrong on our part to disown them by the very fact that their children are still going to school... to universities ... and it is useful for them because they will earn cheaper higher education. 122

The second argument in favour of dual citizenship related to the above was based on individual self-interest and self-preservation. The Constitutional Commission, for instance, found that such citizenship "enables a citizen to have an alternative home should there be war or unrest in one of the countries he or she is a citizen of. Such a situation helps to reduce the undesired increase of numbers of refugees". 123

The third argument was that it would assist Uganda attract rich foreign investors. Dual citizenship, it was argued,

would act as a strong incentive to them and a guarantee that their investment in Uganda would be securely protected. It would also make them committed to the general welfare of Uganda. 124

But this argument was not only limited to foreign investors but extended as shown above through many delegates' arguments that even Ugandans abroad who had acquired other citizenship would more comfortably and securely invest in Uganda.

The final major argument in favour of dual citizenship was that it is:

the best way of fostering African brotherhood and cooperation among neighbouring African countries. It makes the crossing of borders quite easy, thus rectifying the errors of colonial separation of people of the same clan, tribe or ancestral origin. Such arrangements may enhance the desired economic development in the region. 25

121
ibid, 3041.

122
ibid,3047-3048. 123
RU, 1993: 115. 124
ibid.

Related to this position was a general proposition that dual citizenship is progressive and modern. Emmanuel Pinto argued that many Mricans have left Mrica trained as experts and live in "these highly sophisticated countries ... where they find pertinent employment". They should not be discriminated against nor denied their human right to citizenship.

Adopting dual citizenship, to him, would show "Uganda manifesting itself as a member of the global village" and that dual citizenship "is a practice that is available in so many progressive countries". 126

b) Negative Aspects of Dual Citizenship: Why the CA Rejected it.

The CA eventually rejected the provision for dual citizenship. Interestingly, those who argued in favour of dual citizenship in the CA basically saw it as an opportunity for Ugandans to acquire citizenship in Europe or North America or for the rich European or North American citizen to invest in Uganda. It was hardly an argument for Ugandans to acquire for instance African citizenship. It was an elitist argument in spirit and intended to protect interests of Uganda's petty bourgeoisie, and the argument cut across the movement-multi-party divide!

On the other hand those opposed to dual citizenship were essentially against the possibility of neighbouring Mrican peoples compromising the security of Uganda or swamping the indigenous peoples taking away their land, jobs and, indeed, dominating them.

There were mainly two arguments against dual citizenship - the question of loyalty and related questions of the security and sovereignty of the state. Accordingly, to the Constitutional Commission many people argued that:

dual citizenship creates possibilities of having citizens of divided loyalties which may be harmful especially where there may be hostilities between the countries of which a person is a citizen. Dual citizens are not easily trusted especially in times of war or national crisis. They are seen as citizens who live by convenience, able to move where peace and better opportunities are found and ready to run back where they are, once stability and development are guaranteed. Such persons would often lack the spirit of patriotism and nation-building. 127

125

RU, 1993; *ibid*, 115. 126

RU, 1995; Proceedings .. 3048. 127

RU, 1993; 115-116.

One of the foremost opponents of dual citizenship was John Kawanga (Masaka Municipality). He was concerned about the dangers of a young nation and one coming out of turmoil lunging into dual citizenship. His case was that:

as we speak now, we are not even clear as to who citizens of Uganda are. Even before we have achieved that, we want to go around and start giving certain people dual citizenship. It is only very developed countries that I know of that enjoy the luxury of dual citizenship. I think we should not have short memories. This country has suffered from people who had dual citizenship because all our borders are open. People keep crossing from Uganda to their various neighbouring countries and we cannot be sure where their loyalty belongs. We do not have the mechanism to control these people. Therefore it will be terrible at this juncture in our history to allow people to be belonging to other countries yet belonging to this country without having very good reasons for this. 128

Other delegates expanded on this theme and saw dual citizenship as, indeed, dangerous on many accounts. Mrs. Jeninah Ntabgoba (Woman Delegate, Kisoro) put up a spirited rejection of dual citizenship. To her:

this amendment was unfair and extremely dangerous ... it is dangerous because it is going to exercise our children to running away, going to look for a second citizenship. Mr. Chairman, " Uganda has been an easy coming in and going out nation ... We have to remember now that we are forming a united Uganda, we have to keep people who are devoted to developing Uganda as a nation from its poverty ... This divided loyalty is not going to help our nation at all ... Mr. Chairman ... some parents are already being agitated by this proposal. They fear the future. We might have sO many of their kids ... looking around for other citizenship outside .. in countries which are not friendly to Uganda, these same people are going even to be used to come and fight us ... that is why I said this amendment... is very dangerous and we have to fight to defeat it 129

Secondly, it was argued that the question of enticing foreign investors vide dual citizenship was neither here nor there because investment is, in modern times, through big, usually multi-national companies which care more about the socio-political stability and environment rather than citizenship options.

