# Dual Citizenship:
# A Comparative Study of Kenya and Uganda

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## Abstract

**Dual Citizenship: A comparative study of Kenya and Uganda.**

Kenya[1] and Uganda[2] are amongst the countries that, for different historical, political, and economic reasons, have embarked on law reform processes as regards to citizenship. In 2009, Uganda made provisions in its laws to allow citizens to have dual citizenship while Kenya's 2010 constitution similarly introduced it, and at the same time, a general prohibition on dual citizenship was lifted, that is, a ban on state officers, including the President and Deputy President, being dual nationals (Manby, 2018).
Against this background, I analysed the reasons for which these countries that previously held stringent laws and policies against dual citizenship, made a shift in a close time proximity. Given their geo-political roles, location, regional, continental, and international obligations, I conducted a comparative study on the processes, actors, impact, and effect. A specific period of 2000 to 2010 was researched, that is, from when the debates for law reforms emerged, to the processes being implemented, the actors, and the implications.

According to Rubenstein (2000, p. 520), citizenship is observed in terms of "political institutions" that are free to act according to the will of, in the interests of, or with authority over, their citizenry. Institutions are emergent national or international, higher-order factors above the individual spectrum, having the interests and political involvement of their actors without requiring recurring collective mobilisation or imposing intervention to realise these regularities. Transnational institutions are organisations with authority beyond single governments. Given their International obligations, I analysed the role of the UN, AU, and EAC in influencing the citizenship

[1] Kenya, officially the Republic of Kenya, is a country in East Africa, delimited to the northwest by South Sudan, to the north by Ethiopia, to the northeast by Somalia, to the west by Uganda, and to the southwest by Tanzania. The country is also a founding member of the East African Community (EAC). Kenya was colonised in 1895 and became part of the British Empire. As a republic, it was maintained as a protectorate (a British sphere of influence), and in 1920, it officially became a British colony. Anne (2018) notes that since its independence in December 1963, Kenya has been dominated by disruptive changes that followed the British conquest at the turn of the twentieth century (William 1985).

[2] Uganda, officially the Republic of Uganda, is a landlocked country in East Africa. It is bordered to the east by Kenya, to the north by South Sudan, to the west by the Democratic Republic of the Congo, to the south-west by Rwanda, and to the south by Tanzania. According to Reid (2017), in 1894, Great Britain officially made Uganda a protectorate. On Oct. 9, 1962, Uganda became independent, and in 1963, Uganda became a republic.

debates and reforms in Kenya and Uganda. Further, non-state actors, such as civil society, were considered.

Veblen, (1899) describes institutions as a set of settled habits of thought common to the generality of men. Institutions function only because the rules involved are rooted in shared habits of thought and behaviour although there is some ambiguity in the definition of the term “habit”. Whereas abstracts and definitions depend on different analytical procedures, institutions restrain some forms of action and facilitate others. Transnational institutions both restrict and aid behaviour. The famous “invisible hand” is nothing else but transnational institutions. Transnational theories, as applied to politics, posit two distinct forms that are of influence over policy and political action (Veblen, 1899). This influence and durability of institutions is “a function of the degree to which they are instilled in political actors at the individual or organisational level, and the extent to which they thereby “tie up” material resources and networks. Against this background, transitional networks with connection to Kenya and Uganda were considered alongside the diaspora from these two countries and their role in the debate and reforms on Dual citizenship.

Sterian (2013, p. 310) notes that Nation states may be vulnerable to institutional influence and this vulnerability can pose a threat to a nation’s autonomy, political legitimacy, and to the democratic public law. Transnational institutions sometimes “collide with the sovereignty of the state when they create new structures for regulating cross-border relationships”. However, Griffin (2003) disagrees that transnational institutional behaviour is premised on the principles of neutrality, impartiality, and independence. Transnational institutions have become the main target of the lobby groups and civil society, consequently leading to excessive politicisation. Kenya and Uganda are member states not only of the broader African union but also of the E.A.C which has adopted elements of socio-economic uniformity.[3] Therefore, in the comparative analysis, I examine the role of the East African Community and its partners in the dual citizenship debate on the two countries.

[3] East African Community (EAC) was formally launched in 2001 comprising of Tanzania, Kenya and Uganda. In 2007, the community expanded to include Rwanda and Burundi. Within this regional framework, the grouping has achieved two primary stages of integration: A Customs Union (2005) and Common Market (2010) (Knowles, J. 2014).

I argue in the analysis that it is not only important to be a citizen within Kenya or Uganda but also important to discover how the issue of dual citizenship is legally interpreted within the borders of each individual nation-state. In light of this discussion, I agree with Mamdani's definition of the nation-state as a unique form of power introduced in Africa by colonial powers between 1880 and 1940 whose outcomes can be viewed as "debris of a modernist postcolonial project, an attempt to create a centralised modern state as the bearer of Westphalia sovereignty against the background of indirect rule" (Mamdani, 1996, p. xxii). I argue that this project has impacted the citizenship debate through the adopted legal framework of post colonialism, built partly on a class system, ethnic definitions, and political affiliation. I, however, insist that the nation-state should still be a vital custodian of the citizenship debate, not in any way denying the individual the rights to identity and belonging. The question then that arises is which type of nation-state? Mamdani (1996, p. 298) asserts that the core agenda that African states faced at independence was threefold: deracialising civil society; detribalising the native authority; and developing the economy in the context of unequal international relations. Post-independence governments grappled with overcoming the citizen and subject dichotomy through either preserving the customary in the name of "defending tradition against alien encroachment or abolishing it in the name of overcoming backwardness and embracing triumphant modernism". Kenya and Uganda are among countries that have reformed their citizenship laws attesting to Mamdani's latter assertion.

Mamdani's (1996) assertions on how African states continue to deal with the issue of citizenship through either the defence of tradition against subjects or abolishing it in the name of overcoming backwardness and acceptance of triumphant modernism are based on the colonial legal theory and the citizen-subject dichotomy within Africa communities. To further create a wider perspective on legal theory, I argue that those assertions above, point to the historical divergence between the republican model of citizenship, which places emphasis on political agency as envisioned in Rousseau´s social contract, as opposed to the liberal model of citizenship, which stresses the legal status and protection (Pocock, 1995).

I, therefore, compare the contexts of both Kenya and Uganda, the actors, the implications of transnationalism and post-nationalism, on the citizens, the nation-state and the region. I conclude by highlighting the shortcomings in the law reforms that allowed for dual citizenship, further demonstrating an urgent need to address issues, such as child statelessness, gender nationality laws, and the rights of dual citizens. Ethnicity, a weak nation state, and inconsistent citizenship legal reforms are closely linked to the historical factors of both countries. I further indicate the economic and political incentives that influenced the reform.

Keywords: Citizenship, dual citizenship, nation state, republicanism, liberalism, transnationalism, post-nationalism

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**List of acronyms and abbreviations:**

| | |
|---|---|
| ACHPR | African Commission on Human and Peoples' Rights |
| ACRWC | African Charter on the Rights and Welfare of the Child |
| AU | African Union |
| AUC | African Union Commission |
| BRICS | Brazil, Russia, India, China and South Africa |
| CA | Constitution Assembly |
| CCM | Chama Cha Mapinduzi |
| CEDAW | Convention on the Elimination of all forms of Discrimination Against Women. |
| DP | Democratic Party |
| EAC | East African Community |
| EU | European Union |
| IBEAC | Imperial British East Africa Company |
| ILO | International Labour Organisation |
| IMF | International Monetary Fund |
| KCIA | Kenya Citizenship and Immigration Act |
| KY | Kabaka Yekka |
| NCICB | National Citizenship and Immigration Control Board |
| NRC | National Resistance Council |
| UCICA | Uganda Citizenship and Immigration Control Act |
| UDHR | Universal Declaration of Human Rights |
| UK | United Kingdom |
| UN | United Nations |
| UNDP | United Nation Development Programme |
| UNHCR | United Nations High Commissioner for Refugees |
| UNICEF | United Nations International Children´s Emergency Fund |
| UPC | Uganda People's Congress |
| WB | World Bank |
| WHO | World Health Organization |
| WTO | World Trade Organization |

# CHAPTER ONE

## Introduction

Kenya and Uganda are East African countries, both with a central geo-political role in the affairs of the Great Lakes Region. From these countries negotiating peace in the region amidst civil strife, to being members of the international community and signatories to a number of international treaties, an interesting debate inspired my research. This was dual citizenship. In 2009 and 2010, both countries amended their constitutions to allow for dual citizenship, to which both nations had formerly been opposed to. Citizenship is continuing to be a factor of debate. From migration, to emerging markets, transnational connections, alongside a changing political terrain, new debates around citizenship have emerged. Although citizenship is Western concept, yet, in the face of the "spreading" of the nation-state and its accompanying institution of citizenship, it also plays a critical role today beyond "the West", in different ways, due to contexts, historical legacies, traditions, that have continued to impact on this debate. Africa, and in this case, Kenya and Uganda, have had as nation states, to engage in the citizenship reforms accordingly.

The three dimensions of citizenship built from (Marshall, T. H., 1950) whose observations are dictated by history earlier than in logic. His focus on the civic, social and political rights was central given the historical context of the time. World War II had just ended, England was redefining her position both at home and internationally. Hence, he premised his debate on the working class of Britain and the welfare state, highlighting three vital issues: income inequality, citizenship rights, and cultural experiences. This explained his insistence on social rights as this would drive both social and political reforms of the time and provide a backbone for a welfare state. His model has generated debate as well as criticism to date on the understanding of social and civic rights and their interplay to citizenship. Marshall's (1950) conclusions on citizenship are also based on the Constitutional History of England 1760–1860 as noted in (Charles, 1882) understanding of the structure of the state that are; the Executive, and the Court of Judicature, which was the House of Commons. Citizenship was henceforth determined civilly, politically, and socially (Marshall, T. H., 1950).

According to Marshall (1950, p. 10), "The civil element is composed of the rights necessary for individual freedoms and directly associated with civil rights are the

courts of justice. The political element denotes the individual's right to participate in the exercise of political power, directly associated with institutions, such as the parliament and councils of local government, while the social element relates to the right to a modicum of economic welfare and security connected with it are the educational system and the social services."

Although there are legal variations in how different countries determine citizenship, there is general acceptance that citizenship is accorded through constitutional laws (Maftei, 2015). Adding that within comparative law, citizenship is accorded through the two principles *jus sanguinis* (citizenship by descent) and *jus soli* (citizenship by birth), and a legal act issued by state through naturalization or registration. Through history of citizenship, different states have adopted laws on citizenship, depending on their specific contexts. For example, Safran (1997) provides an insightful analysis of the contextual aspects, when he mentions that all states have either applied one of the two methods for citizenship acquisition, or through naturalization. He provides a historical perspective to his argument, that originally when states were defined in terms of the sovereignty of feudal lords or monarchs, citizenship was described in the *jus soli* to those who had been born in the estate. He further contends that later when nation states emerged and their existence backed up by sovereignty of the national community or in this case, "ethnic" community, then *jus sanguinis* took precedence. I argue that his analysis brings to the fore a fact that the method adopted by societies (and in this case, nation states) is partly influenced by their historical contexts. Jus soli mainly preferred in "settler societies" while *jus sanguinis* is preferred in "historic states" as he argues, those that arose out of pre-political and primordial communities. The differences in legal determination of citizenship between countries in terms of citizenship principles, modes of acquisition, and loss of nationality continue on the global agenda and have generated the debate on conflicts of nationality with regard to dual nationality and statelessness (Maftei, 2015).

Stewart (1995) however provides a new citizenship analysis based on the post-Soviet era and the emergent West at the time, which provides democratic societies a political sociological description citizenship. Therefore two conceptions are availed: state citizenship, involves the identification of citizenship with the elaboration of a formal legal status, interlinked to the emergence of nation-states and their diverse lineages.

The second conception, is that of democratic citizenship, which involves the elaboration of citizenship around shared membership of a political community, in which conception citizens are political actors constituting political spaces.
I argue that the conceptions suggested by Stewart provide a basis for debating citizenship with the evolving political and democratic contexts. To what extent these changes impact on the global system is a matter of debate. In the comparative chapters, I argue that the changes in the regional or country contexts of Kenya and Uganda, influenced the political actors of the respective countries, to re-imagine, redefine, and reform citizenship. If and how citizenship will continue to change, is a matter of debate too.
In the context of Britain at the time, the description provided by Stuart Hall and David Held (1989) the history of citizenship as one of the successive attempts by those who benefit from its restriction, to limit citizenship to other groups, re-iterates my argument. Their discourse was focused on the Britain in that particular context and political moment. Citizenship in the realm of the immigrants, women, wage workers, was something far from reach. This may have changed today, but by discussing dual citizenship, I highlight, on one end the capacity it provides for persons to have multiple identities, but also the risk it poses to excluding several others. Looking at the Kenya and Uganda context, in the African perspectives, provides an avenue to further debate citizenship at a global, regional and continental level. More so, to analyse citizenship not only driven by economic stimulus but by a human rights based approach.
The conflict of either common law or nationality law, regarding citizenship appears to arise from the lack of global consensus on how the right to citizenship should be determined globally while state sovereignty, independence, and the right to self-determination are maintained. While citizenship remains a national prerogative, with emerging perspectives on the international realm, such as transnationalism, post-nationalism among others, the national aspect of citizenship is influenced greatly. I argue that in the case of Africa, the conflict between jus soil, jus sanguinis and a post-colonial state, can be traced in the law. In determining who a citizen is, states provide for who is not a citizen. For example, Akhilbek Baikenzheyev et al. (2017) noted that citizens have the rights to elect and be elected and that these rights continue to be denied to noncitizens. The revival of the East African Community (EAC) in 1999 and later adoption of dual citizenship by some of its member countries influenced my empirical investigation as to why and how the countries opted for dual citizenship

reforms and the impact of the emergence of transnational and regional blocs in the case of Kenya and Uganda.

The EAC is a regional bloc of countries in the region, bringing together the countries of Kenya, Uganda, Tanzania, Rwanda, Burundi, and South Sudan. The EAC region was of a general interest, however my specific and particular focus was on the nation states of Kenya and Uganda, given their geo-political strategic location, the sequence of events and processes that facilitated the law reform, and the closeness in time: that is to say 2009 and 2010, of the constitutional amendment, provided me with timely comparative scope. My choice was influenced in part by the noticeable increased role of the civil society in Kenya on the citizenship debate, the unexpected but timely gender nationality law reform in Kenya, which allowed as of 2010 for women to pass on nationality to their children and their spouse who might otherwise not be of Kenyan descent. In the case of Uganda was the increased role of the Ugandan diaspora especially those living in the Western hemisphere. For example, through their Uganda North America Association (UNAA) annual convention I argue that while the Kenyan and Ugandan diaspora continue to participate in the affairs of their countries of origin, some of them naturalized elsewhere, and hence previously by Kenyan and Ugandan laws they would cease to be nationals. With the reform to allow for dual citizenship, a new possibility was availed. In comparing the contexts of both countries, I analyse the procedural aspects to acquire dual citizenship alongside the legal aspects. Important to note, is as the dual citizenship debates emerged more prominently in both countries, so was the increased formations of associations of the Kenyan and Ugandan diaspora both in North America and Europe. My specific interest in this comparative study was to establish the specific drives for the law reform in both countries, who the actors were, the implications and how these factors could stimulate both economic, social and political progress in both countries. Further specific analysis was to highlight and benchmark the progress or shortfalls both countries Kenya and Uganda, have made in the citizenship debate over the years after attaining independence in 1963 and 1962 respectively.

In the comparative analysis, I argue and raise critical long standing and neglected factors in the citizenship debate in both countries, such as the children born to stateless persons, the particular tribes that could not naturalize since independence in both countries, despite continuing to reside in-country, the historical impact on colonialism in the jus soli and jus sanguinis citizenship acquisition and the situation of the refugees

in both countries. I further, through a comparative analysis, critique what is sometimes defined in the scholarly world as a “global” description or understanding of citizenship. I argue in the chapters that follow that, while there ought to be international standards guided by international laws, the debate on citizenship has national or, for that matter, local contexts. The East African region has for years been embroiled in civil conflicts, for example the 1994 genocide in Rwanda, the insurgency in the Democratic Republic of Congo, the long-standing civil conflict in the Somalia and civil war in the world´s youngest country the South Sudan. Those factors, among others, have given rise to the issue of refugees, forced migrations, irregular movement and regional instability. Kenya and Uganda have become receiving hubs for refugees and all those in need of urgent shelter. According to UNHCR two of Africa´s and the world´s largest refugee settlements that is: the Bidibidi refugee settlement in Uganda and the Kakuma refugee camp in Kenya, highlight issues, related to citizenship, identity, belonging and migration. Given that background, citizenship and its several forms are and will therefore continue to be of great influence on these two countries. With human movement, will come intermarriage, children born to stateless parents, undocumented persons, refugees in need of urgent and immediate protection from neighbouring state, but also asylum seekers who may require political instability in their countries and seeking safe haven in Kenya or Uganda. My argument is most of the conflicts listed above arose out of political turmoil, ethnic wars or mineral resource curse. Proper laws that govern the citizenship debate are vital.

The acceptance of multiple nationalities has been contested throughout the history of the nation-state (Kivisto & Faist 2007; Spiro 2010, 2016; Triadafilopoulos, 2007). This was reflected in the 1930 Hague Convention on Nationality which reads: “… every person should have a nationality and one nationality only” (League of Nations 1930, p. 847). This sentiment of loyalty to the sovereign nation continued through the cold War when dual citizenship was seen as a possible threat to national security (Spiro, 1997). According to Spiro (2016, p. 3), belonging to more than one nation-state was—in the first half of the 19th century was seen as ‘an offense to nature, an abomination on the order of bigamy’. Dual citizens were regarded as a potential ‘fifth column’ within the national community and needed to be avoided (Midtboen, 2019).

The post-World War II era and the recent xenophobia in different parts of the world, including Africa have attracted global attention to the concept of citizenship (Mamdani, 1996). While this concept is a complex one, it is an important political ideal

which in contemporary times has been heightened in the struggles over the rights and responsibilities concerning refugees and asylum seekers today[4]. Citizenship is concerned with the protection of a person's rights, that is to say; being a member of a nation state, both at home and abroad and it consists of legal, political and social rights (Cohen, 1999; Kymlicka and Norman 2000; Carens, 2000). For instance, in the legal realm, it considers the constitutional/legal status of an individual as a full member of society, in the political dimension, it considers the recognition of citizenship status by fellow members of society (citizens) and in the social sphere it considers the character of an individual within society. The concept of citizenship is thus a critical concept that is interlinked with all aspects of people's lives and it continues to inform significant ongoing global debates and struggles about origin, identity and the ensuing rights (Mamdani, 2018).

In contemporary societies, critical questions relating to the identity status of minorities continue to be asked amidst challenges of safeguarding and promoting democratic principles of governance (Klein, 2011). Liberal theory recognizes that every citizen must be entitled to the basic principles of freedom, justice and political rights (Veera, 2011). However, as Pettit argues that special minority rights are, incompatible with the liberal or electoral democracy, though they "might have a powerful moral appeal" (Pettit 2000, p. 204). It is important that such inequalities encountered by different groups are comprehensively addressed since if neglected, can easily degenerate into conflicts within societies. The concept of citizenship thus has strong association with belonging especially in countries which attach great importance to citizenship as a symbol of national importance (Simonsen, 2007).