According to Eresu Elyanu 130 it seemed:

the main point for those who urge ... dual citizenship is the economic reason and that economic reason is the transfer of funds into Uganda. Now ... supposing that person who holds Ugandan citizenship apart from the citizenship of that other country runs bankrupt would be lose his citizenship ... he is no longer having that economic power to justify his continued being aU ganda citizen (Applause).131

128

RU, 1995; Proceedings ... , ibid: 3035. 129

ibid, 3048. 130

CA Delegate, Kaberamaido County.

Obua Otoa also opposed dual citizenship because it was based on the interests of a few Ugandans living abroad and the amount of money they could send to their relatives. Obua Otoa extensively argued against dual citizenship. To him the reasons for rejecting dual citizenship since independence were still valid. He contended:

there are some sensitive issues in this constitution-making process and this citizenship is one of them. I do not know any other issue which raises so much emotion as citizenship and I think for understandable reasons. No one wants a person of dubious citizenship to own land in this country. No one wants a person of dubious loyalty to become the President of this country I know that no Langi would wish to see a Kenyan or a British or a Munyarwanda or anybody else who is not a Ugandan becoming President. We all remember an incident which happened in Boroboro not too long ago whereby .. some may not be very well informed pupils described our President as a Munyarwanda and we all know how that issue raised so much dust.... 132

The question of security concerns and sovereignty were discussed by the Constitutional Commission and the CA itself quite extensively. The Constitutional Commission reported that people feared that a minority with dual citizenship could have aims and ideas not congruent with those of the majority and could "assume political and economic control of the country to the advantage of the second country ... of which they are also citizens. This would occur mainly if the people with dual citizenship are the rich investors with strong economic interests abroad". 133 Related to this, but more to do with security, it was feared, according to the Constitutional Commission, that dual citizenship would compromise the security of the state especially in the African context where, because of poverty, many people could be bribed to support a detrimental system or programme.

People could apply for dual citizenship for the wrong motives of spying, undermining and causing instability in the country. The comparisons of Uganda with Israel in this respect is misconceived because Israel has a common and powerful link of ideology which keeps all its dual citizens united wherever they are for the good of all Israel. Such ideology does not exist in Uganda. 134

The Constitutional Commission recommended the rejection of dual citizenship and the CA equally rejected and prohibited it. Once dual citizenship had been laid to rest any other outstanding issues on citizenship were quickly dealt with as they were not as controversial.

131

RU, 1995, Ibid. 3037. 132

ibid: 3045. 133

RU, 1993: II6. 134

ibid: II6.

Section IV: The Citizenship Debate: Lessons and Conclusions

The concept of, and rights relating to, citizenship as this paper graphically shows are essentially political in character. They are determined principally in a political context and to serve or advance well-defined political interests. One could even say that the debate on citizenship in the CA was carried out with clear, cold political calculations.

Citizenship was in popular terms equated with being a true Ugandan, and in particular a citizen *by birth*. The category of citizenship by birth was treated with great emotion. Apparently, as far as most Ugandans as well as the CA delegates were concerned, what mattered most in the citizenship debate was *citizenship by birth*. This was notwithstanding the fact that, in terms of practical significance and rights attendant thereto, the only right enjoyable by a citizen by birth which other categories of citizens (that is, by registration) cannot enjoy is the right to be Uganda's Head of State, that is the right to be President or Vice-President. Since very few Ugandans even ever aspire to become Heads of State, the right is only of emotional and symbolic significance. But to the extent that the Head of State is presumed to be the embodiment of the people (or their true representative), then the symbolism is not of little value. This is particularly so considering that a good number of Uganda's Heads of State have had their Ugandanness constantly questioned.

For practical purposes one must observe that all citizens (whether by birth or registration) are entitled to the most important rights enjoyed by all the ordinary people, namely: the right to own land in freehold, the right to stand for any office other than that of Head of state, the right to vote and all other fundamental human rights. Indeed, most of the human rights are not rights of citizens but rights of any human being living in Uganda including non-citizens. ¹³⁵The only rights reserved for citizens are: the right to participate in the affairs of government, ¹³⁶ the right of access to public/state information, ¹³⁷ the right to a clean and healthy environment, ¹³⁸ and the right to vote. ¹³⁹

The reconceptualisation and reconstitution of Uganda's citizenship revived the role and place of nationality and ethnic rights and identity. While social constructionists (especially in the West) have of recent excelled in glorifying the virtues of ethnicity and ethnic identity in Africa as positive political forces, they have forgotten

¹³⁵

See Cap. IV, 1995 Constitution. ¹³⁶

Article 38. ¹³⁷

Article 41. ¹³⁸

Article 39. ¹³⁹

Article 59.

42 CBR Working Paper No.55 the double-edged nature of such a position. For while it is legitimate to recognise the right of nationalities and ethnic groups to protect and enjoy their identity and thus, though in a limited sense, exercise the right to self-determination, this right is not without contradictions. These contradictions may be intra-nationality or vis-a-vis other nationalities. In this regard, it is significant that in determining the indigenous communities living in Uganda as at 1 February 1926 no scientific criteria was used. The whole determination was political.

In general, the CA was very liberal in allowing whichever community wanted to be recognised as a distinct nationality to have itself so-recorded in the Third Schedule of the 1995 Constitution. Being in the Third Schedule was important because it is only by reference of one's ancestry to the scheduled nationalities that one can be a citizen by birth. Though this is of little significance in practical terms it is the popular basis for determining whether one is a "true" Ugandan or not.