For Kenya and Uganda, with strong historical ties to their colonial history which influences their current legal system built around the commonwealth model, the debate on dual citizenship is problematic. I investigate which aspects of the nation state, citizenship debates were analysed. For example, Kymlicka describes aspects, one being a multination state built on members who belong to different nations and the other being polyethnic state with members having emigrated from separate nations. The above description, generates further discourse on the ethnic relevance to the citizenship debate. I will indicate in my chapters further, how this could deter membership or enable it otherwise.

[4] Universal Declaration of Human Rights(1948)(article 14)

## 1.1 Background to the Question of Citizenship

Citizenship continues to be a debatable and contested issue. Its interpretation and meaning vary within different contexts, societies and times. There historical, political and cultural factors hold a crucial and central role in the debate.

The roots of the concept are in the Greek *polis* and the Roman *res publica* (Pocock 1998, p.35). Pocock describes the "'classical' account of citizenship as an Athenian ideal", i.e., as a male warrior, found in Aristotle's *Politics*. In *Politics*, Aristotle states that a citizen "is defined to be one of whom both the parents are citizens..." (1275b23-1275b33 p.2024) and who holds an office or is in some other way participating in the deliberative or judicial administration of the state: "Hence, as is evident, there are different kinds of citizens; and he is a citizen in the fullest sense who shares in the honours of the state." (*Politics*, Book III, 1278a35-1278a39, p. 2028). The concept of citizenship has been a centre for interest in philosophical debates. There is a discourse that in political philosophy there have been two different and often separate debates about the issue of citizenship and group rights (Kymlicka and Norman, 2000). The first one is concentrated on minority rights and multiculturalism and the other debate centres on the concept of citizenship and the role of civic virtues. However, the debates are inherently interdependent. Therefore, Kymlicka and Norman argue that there is a need for an account of citizenship that connects both the issues of multiculturalism and group rights and the discussion of what makes a good citizen. Given the historical and colonial context of Kenya and Uganda, where citizenship debate is, among other factors, influenced by issues, such as ethnic identity, this argument is vital.

The concept of citizenship originates from the relationship between an individual and the community. Citizenship in modern times is defined by the law of that state, with corresponding duties and rights (Mojibayo & Babatunde , 2017). Historically there are two models of citizenship: the republican model as advanced for by Aristotle, Rousseau and Machiavelli and the liberal model as advanced for by John Locke and John Stuart Mill. These have continued to evolve to expand new forms of citizenship identity. For example, T. H. Marshall (1950) argued that a new form was social citizenship which would be an addition to social and political rights. Stewart (1995) proposes two new conceptions of citizenship: state citizenship which gives due attention to legal status, the emergence of the nation state and its diverse lineages, the other being democratic citizenship which places emphasis on citizenship around shared membership of a

political community with active participation. There have been other scholars that have and continue to enrich the debate on citizenship, such as (Lister, 2003) who places emphasis on the feminist aspects of citizenship, which I argue is crucial in the Kenya and Uganda context on gender nationality laws, children born to stateless parents, citizenship by marriage which has an interplay in some aspects to dual citizenship.

According to the Oxford Concise Dictionary of Politics, citizenship is the status of being a citizen usually determined by law (Macmillan, 2009). I argue that in the context of Kenya and Uganda, where citizenship laws were extended from the colonial times to date, the law is sometimes exclusive as opposed to being inclusive. This further points to the historical debate on citizenship as (Pocock, 1992) highlights a contrast between the Roman conception of citizenship that places emphasis on the legal status as opposed to the Greek conception of citizenship that emphasizes collective self-rule with ethnic aspects.

A citizen is a person who owes allegiance to a state and in turn receives protection from the state. Therefore, citizenship implies two-way relationship between individual and the state (Gauba, 2003).

The scope of the rights of citizenship has expanded since antiquity to incorporate more groups of people and the framework of citizenship has widened from being local into a state-wide institution (Gershon, 2008). The increased importance of membership has brought the concept of citizenship and what it means to be a citizen into the forefront public discussion once again. In modern Western political thought, the concept of citizenship is closely connected with the idea of a self-governing community, i.e., a sovereign state (Hindess, 1993, p.34). I argue in the context of Uganda and Kenya, that the idea of a sovereign state is debateable. These countries only gained independence in 1962 and 1963 respectively. The institutional framework continues to have legal, social and political influences from the colonial set up, in certain aspects.

Gershon argues: “The framework for modern citizenship rights is the state that is gradually transformed into a state for nation, a nation-state” (1998, p. 16). The idea of sovereignty requires that there is a limited area and at least to some extent culturally unified people residing in that area and sharing a common fate (Honohan, 2002, pp. 274–275). The way the concept of citizenship is understood, relies heavily on the

concept of a nation-state and the assumption of shared cultural values: nationalistic tendencies have been at the forefront of determining the development of modern states. I argue, that with the changing and transformative nature of citizenship, nationalistic tendencies are not sufficient anymore. With the emergence of dual citizenship, based on factors such as immigration, trade and investment, intermarriages, among others, post-national ideas ought to influence and impact on the citizenship regime. Given the historical, political and social context of Kenya and Uganda, while the citizenship reform creates progress, it as well creates a conflict/problem. Habermas (1994) provides an insight on citizenship and national identity, with him arguing that the socio-psychological connection does not imply that the two are linked in conceptual terms. This argument draws further the debate on the true custodianship and identity of citizenship, more so to this context where I compare the reforms that happened in two separate states (Kenya and Uganda) to expand on the form of citizenship to duality. An emphasis raised by Habermas, that there is no linear connection between the emergence of democratic regimes and capitalist modernisation, is vital in analysing the citizenship concept and the drives for or against it. When we mention the transformation of citizenship, while there could be economic factors for it, there as well could emergence other driving forces.

Usually belonging to a nation is perceived to be non-voluntary. In some definitions, the membership is acquired by being born to a certain country or a group, as Avishai Margalit and Joseph Raz state: "Qualification for membership is usually determined by non-voluntary criteria. One cannot choose to belong. One belongs because of who one is" (Margalit and Raz, 1990, p.447). Others emphasise the identification with the community and its importance in the construction of personal identities (Frank 2010; Miller 2000). The traditions and conceptions of citizenship within the nations are not fixed but can change: in addition to gaining membership by birth, most nation-states have some alternative mechanisms through which the membership can be acquired. There are various opposing views concerning the rationality (or irrationality) of people's attitudes towards nationality, as well as whether the nation is socially constructed or not. For instance, Jeremy Waldron states (1992, p. 781) that the idea of nationality is a product of civilization, not an eternal truth.

The basic principles connected with national sovereignty, i.e., the unified nation sharing the same culture and values, are not easily defined and rather blurry. What is

meant when speaking about 'shared values'? There are two concepts here, both of which are often not clarified: the concept of nationality and the concept of culture. Honohan says: "The key feature of nationality is a collective sense of a common identity; whether based on ethnic, linguistic, or other cultural grounds, this is often rooted in an 'imagined community' and does not intrinsically require interdependence in practices between co-nationals" (2001, p. 65). Kymlicka argues that language is an important reason for why the 'national' political communities are the "primary forums for democratic participation" (2001, p. 213). Most people are only fluent in one language, which rules out the participation at the federal or international level (*ibid.*).

Although the nation-state is the primary framework "used to secure citizenship as membership of a society" (Skeie, 2003, p. 47), the rights connected with citizenship are also enforced by supranational institutions, like the United Nations (*ibid.*). The role of the supranational institutions and the fact that the nation-state is still the primary guarantor of the citizenship rights has created political tensions and will no doubt do that in the future, as can be seen in the debates over the rights of different groups.

The concept of citizenship includes the legal status and the political recognition as a member of a community as well as the specific rights and obligations associated with the membership. The political ideal is that every citizen is equally entitled to the same rights and duties. The idea of rights is inseparable from the idea of duties. If a person has a right, then there has to be someone who has the corresponding duty to fulfil that right. If I have a right not to be injured, other people around me have the duty not to violate or hurt me. Human rights – or more precisely, the implementation of human rights – are closely connected with the concept of citizenship. In the contemporary world citizenship has become the primary category of membership; in a state-centric world it is crucial to be a member of a political community. In principle human rights are entitled to all people regardless of their social status, gender or race. Nevertheless, in practice many states violate these rights. People travelling without proper documents of identification, especially, are often treated harshly. Still, it does not end there; also, within the societies there are groups of people that do not have the same kind of recognition of their status as full members of that society. Various minorities, especially indigenous ones, have faced severe discrimination based on their status as minorities (Mamdani, 2018).

The Universal Declaration of Human Rights[5] was adopted in 1948 by the United Nations. Even though the concept of human rights or the concept of minority rights are not easily defined, nowadays they are widely implemented in both international and national law. The core value of liberal democracies is that every person is equal in the face of law and as a member of political community. However, the fact that in most cases states are the guarantors of human rights brings problems. If a person does not have a membership in a state, or is displaced or for some other reason rejected by the state he or she lives in, the realisation of basic human rights for that person is questionable. In many cases there is no one to claim those rights. The actual protection of every human being seems to be dependable on the political will, which in some cases seems to be non-existent. On the one hand, there is a danger in widening the rights discourse to include new rights; if rights are seen as disconnected from duties then the main aspect of human rights – the protection of every human being – is lost in the process. While on the other hand, different conventions and declarations highlight the situation of the disadvantaged groups and direct the public attention to injustices that have passed unnoticed in the past. Bryan S. Turner´s cultural citizenship where he highlights two important factors of democratisation and postmodernisation provides an avenue for the citizenship debate to be inclusive and incorporate other aspects previously excluded by earlier description from citizenship scholars. In contemporary democracies there are also institutions that are connected with citizenship and that shape understanding about it. Though it is not often reflected in public, those institutions follow patterns and ideas that impose certain assumptions about what it is, to be a good citizen. Nevertheless, the idea of a citizen should not be seen merely reducible to an opposition between oppressed minority groups and oppressing majority groups (Beiner, 2006, p. 34), since that would compromise the idea of a shared political community. The issue is too important to be bypassed by political theory.