There were four scenarios in the whole scheduling controversy. There are those who did not try to have themselves separately scheduled from the existing nationalities. These appear to have calculated, at least as per their representatives, that remaining in the well-known or bigger nationality was more favourable. For instance, the *Banyaruguru* of Ankole (Bushenyi) did not seek to be scheduled separately from Banyankore whereas the *Batagwenda* did. Yet, historically, the *Banyaruguru* and *Batagwenda* are said to be of the same ancestry.

The second scenario was composed of those who were opposed to the "creation" of so-called new tribes (nationalities) by splitting the old well-known ones. In this regard, opposition came mainly from Buganda but also from Bugisu. It appeared to them that by allowing splinter groups they would be undermining their own nationality.

The third scenario included those who tried to emerge as a distinct nationality by this legislative fiat and succeeded. These were several, including those initially included by the Constitutional Commission in the Draft Constitution and particularly those added at the Select Committee stage. The most significant of these were Bafumbira who without much ado convinced everybody that they were different from Banyarwanda (whether Bahutu or Batutsi, as in Rwanda) whereas historical evidence points to the contrary.

Finally, the fourth scenario included those who tried to emerge as a distinct community but failed or were thwarted. The Bahima were in this group. The most interesting aspect of the exclusion of Bahima from the right to a distinct identity was that while the Select Committee had agreed that they be scheduled the CA Chairman refused the matter to be discussed. And unlike other debates on scheduling, this seems to have been the only one that was determined outside the CA itself.

Apparently, the political leaders in NRM feared that a separate identity for Bahima from Banyankore would undermine their political leadership.

In addition, the whole argument about the cut-off date and the scheduling of indigenous communities showed one paradox. Whereas in legal terms citizenship is an individual right, the CA debate showed that in reality it is more of a collective right than the individual because it is when the individual is located in the collective, his community or nationality, that he assumes identity. And it is this identity that seemed to matter to the CA and the people they represented than the individual rights attendant to citizenship. In fact, more significantly, it was tacitly and implicitly agreed that one derived one's Ugandanness from the primary identity in his nationality (or tribe).

Finally, the CA debate established beyond doubt that citizenship is a political category. Whereas in the 1962 and 1967 citizenship debates the main issue was about whether and under what conditions Asians and foreigners should be allowed to register as Ugandan citizens, in the 1994-1995 debate the main issues were two: who was a true indigenous Ugandan, and whether refugees and illegal immigrants should be granted citizenship. Even those who opposed dual citizenship (nationality) were mainly apprehensive about our neighbouring countries (not Europeans or Americans) who had been responsible for pushing into Uganda several refugees and illegal immigrants over the years. The controversy about dual citizenship was not about Ugandans living abroad but wishing to acquire or retain foreign citizenship. These were only caught in the cross-fire. The main thrust of the argument was against allowing our neighbours (and thus the refugees, especially Rwandese) becoming Ugandan citizens as they concurrently held citizenship of their own countries.

In conclusion one may say the following:

- a) that a number of issues remain unresolved and should be tackled by parliament: 140
1. The question of dual citizenship should be revisited especially for those Ugandans already living abroad since their dual citizenship may not jeopardise Ugandan interests. Because of the fear of divided loyalties and due to security concerns, dual citizenship should continue to be prohibited vis-a-vis all our neighbouring countries. Relations with neighbouring countries should be stabilised politically and questions of shared citizenship can then be looked at in the context of regional cooperation and integration.

2. The question of rights of citizens by birth should be further reviewed with a view of giving more protection to them, especially in the ownership of land. Certain other rights should be restricted to citizens and not necessarily granted to all persons as is presently the case - for instance the right to education and other socio-economic rights.
 3. The decision as to which community or nationality should be regarded as an indigenous one should be open and clear; and scientific criteria should be established for any community to be scheduled. Otherwise, the scheduling done by the CA was, in many ways, arbitrary or merely politically circumscribed.
 4. The citizenship granted to refugees and illegal immigrants who had lived in Uganda for twenty years by 9 October 1995 should be carefully reviewed by Parliament even after enacting a new citizenship statute. Some of these refugees have since returned to their countries whereas several members of their families may still be in Uganda. Yet Article 12(2)(c) is mandatory that any person who had lived in Uganda for 20 years by 9 October 1995 *must* be registered as a citizen if he or she applies. Isn't the loyalty to Uganda of certain types of refugees and illegal immigrants clearly open to question? Parliament must squarely deal with this issue and, if necessary, effect a constitutional amendment giving the National Citizenship and Immigration Board the discretion to register or refuse to register some refugees or illegal immigrants if satisfied that they do not owe allegiance or show satisfactory loyalty to Uganda.
- b) Finally, it is important that ordinary people be educated about their rights and duties as citizens of Uganda. This education must be carried out by credible and non-partisan organisations and institutions. The constitutional rights of citizens will only remain on paper if Ugandans are not aware of the privileges and advantages that citizenship confers upon them.

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