Citizenship processes and practices as defined in different modern states create troubling relationships between states, nations, and citizens. This emanates from three varying dimensions of how different states choose to define membership in the political community. Citizenship can be understood in the legal dimension of an individual's state membership in the context of an interstate system (Sassen, 2006;

[5]http://www.un.org/en/documents/udhr/

Bosniak, 2008). In the second instance, citizenship can mean a set of rights and obligations connected to the rules and procedures through which they can be accessed (Bosniak, 2008). Thirdly, citizenship can also mean participating in the public sphere, which in this case is the process of becoming political subjects (Isin, 2002). The three variations in the understanding and usage of the term citizenship articulate different meanings of the idea of membership in a political community. In such cases, the understanding of citizenship can be very blurred (John, C, Kathleen, C, Evelina, D, & Catherine, N, 2014). The above three mentioned dimensions can be conflicting and problematic: I argue in the Kenyan and Ugandan context that that membership in the legal dimension sometimes creates discriminating or exclusive laws that deny certain would-be members a possibility of participation. In the second instance as a set of rights and obligations, the state may impose unfair obligations on the citizenry to the benefit of a few and thirdly participation in the public sphere implies becoming political subjects and actors. I argue that with nation states that hold weak political institutions, this poses a risk. While the dual citizenship reform was promulgated in the constitutions of both countries, the three varying aspects above, remain to date unclear for the dual citizens. I agree with Soysal (1994) who argues with his idea of post nationalism that there ought to be a different logic and praxis, in that what were previously defined as national rights become entitlements legitimized on the basis of personhood.

The sociological problem that arises is that the analytical description of citizenship is characterized by the variations in mainstream constitutional and geopolitical theory. While within the analytical understanding of constitutionalism, citizenship is the membership as a legal issue, status and state-centric, in normative geopolitical theory, citizenship refers to participation in the political community as the fundamental relationship between the citizen and the state. In both instances, there is a presumption that citizenship is enacted within bounded national societies. Enormous literature on citizenship appears to presume that citizenship is national as a matter of current fact, as it is a matter of necessity and nature (John, C, Kathleen, C, Evelina, D, & Catherine, N, 2014).

Therefore, a contradiction arises is that of: citizenship as a status or citizenship as practice that is inherent in national citizenship. The liberal tradition on the one hand and the republican tradition on the other hand. T.H. Marshall (1950), in the realm of

the liberal citizenship, emphasizes the need for the expansion of the civic rights. As one of the earliest scholars in liberal citizenship, John Locke ([1690] 1960) highlighted three aspects that are central and these are: the state, individual property creation, individual interests as opposed to the interests of the others. I argue that these factors are vital in the debates on dual citizenship as the individual and not the state, should be the central figure. Specific to the context of Kenya and Uganda, in the comparative study I conducted, the risk of liberal citizenship is, as (Kymlicka, 1995) indicates, for the state to extend legal rights to groups which may then suffocate the individual rights. In instances where ethnicity, or specific indigenous groups are poised to have more importance than the others, then a “hierarchy of citizenship” could be created. On the other hand, the republican citizenship as presented by Aristotle, Rousseau, among others, places its particular focus on the polity and the obligations of the citizenry to the polity. For (Aristotle *Politics*, 1275a8) citizens are those who share in the holding of office. I argue that in contexts of a successor state or a nation state with historical factors such as colonialism, obliging the citizenry to submit fully to the duties of the state is untenable. The probable instability of the nation state, could weaken citizenship laws. With historical factors, there is limitedness of sharing in holding of office, with issues such as rigged election, or further still on the issue of dual citizenship, the inability of dual citizens taking part in the electoral process. In certain contexts, as I argue, political agency is possible, while in others it is a trade-off as indicated in both constitutions of Kenya and Uganda, explicitly. While there were law reforms to allow for dual citizenship, the same reforms explicitly deny dual citizens in participating in particular political offices.

I sought to draw attention to what citizenship is, in substantive terms within these pre-given boundaries. I extend the view that the usual correspondence between citizenship and nation-state is unsubstantiated, more contingent and historical than intrinsic. The formation and locations of citizenship, as conventionally understood are more varied than ordinarily acknowledged. For example, in Africa, state borders were based on the political interests of the colonial powers (Manby, 2016). In the Anglo-Saxon legal system, the terms "the national" "the citizen" and "the subject" were used simultaneously to mean a person belonging to the nation. Numerous such terms were spread in the British colonies’ states including Kenya and Uganda. The term "citizenship" was used to mean full-fledged citizens within defined state borders (Akhilbek Baikenzheyev, et al., 2017, p. 74). I build on Bosniak (2008, p. 5), with the

argument to suggest that citizenship needs to be enacted not merely within national borders but beyond and across borders. This therefore is one of my critical arguments that, by colonial powers having established state boarders based on political interests had implications for the citizenship regime. Cultural, social and familial identities were re-arranged based on the interest of the non-state actors. As I argue in recurring chapters, this arrangement weakened the nation states that took shape post-independence. Citizenship and the nation state had to then take a new meaning for the local population. This has continued to be central in the political realm as well as in the debates on citizenship.

Bloemraad (2004) addresses three aspects of dual citizenship which I agree are central to the discussion and vital in the Kenya and Uganda comparative aspect that I analyse. These are the: traditional, post-national and transnational models. Bloemraad argues that lack of statistical data has made it impossible for a broader empirical assessment on dual citizenship. I further argue that the actors who have pushed for this reform have not sufficiently been analysed and that is to say; in the three contexts mentioned above. In the African context and taking the cases of Kenya and Uganda, I analysed both state and non-state actors, to establish the factors for which dual citizenship was advanced.

The debate on citizenship has been progressing with different scholars looking at it in different perspectives. For example: Soysal (1994) premised his arguments on post-nationalism, while Bloemraad (2004) discusses transnationalism and its impact of the citizenship debate. Their debates centred on globalization are vital and point to the factors that influence a global system and more so the actors. While I argue that for dual citizenship in the Kenyan and Ugandan context to be effective, a democratic and stable state are important, some scholars argue that citizenship should be centred on the individual as the core factor and not the nation state. I argue that the state is still a strong institution with the legal authority to legislate on citizenship. However, what I don't doubt, is the increasing role of "other" actors, some being non-state. Some go as further as arguing that citizenship will cease to be relevant, which I doubt. If citizenship is to be irrelevant, then the nation state ceases to be relevant. I argue that for globalization to function, nation states are tenets on which the global concept ought to be constructed. However (Soysal, 1994; Jacobson, 2009) rather argue that state legitimacy is moving from the formerly traditional principals of sovereignty to the International human rights. I argue that the concept of International human rights

ought to be analysed in the historical realm of different societies. If we are to discuss citizenship and dual citizenship for that matter, in the African and for that case East African context, issues such as colonialism and post colonialism have a role to play to this debate. By this, I refer not only in the state governance matters but also in the human rights realm, and legal aspect. With a politically motivated division of persons, creation of formerly non-existent state boarders, with an "adopted legal" post-colonial framework, injustices continue to exist.
Smith (1997) points to a crucial aspect of the citizenship discussion by highlighting the issue of ethno-racial minorities. In the context of Kenya and Uganda, where I make a comparative study on dual citizenship, this is a central theme. As I argue, that while both countries allowed for dual citizenship, the ethnic factors placed a crucial role, just as my field findings indicate.

## 1.2 The Debate on Dual Citizenship

Despite the historical disapproval of multiple citizenships, policy and opinion are shifting (Spiro, 1997). A recent count by Renshoon (2000) suggests that 89 countries worldwide recognize some form of dual citizenship and 12 countries in Africa recognize dual citizenship (Mutiso, 2016). What accounts for this contemporary acceptance of dual citizenship? Some scholars have identified immigration as the primary catalyst (Aleinikoff and Klusmeyer, 2002; Castles and Davidson, 2000, Jacobson, 1996; Nash, 2000; Soysal, 1994).

Against the background of these ideas linked with citizenship as belonging to *one* national community bestowing exclusive rights on its members, the problem of dual citizenship arises that makes individuals belong to two national communities since dual citizenship processes and practices as defined in different modern states create troubling relationships between states, nations, and citizens.

I argue, that despite ongoing variations in definitions of belonging among societies, changes occur from society, depending on contexts. There too could be, a challenge in contexts where certain nation states seem to be stronger than others, in economic and political terms. My question hence on dual citizenship is; which actors (state or non-state) were the initiators of the dual citizenship debate and how did this impact on the global context. To me, this debate, its impact and reception in different societies and

contexts varies widely further highlighting either the inclusive or exclusive citizenship policies. In an African context, where most nations have only gained their independence from the 1960s, such a debate would be, in some effect, a source of conflict as I will show in my comparative chapters. If you take the example of Kenya which was a British Colony in comparison to Uganda which was a British protectorate, there were variations in the citizenship discourse and so, did this affect eventually the debates on dual citizenship several years later.

Historically, the argument of citizenship beyond borders, that is, dual citizenship, was suppressed in the 19$^{th}$ Century and later accepted and continued to be rejected in the 20$^{th}$ Century.

The gradual acceptance of dual citizenship in western countries since the early 1990s (Sejersen, 2008; Spiro, 2016) has been seen both as a symptom of an emergent post national era (Soysal, 1994; Spiro, 2006) and as a pragmatic adjustment to the transnational realities of migration (Faist 2007a, 2007b; Gerdes & Faist 2007; Kivisto 2007) and transnational theories (see, for example, Faist 2007a; Kivisto & Faist 2007), acceptance of dual citizenship is a means of liberalization, in the sense that it reflects a strengthening of individual rights vis-a-vis the nation-state (Faist 2007b, p. 5). But is this assumption correct?

Given the above assertions, I analysed amendments in citizenship laws to accept dual citizenship while seeking to understand how it is determined in the comparative case of Kenyan and Uganda. The study henceforth makes a comparative analysis of the processes on legislation, implementation, contradictions, as well as on the shortfalls.

Midtboen (2019) noted that in the latter half of the 19th century, most Western countries developed nationality laws defining the terms for acquisition and loss of state membership. The set regulations, which were intended to avoid dual citizenship, were laws, such as renouncing the original nationality—a prerequisite for naturalization. Spiro (2016) added that persons born with dual citizenship were required to choose between the two. Midtboen (2019) observed the interplay between different regimes of citizenship attribution by birth; some nation-states attributed citizenship to anyone born in their territory (*jus soli*) while others attributed citizenship only to children of citizens by the rule of descent (*jus sanguinis*); hence the number of dual citizens increased. According to Spiro (2016, p. 31), the increasing number of dual citizens sparked bilateral conflicts between the USA and European states. Historically in

Europe's nation-states, citizenship was tied to the right of diplomatic protection from the state in the case of mistreatment by another state, dual citizenship created conditions of interstate conflict.

### 1.3 Dual Citizenship in Africa: The case of Kenya and Uganda

In their debate on Citizenship in Post-Colonial Africa, (Ngwéno and Obura, 2019) present three central themes, which, according to them are central to the structuring of the citizenship debate. These are *governance, post coloniality and autochthony*.

I argue that, these three themes transcend the dual citizenship debate on the continent, further bringing up a vital question, of: why now and why very soon yet the discussions on naturalization and inclusion of excluded groups have not been legally addressed. One ought to keep in mind the presence of several ethnic groups within these countries, with some, who to date have not been granted the citizenship opportunity due to exclusionary laws set up during the colonial times and adopted post-independence with absence of reforms to date.

Therefore, I investigate in a comparative form of the two countries, the procedures, legislation and outcomes of the legal reforms on dual citizenship. By doing so, I point out the existing loopholes in the citizenship debate in the region. I am further able to critique or provide an analysis of the beneficiaries of dual citizenship, to ascertain whose interest this reform serves, both its pros and cons. I also point to a conflict of laws on *Jus Soli* and *Jus Sanguinis* in formerly colonized countries, with the similar former colonial power, Great Britain, but with differences in conflict of laws. This in a way serves to inform politicians, academics, judicial officers of a need to rethink or reform their citizenship laws for a more inclusive citizenship regime. In a summarized form, my research points to the problem of dual citizenship in Kenya and Uganda, in three aspects; legislation, implementation and outcomes. In this way, the idea is to generate scholarly debate on Africa, in this case Kenya and Uganda, finding its post-colonial citizenship identity. The consequences would be for actors to rethink, reform and remodel, some of the citizenship laws. This does not in any way imply that Africa exclude itself from the global citizenship regime, however I find it vital, important and critical for the dual citizenship debate to be engaging and of benefit to the citizenry. Since this debate on dual citizenship originated not from Africa, it is important for

Africa to identify its specific position, in lieu of the historical context of the respective countries alongside their international obligations and commitments.

The risk is for Kenya and Uganda to create a "hierarchy of dual citizenship" among their citizens, with some having the ability to acquire multiple citizenship while others without the ability to even naturalize despite the fact having lived in the countries since the independence days. I, in a comparative way, juxtapose three issues that surround the Dual Citizenship debate in the two countries. The issues are: the *colonial history*, the *nation state* (through my argument that a weak or emerging nation state, risks influencing a weak citizenship regime, or being influenced by "other" actors) and the role of *instrumentalism* (considering the ethnic factors) and their central role in the political, social and cultural spheres of these societies.

A number of reasons have been postulated for the presumed growth in dual citizenship in recent decades. These include, large and circular migration flows, growing rates of naturalization, provisions for *jus sanguinis* (right of blood) in national legislation, children from increasing international marriages, and less direct reasons, like reduction in warfare between countries and demise of military conscription, as well as expansion of the international human rights regime (Kivisto and Faist, 2007).

In my comparative research, I ague that some of the reasons above, availed in explanation for dual citizenship legislation, in the case of Africa, more specifically Kenya and Uganda are problematic. While these reasons could serve in certain contexts and in certain democracies, I argue that some of them, do not suffice in the case in Kenya and Uganda. As indicated in my concluding chapters, I hence suggest some possible solutions or issues that can be used to address the impasse around dual citizenship.

In Africa, while most African countries took the decision that dual nationality should not be allowed at independence, many African states have followed the global trend and changed their rules to allow dual nationality or are in the process of considering such changes (Manby, 2016). It is further critical in the study to understand the impact the legal reforms on citizenship had in the nation-states of Kenya and Uganda. Both (Manby, 2016) and (Midtboen, 2019) appeared to agree that post-nationalism and transnationalism have influences and continue to influence the acceptance of dual citizenship. Manby (2016) argued that the growing African diaspora with ties to African states coupled with interstate migrations not only among ethnic groups living

on the frontiers between two states but also being able to carry two passports justify the acceptance of dual citizenship. Additionally, the acceptance of dual citizenship is more a reflection of international law than an effect of transnationalism. Within International law related to nationality, there have been significant new jurisprudence and efforts at standard-setting in recent years, including by the African Union institutions with regard to human rights (Manby, 2016).

Under International law, adopted in 1999, individuals who had the nationality of a predecessor state should have the right to the nationality of at least one of the successor states. In this case, the default rule would be based on habitual residence (Manby, 2016, p. 11), and as regards international law, the most authoritative interpretation is the International Law Commission's Draft Articles on Nationality of Natural Persons in Relation to the Succession of States. Although countries have reviewed their constitutions to allow dual citizenship, it is critical to observe that the acceptance of dual citizenship varies widely. According to (Manby, 2016) countries continue to have rules that prohibit dual citizens from holding senior public office, because the loyalty of such persons should not be divided. The case of Kenya and Uganda is key for this study not only because both countries recently in the early 2000s changed their laws to accept dual citizenship, but also since both countries introduced at the same time a general ban on dual nationality to hold public offices. I sought to look critically at the legislation and procedures comparative on dual citizenship and also be able to engage with the debates on citizenship laws in the region. Could such rules be geopolitically motivated?

The geo-politics within East Africa can be traced from the integration of the East African Community first established in 1967 by the post-independence leaders of Kenya, Uganda and Tanzania, and lasted ten years before dissolving in 1977 but later revived in 1999 to add other countries, Rwanda, and Burundi and later South Sudan in 2007 (Manby, 2018). Under its most recent agreements, citizens of any EAC Partner State have the right to visa-free travel and to stay in other Partner States for up to six months and a new internationally valid EAC e-passport with increased security features was introduced from January 2018. Each Partner State is obligated to phase out its current national passports and replace them with documents issued according to the new standard format. National identity cards are now recognized as travel documents by Burundi, Kenya, Rwanda and Uganda and there are proposals for

further mutual recognition of national identity cards are under discussion (Manby, 2018). To understand accurately the construction and functioning of the system of state bodies regulating the functioning of the institution of citizenship within the context of emerging state integration, I sought to investigate the impact the emergence of transnational and regional blocs had on modern states in determining dual citizenship reforms in the comparative case of Uganda and Kenya

### 1.4 The Questions and the Problem

Given that background my research intended to answer three questions;

i) *Why did the nation states of Kenya and Uganda allow for Dual Citizenship in 2009 and 2010 respectively?*

ii) *What were the legal implications of this reform in regards to the citizenship debates in these two countries?*

iii) *What was the role of the transnational actors in this process?*

In bringing forth those three questions and given the background discussion above, my analysis indicates that there is a problem with the citizenship discourse in both Kenya and Uganda. The three main dimensions of citizenship, that is to say; the legal bond, political agency and membership in a political community, I argue, are not fulfilled. This is in part, that these two countries are emerging nation states, with ongoing processes of nation and institution building. These countries as mentioned above and as I discuss in my further chapters, have built their legal and political structures based on their colonial history and to date with a huge influence of their former colonial masters. Further with ongoing civil strife, ethnic tensions that continue to surface post-independence, the quick reforms on citizenship law and the opening up for dual citizenship are or may have been influenced externally. While Dual Citizenship was opened up in these countries, the context of Stateless persons was not addressed. Neither was the issue of children born to Stateless persons. As I question in my chapters, through a comparative outlook, why the immediate allowing for dual citizenship, without resolving on the long-standing debates on *jus soli* and *jus sanguinis* acquisition of citizenship. The risk as I argue, could be to enable a few "citizens" acquire possibilities of diversifying their citizenship, while leaving others at

the bottom of their respective societies. While Dual Citizenship is a right move, this should not be politically motivated or driven, neither should it be used to isolate a certain section of the wider population. By carrying out a comparative study, I indicate the successes as well as the shortfalls in the drafting, legislation and implementation of the citizenship law reforms. I further highlight the actors and the beneficiaries of this reform. I extend the argument raised by Jürgen Mackert and Bryan. S. Turner, in their discussion on the transformation of citizenship. By doing so, however I bring to the front the aspect of where this transformation is happening, in whose interests and for what purposes. In the East African context, the drives could differ, though not entirely, as would be in the EU context. I conclude by arguing that for a strong citizenship regime, a stable and not fragile state is vital. Fragility, conflict and violence, are not in the best interest of citizenship rights. My research brings further the debate on the understanding of community, belonging, identity and society. Ethnicity, tribe, and culture are central in the discussion on citizenship in the region, so are they in the political aspect. While they could be points of unity on one end, they could lead to division on the other. This hence implies a proper legal structure, crafted by the countries (Kenya and Uganda) in their current context and not based on laws set up, pre-independence.

### 1.5 Theoretical Framework

I analysed aspects of transnationalism based on the definition of (Schiller et al., 1992b) as 'the processes by which immigrants build social fields that link together their country of origin and their country of settlement'. Given the varying scope in which scholars debate transnationalism, this particular realm availed the analytical outlook on duality of citizenship and belonging. I premised my argument of comparing the dual citizenship law reform in Kenya and Uganda basing on Portes (2001, p. 185) four categories of actions carried out across national borders: 'those conducted by national states (in this case looking at Kenya and Uganda); those conducted by formal institutions that are based in a single country (in this case the East African Community); those conducted by formal institutions that exist and operate in multiple countries (for example the United Nations and the African Union); those conducted by non-institutional actors from civil society (for example the Non-Governmental

Organizations working on the theme of citizenship)'. In this way, my criticism or argument was not only looking at the citizenship reforms, but further the actors who influenced them, why they did push for the change, the impact of this change in the long term. Post nationalism is another theoretical concept that influenced my comparative analysis on dual citizenship. I based my argument on Peter Spiro´s definition as "the decline of the state as brought about by a dilution in state-based identity and the rise of non-state attachments". In this regard, my critique of the East African Community, the African Union and the United Nations as key actors in the dual citizenship debate are a justification of my reliance on this theoretical aspect.

I provide a theoretical discussion on dual citizenship in a comparative case of Kenya and Uganda. The concept of dual citizenship that arises from political, social, legal reform processes, to allow citizens to hold more than one nationality creates debates. By pointing out the gaps in the legal framework on the practice, interpretation, and application of dual citizenship literature, this chapter focused on the theories on dual citizenship. Secondly, I critically analysed the concept of dual citizenship to investigate its definitions and explain the typology for the concept. Then, I elaborated on the identity, rights, and obligations of the dual citizen as outlined by existing studies. Finally, I present the general research aims and propositions for my research.

Post-nationalists such as Sassen, Bloemraad and transnational theorists such as Baubock, Faist view the acceptance of dual citizenship as a means of liberalization, in the sense that it reflects a strengthening of individual rights vis-à-vis the nation-state (Midtboen, 2019, p. 293). Therefore, the two theories influenced my comparative study on Kenya and Uganda. The justification for this was to compare aspects, actors and drives that influenced first, the debates in the political realm of the two countries, through their legislative bodies: that is to say, the parliament. Secondly the processes of the constitutional reform, which involved the legal actors and the constitutional amendments of 2009 and 2010. Thirdly and finally, the actors in the entire process, and in doing so, I argued and critiqued the different actors both within the nation state, and the transnational actors or institutions, juxtaposed with the Kenyan and Ugandan diaspora.

### 1.5.1 Conceptualization of Dual Citizenship

During the 19th Century and early 20th Century, public opinion and political theory regarded citizenship and loyalty to a nation-state as inseparable. It was until the mid-

20th and later 21st century that amendments and reforms in state laws, practices, interpretation, and applications on citizenship to allow multiple nationalities raised considerable doubt to the extent to which citizenship was confined to nation-state borders and the principle of popular sovereignty (Faist, 2001).

The reform in state laws to allow dual citizenship continues to increase in many parts of the world in the past decades (Faist, 2001). More than half of all sovereign nation-states in the world have accepted dual citizenship for various reasons (Goldstein & Victoria, 1996), even when the legal reforms process in state laws, practices, interpretation, and applications on dual citizenship vary widely (Spiro P. J., 2010). The trend of acceptance of dual citizenship has been more prevalent in immigration countries, such as Canada, United States, France, Israel, Portugal, and, Sweden, which have reformed their rules allowing for dual nationality. Even among countries, such as Germany, where dual citizenship is not tolerated, as a rule, about one fourth to one-third of naturalized persons from the 1970s through the 1990s attained multiple nationalities (Faist, 2001).

In Africa, many countries have "followed the global trend and changed their rules to allow dual nationality or are in the process of considering such changes. Almost 30 states now permit dual nationality in most circumstances, and a handful more allow dual nationality with the explicit permission of the authorities, including Egypt, Eritrea, Libya, Mauritania, South Africa, and Uganda" (Manby, 2016, p. 9). More countries are removing the restrictions on dual citizenship, and there is growing tolerance and acceptance of the status. The trend has been attributed to effects of transnationalism (Bloemraad, Korteweg, & Yurdakul, 2008), growing international human rights concerns including the right to multiple nationalities (Spiro P. J., 2010), increased international migrations (Manby, 2016) and post-nationalism (Bloemraad, Korteweg, & Yurdakul, 2008).

Recent trends towards more integrated countries, blocs, and globalization have not only economic, political, and sociological effects but also account for the promotion of citizenship identities that exceed national borders (Bloemraad, Korteweg, & Yurdakul, 2008). Increase in immigration stirs debate on the sociological aspects of civil versus ethnic foundations of citizenship. The implications of which continue to inform the understanding, interpretation, and legal practices on belonging, status, rights, and participation of dual citizens. Furthermore, it is the theocratic debate on

multiculturalism, which originates from the interaction between rights and community membership. The question that often arises is to which individual rights be granted to ethnic, religious, or other culturally differentiated groups within the nation-state? (Bloemraad, Korteweg, & Yurdakul, 2008).

This hence influenced my research question on how nation-states determine dual citizenship. What is clear is that post-nationalism subjects a sense of one's self as a member of humanity as opposed to ethnic, religious, or other cultural groups defined within nation-state borders. Dual citizens are a typical illustration of post-national identities that create a sense of belonging to all humanity rather than belong to social groups within the nation, confidence in supranational politics and institutions, such as in the United Nations, European Union (EU), African Union (AU), East Africa Community (EAC) (Schlicht-Schmälzle, Chykina, & Schmälzle, 2018). The impact of transnational blocs, corporations to constrain nation-states' economic, political and social action and the growing number of international free trade agreements that push markets beyond state borders cannot be underestimated in influencing the definition, interpretation, application and legal practice on citizenship. I investigate the influence of transnational institutions on legal reforms to accept dual citizenship.

### 1.5.2 Perspectives on Dual Citizenship.

Citizenship as a form of membership to a political and geographic community is disaggregated into four dimensions: legal status, rights, political and other forms of participation in society, and a sense of belonging (Bloemraad, Korteweg, & Yurdakul, 2008). Thomas Faist (2001) noted that based on the principle of domaine réservée, each state regulates within the limits of sovereign self-determination which criteria it requires for access to its nationality and the state constitutions of modern states have enshrined human and fundamental rights of liberty as belonging to citizenship as a legal status. Three perspectives inform the understanding of dual citizenship within modern national states that are national, post-national, and trans-state perspectives.

Within the national perspective, Faist argues that citizens living abroad belong to territorially and intergenerational bounded political communities. There is a sense of national acceptance towards multiple memberships of their citizens living abroad. Additionally, there has been a general interest among emigrant countries to maintain ties to their citizens living abroad, based on economic interests. For instance, the continued re-transfer of remittances, technical know-how, and skills (Manby, 2016)

and some few emigration states have shown interest in working with emigrants' lobby groups to influence the foreign policy of immigration country governments. I investigated this empirical evidence to understand recent (2000 to 2010) legal reform processes in the citizenship debates to accept dual citizenship in the case of Kenya and Uganda.

Post-national perspective on dual citizenship views the dual citizen as a member subjected to the impact of interstate norms upon citizenship in sovereign states (Faist, 2001). Within this understanding of dual citizenship, rights, duties, and collective identity have increased. Rights that were previously connected to nationality based on state borders can also apply to non-citizen residents. Therefore, settled non-citizens, including dual citizens and stateless persons, also have access to significant human, civil and social rights. Citizenship ceases to be a fundamental basis for membership in political communities, rather founded on discourses tied to interstate norms, such as the various charters on fundamental rights by the United Nations (UN) and the EU (Spiro P. J., 2010).

The trans-state perspective on dual citizenship is when sovereign states gradually centralize and assimilate local and regional nationalities (Faist, 2001). Over the past decades, the EU, for instance, has increasingly constituted propitious political-economic conditions, such as continued social policies, acceptance of democratic majority decisions, and proto-federal systems. Bauböck (1997) observed that the irony in the construction of Union citizenship is the uneven determination of rights and maintenance of administrative formatives that exclude third-country aliens. According to article 8, " Every person holding the nationality of a Member State shall be a citizen of the Union and citizens of the Union shall enjoy the rights conferred by this Treaty and shall be subject to the duties imposed thereby" (European Union (EU), 1992, p. 15). The rights specified in 8a to 8d apply thus only to nationals of a member state. Even in trans-state citizenship, union citizenship depends on the rules for acquisition, transmission, and loss of its various national citizenships. Besides, the principle of free determination of nationality by each state has been left unconstrained (Bauböck, 1997). It remains elusive how different procedures of admission lead to a single and common status of membership and this given the East African context, inspired my study in the (Kenya and Ugandan) to determine the influence of trans-national institutions on determining dual citizenship.

# CHAPTER TWO

In this chapter, I examine why the East African countries of Kenya and Uganda reformed their laws in 2009 and 2010, respectively, to allow dual citizenship. I also investigate the legal implications of this reform for these countries and the region at large, as well as the role of transnational actors. The need for such an investigation is noteworthy here as it has already been well-known that for years, there were several external influences on the region, in terms of law, trade, agriculture, and political participation. For this reason, it is important that I provide an analysis of the historical background of this region, which today is called East Africa. This chapter therefore provides an opportunity to discover how citizenship has been defined socially, culturally, and politically in the region over the years.

Once again, I concur with (Mamdani, 1996) reference to citizens and subjects, this discussion seems to continue to be at the centre of citizenship debates within the East African region. I argue that there are several historical, political and possibly legal factors that enable this. For example, as I will indicate in the recurring chapters, much

of Citizenship recognition laws were based on the "Indigenous persons" in the case of Uganda. Certain tribes considered to be indigenous after 1926 and through post-independence times, were given priority. Interestingly, the list of these tribes has been updated in the recent years. The case would not be so much different in the Kenyan context. With such a background, and surely sometimes surrounded on political-ethnic conflict as I will explain in the paragraphs below, there could be risks to citizenship.

### 2.1. A Brief History of the East African Region

Originally, territorial East Africa meant Kenya, Tanzania, (Tanganyika and Zaire), and Uganda. There were few and famous islands, such as Zanzibar, Mozambique, Mafia, Kilwa, Mombasa, Malindi, and Pemba, in the East African region. East Africa is bordered geographically on its northern side by the Somali desert and Ethiopian mountain range, by large lakes, such as Albert, Kivu, Tanganyika, and Nyasa, on its western side, Zambezi in south, and the Indian Ocean in the east. This entire territory is about one million square miles. It is densely populated and looks like a plateau. During the 19th century, this area was very important for European countries, especially those of Great Britain, because of the strategic promotion of their interests allowed by the region. Thus, they colonized East Africa and many other parts of Africa.

During the eighteenth century, European empires in America reached their peak, and the foundations of European power were laid in the east. But in Africa, there was little evidence of European activities. This was at first sight surprising, for the earliest European overseas expansion took place in North West and West Africa. During the fifteenth century, the Portuguese established themselves on the west coast at Arguin, Elmina, São Tomé, and San Salvador; their discovery of the Cape of Good Hope in 1487 led to the occupation of main existing ports of East Africa—Sofala, Mozambique, and others, extending as far as the Red Sea and Ormuz. During the sixteenth century, it seemed possible that Portugal might establish territorial colonies in the Congo region, Angola, and the Zambezi where adventurers and missionaries were following the same paths as those of the so-called conquistadores and religious orders in Spanish America. But gradually these enterprises withered (Rodney, 1972).

The Portuguese Crown lost interests in exploration and conversion. India and the East monopolized its energies; Africa was seen either as an obstacle en route to the Indies or as a source of gold, ivory, and slaves for the plantations in the Americas. Portugal showed no desire or capacity to develop its coastal bases into colonies. In due course, other European countries adopted the attitudes and practices of the Portuguese, who, along with the Arabs, controlled all the ports of East Africa. The trade was run by Portuguese firms that bought a monopoly of rights for defined periods and paid a duty on slaves, brought some wealth to Angolan ports. However, slavery was incompatible with the territorial empire and created a wilderness in East African ports, especially Tanganyika and Zanzibar. During the seventeenth century, the Dutch attacked shipping and seized the Indian and eastern bases whose trade had previously brought wealth to Portuguese East Africa. The Arabs were expanding from the north and captured all ports north of Zanzibar. Inland, the empire had broken the power of the Monomatapas—the allies of Portugal—and weakened her influence south of the Zambezi. Mozambique then remained the Portuguese capital (Almond, Powell, Strom, & Dalton, 2004).

In East Africa, Britain's trade was considerably less than that on the west coast, and its East African commerce gave much less scope to small peasant cultivators. Principal British imports centred on luxury goods, including ivory, a commodity obtained through the skills of professional hunters; sugar canes grown mainly on Mauritian, plantations; and cloves, derived from Arab-owned estates on the island of Zanzibar. British political influence in the sultanate of Zanzibar depended on a partnership with a local Islamic oligarchy of great estate owners and merchants. But in Zanzibar, as at Constantinople, British policy rested on unresolved contradictions. On the one hand Britain wanted to enforce reforms acceptable to the British humanitarian conscience; these reforms hinged on free trade, free wage labour, and the benevolent treatment of the weak. On the other hand, the home government wanted to avoid expensive commitments, and therefore, looked to traditional rulers to carry out reforms that were incompatible with traditional instructions (Eminue, 2004).

In East Africa, the British were determined to wipe out the Muslim slave trade, one of the props sustaining the social system of Zanzibar. This forced the former to play an ever-increasing role in the affairs of the Sultanate. At the same time, British

Indian financiers and business men acquired growing influence within the island's economy. In 1869 Suez Canal was opened, and western European ships bound for India could avoid the long haul around the cape. Four years later, the British relying on their overwhelming sea power succeeded in closing the Zanzibar slave markets, with the result that the Sultan become over more dependent on royal navy support. During the 1870s, therefore British power engaged in many parts of East-Africa. It was also the time of industrial revolution in the European countries; the British had needed a wide market for trade. Thus, the British had chosen the East-African coasts.

### 2.1.1 Pre-Colonial Times

Colonialism is the establishment, exploitation, maintenance, and expansion of colonies in the territory by people from another territory. It is a set of unequal relationships between the colonial power and the colony and often between the colonists and the indigenous population. This idea, mainly, came from the west. With respect to this, Marx commented that "Colonialism presented capitalism in naked form, stripped of decorous, clothing of European bourgeois society" (Marx 1973, p. 324). This explains how or where people 'belonged' in East Africa ethnically in any traditional, political, state context. This would however later change with State formation, Institutional set up and structure. As part of my arguments surrounding the understanding of citizenship by the local communities that were colonized and by the colonial actors, the interpretations seemed to be different and these implications seem to persist to date as will be discussed in my chapters below.

Chiriyankandath (2007) also contends that colonialism operates in a different temporality from Western capitalism, in the time of its secondary system. Fanon (1965) in turn points out the differences of temporality within the colonial domain, "a time lag" between the cosmopolitan modernity of the nationalists' leaders and peasantry.

The 1890 treaty of the scramble of Africa virtually fixed the pattern of colonial East-Africa. It remained to decide whether Britain would convert her sphere of influence into a formal protectorate or colony or merely keep Germany out of it; what boundaries would be drawn between Uganda Congo Free State; whether the Congo would cede a corridor west of Lake Tanganyika, so that Uganda and Egypt could be linked with Central Africa; and finally, whether France or Italy would dispute British predominance in the Egyptian Sudan.

The Imperial British East-African company, however, proved an economic failure and surrendered its charter in 1895. East-Africa lacked an easily accessible source of wealth, and the enterprise had begun with an inadequate economic base. The company could not complete in trade with Indian merchant from the coast; the income from customs revenue was inadequate to support even a rudimentary form of western government; agricultural development was impossible without railway construction that the company, with its limited resources, could not afford. When the Imperial East-African Company was failure, the company lost its charter. After the company's administration, perhaps 10 percent of officials in the administration of British East-Africa before 1914 had come from South African Nyasaland or Rhodesia. The company's administrative organization was, in fact, slender. It was run by a council in London and directed operations in East-Africa through an agent general, three provincial and some district superintendents. The company mentioned a small military police force, consisting of Hausa and Yoruba; it owned a small and lightly armed river fleet and a battalion. Real power rested with company administration. After 1895, there were some changes in the British administration in East-Africa. Queen Victoria was very interested in colonial affairs and wanted to see all important issues and trends progressing.

### 2.1.2 Colonial Period

Colonialism prevailed in Asia and Africa; in America there was colonialism. It was Great Britain which championed colonialism to an intense degree. Other European countries too had their colonies. After each colony attained independence, it so happened that colonialism in East Africa was not rooted out, but a new type of colonialism persisted and manifested its primordial characteristics (Mathieson, 2016). British colonialism in East-Africa during 19$^{th}$ century times was very much important mainly for economic reasons, among others. The current debate shows how and why the British became interested in East Africa, their administrative system at that time. In East Africa, the period 1885–90 was more decisive, because British and Germany were able to come to satisfactory agreements with little difficulty, which was called "Scramble of Africa". Italy had acquired Assab, on the red sea, and wanted to build on empire for prestige reasons in the horn of Africa. It was weak, but was a member of triple alliance, and this entitled it to German sympathy and stimulated Britain offer counter bribes. Bismarck had little interest in East-Africa, beyond the

welfare of Carl Peters' East-African company. Bismarck supported him in whatever treaties he made with Africans to extend his company's claims provided these did not produce a serious quarrel with Britain (Rodney, 1972).

Thus, Britain established her protectorate over East-Africa step by step. Its administrative system was also running strongly day by day. According to the Marxist interpretation of history, the colonial system was a capitalist invention designed to enrich merchants and industrialists, they were supposed to have sent their sons out to rule the empire. Or conversely, the rulers of the empire were but the employees of money men, chosen to serve the wealthy. In fact, British colonial governors rarely had any links with the instruments of production or finance. By the end of nineteenth century, the British colonial system fell into two categories; firstly, the crown colonies, under the aegis of the colonial office; and secondly the protectorates, most still at this point under the foreign office and the chartered company, also theoretically under the colonial office but only loosely supervised at best. Most of the men, who governed the colonies, were called governor (Burnell, & Randall, 2008). In East-Africa, the leading exponent of chartered enterprise and railway investment was William Mackinnon, who combined his evangelical fervour and British patriotism with a bitter hatred of Germany. His chosen instrument was the Imperial British East-African company, like the Royal Niger Company, a trading firm. It received its royal charter in 1889. AS John S. Galbraith, Mackinnon's biographer, has noted, the subscriber represented the upper riches of Anglo-Scottish society. Business interests, philanthropy, independent wealth and distinguished public service were blended into a governing board with East-African interests; it could command respect from any government, liberal or tray. For board members were themselves MPs. The former grocer's clerk had risen in society and become a power in the land. So, this is how the legal systems were set up, the colonial governance structure and the sort of parliaments they had, a factor which was relevant later in explaining how citizenship laws have evolved.

### 2.1.3 The Emergence of the Nation State (In the East African Colonial Context)

The East-African region was ruled by a governor after 1895. It is necessary to say that the governor's duties were both formal and informal; they were written down in various rules and regulations and developed through his relations with the colonial

office. He was appointed by the sovereign on the recommendation of the colonial secretary after consultations with the prime minister. He acted as the sovereign's representative (Almond, A.G., B.G. Powell, K. Strom & J.R. Dalton, 2004). As head of the executive, he supervised the work of all departments and scrutinized all matters of importance. In other words, the governor was all in all in his region. Besides these, chief justice, colonial secretary, colonial treasurer and colonial surgeon like teacher school officials etc.; were in administrative bodies. The local administration also supplied the governor with an impressive domestic staff, a major domo, stewards, chiefs, chauffeurs, house boys, gardeners, and laundrymen, sometimes as ma (Burnell, P.J. & V. Randall, 2008).

At the end of the nineteenth century, East-Africa was ruled by Governor Sir. Charles Eliot and Alfred Claud Hollis (Sir Claud) was personal secretary to Sir Eliot. Hollis made everything running smoothly in there. In 1887, at the age of twenty-three, he joined the administration as district commissioner. In 1902, he took direction of the newly formed secretariat in British East-Africa and proved to be a capable administrator (Rodney, W., 1972). By1912, he was a resident of Zanzibar and worked as governor of Trinidad and Tobago. He did well everything, especially he wrote widely on anthropology and allied subjects, including books on the Nandi and the Masai.

The British dominated the East-Africa in the nineteenth century-religion, race, class and nationality. The British, in their own estimation, had created the world's most successful society prosperous by comparison with most of their neighbours, law-abiding and stable, secure from foreign invasion. These values were reflected in British attitudes towards the Africans, specifically, the changes were in African society. Mistakenly or not, the bulk of British administrators were convinced that colonialism was an instrument of social reform integration.

In East-Africa, the impact of British protectorate was not only absorbed in political terms but also effective; for example, the railway, the telegraph, many hospitals, schools, were founded there. The most important result of British activity was, in fact, the introduction of new food stuffs, notably cassava, maize and sweet potatoes, which greatly improved African diets (Wallerstein, I., 1974). Besides this, the British had made a little more than beginning in spreading their language, their nations concerning government and their religion in East Africa. The British activity also made East African nationalists' movements in the twentieth century

(Nazifa, 2014).
Therefore, in East-Africa, the British came as colonizers, indeed they prided themselves on that role. This is not an easy task. Few words arouse as much hostility in the modern world as the word colonialism. Colonialism, the argument goes, accounts for much of the wealth accumulated by the rich nations of world at the expanse of the poor. Colonialism, moreover, must bear the blame not merely for the property, but also for the stagnation of the so-called underdeveloped world like East-Africa (Rostow, W.W., 1960). This brief background therefore summarizes the economic, political and social activity of the colonial actors at the time, in the East African region. The systems and structures put in place at the time, which would knowingly or unknowingly be of great influence to the discussions surrounding citizenship when the respective countries received their independence and after. As I will discuss in other chapters, this system continues to be central in the citizenship debates in the region, let alone with a difficulty on a clear line between the "Jus Soli" and the "Jus Sanguinis" policy. Furthermore, on the role of State Actors and non-state actors in the debate on citizenship in the 21st century in an African context.

## 2.2 East African Community Member States and the African Union and Other Regional Groupings (ECOWAS, SADC, IGAD)

There is considerable variation in the political economic dynamics of each of the EAC member states, but they all share an especially close connection between political elites and a small set of business interests. In the case of transport, for example, ruling elites in Kenya and Tanzania have a stake in the trucking industry, which helps explain why roads have enjoyed more public funding than railways, and why there are no serious attempts to liberalize the regional trucking sector. Likewise, the recent shift towards railways in the EAC's agenda can be traced back to an increased focus on private sector development in Kenya and Uganda, large-scale patronage opportunities from railway tenders, and Chinese financing to facilitate these trends.
In other cases, however, member states have proven willing to alter these practice s and focus on economic growth rather than on rents for political elites. For example, the Mombasa port in Kenya has been subject to substantial management reforms which resulted in a reduction in patronage and high-level corruption in Mombasa port, more effective financial management and reinvestment in operations (Mathieson et al., 2014).

Large disparities in power between EAC states and Kenya's role as the regional hegemon have enabled Kenya to exercise disproportionate influence on other member states in the EAC and dominate the regional policy agenda. Generally speaking, Kenya has a greater interest in regional integration than other EAC member states, given the importance of Kenya's trade with other EAC states—intra-EAC trade is hugely dominated by the export of Kenyan goods, primarily of high value primary/secondary goods. Kenya's most recent Presidents have been very receptive to private sector interests, including those that relate to the EAC. As such, Kenya is willing to bear the costs which come with inter-governmental co-ordination to accelerate the integration process (East African Community Secretariat. 2014a). The Government of Kenya has, relatively successfully, pushed ahead on the implementation of EAC policies, including on improving the efficiency at Mombasa Port, developing a regional Standard Gauge Rail network, addressing issues around weighbridges and easing visa restrictions.

The strong stance and economic dominance of Kenya has sparked fears among some states that regional integration will be a form of national subjection to Kenyan interests. In this regard, an increasing clash of interests between elites in Tanzania and Kenya risks constraining further progress. The Kenyan attempts to accelerate EAC integration represent a threat to Tanzania, the second largest EAC state, which does not have a similarly regionally expansive private sector (East African Community, 2007). Consequently, Tanzania has the lowest level of compliance on policies to eliminate tariffs and NTBs (Non-Tariff Barriers) and harmonize quality and safety standards in trade. Tanzania is in many ways seen to prefer a shallower form of integration to accommodate its other regional commitments. The different approaches between Kenya and Tanzania have also spilled over to the EAC's external relations, with Kenya championing and indeed needing the EPA (Electronic Partnership Agreement) to maintain the same EU market access, and Tanzania fiercely rejecting it. While most countries in the region have not backed the EPA, Tanzania in particular fears its domestic industries will be outcompeted by heightened European competition. Paradoxically, Kenya's willingness to align with private sector interests, which has been a driver of EAC integration, could mean adoption of the EPA at the cost of future EAC integration.

The clash of interests between Tanzania and the rest of the region led in recent years to the Tripartite Infrastructure Initiative, later called the Northern Corridor

Integration Project. The project consisted of an informal tripartite grouping of Kenya, Uganda and Rwanda and was used as an alternative policy forum to the exclusion of Tanzania (Mwangi, 2014). The Northern Corridor Integration Project (also known in local press as "the coalition of the willing") was established with a specific focus on the Mombasa port and the Northern Corridor, but soon expanded to include extra clusters ranging from Information and Computer Technology (ICT) over defence cooperation to the possibility of a political federation. South Sudan became an active member at the third Summit, while Ethiopia and Tanzania eventually joined as observers. Interestingly enough, cracks are starting to show, with members of the alliance turning to Tanzania instead of Kenya for infrastructure cooperation, following Tanzania's elections and political change there.

The tensions between Kenya and Tanzania have been accentuated by two recent developments. In the case of transport, the long-standing competition over control of the regional transit market between Tanzania and Kenya is growing with the traffic at Dar port increasing up to 12.9% compared with 11% in Mombasa (Shippers Council of Eastern Africa, 2013), and the US$10 billion finance that the Government of Tanzania has secured for the development of the port of Bagamoyo. Additionally, the discovery of gas reserves worth US$2.1 trillion could bolster the Tanzanian government in its aims of industrial transition and threaten Kenya's regional economic dominance (Byiers et al., 2015). While neither of these developments currently poses a challenge to Kenya's position in the region, there is a risk that they could in the future and Kenyan elites seem to be reacting strongly to this possibility.

### 2.3. The East African Community and Other International Actors (EU/UN).

The stated objective of the EAC is to establish among its member states a customs union, a common market, a monetary union and ultimately a political federation. The Treaty provides a legal basis for regional cooperation in the political, economic, social and cultural fields, research and technology, defence, security and legal and judicial affairs (EAC, 2007).

Over the past 50 years (1963–2013) Africa focused her collective efforts on the decolonization, the struggle against apartheid and attainment of political independence for the continent. On the occasion of the golden jubilee (May 2013) of

the Organization of African Unity (OAU)/African Union (AU) which spearheaded the decolonization process, the continent re-dedicated herself to the attainment of the Pan African Vision of an integrated, prosperous and peaceful Africa, driven by its own citizens, representing a dynamic force in the international arena. To achieve this vision, the Golden Jubilee Summit of the Union came up with a solemn declaration in eight areas spanning: social and economic development; integration, democratic governance and peace and security amongst others as the planks of the vision.

The EAC was originally founded in 1967 with Kenya, Tanzania and Uganda as members. It built on, and superseded, a range of other regional cooperation communities between the colonial governments of the three countries, dating back to the early 20th century. The initial post-independence project of East African integration therefore explicitly took inspiration from Pan-Africanist thinking and often identified itself as an intermediate step in a wider process of continent-wide integration (Shivji, 2009).

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The EAC Treaty establishes six institutions. The *Summit* consists of the Heads of States of the EAC member countries and is responsible for giving directions and impetus to the EAC. The Council consists of the ministers responsible from each of the member states. It is the main policy organ of the EAC and is to promote, monitor and review the implementation of EAC programmes. It initiates and submits regulations, directives, decisions and recommendations. The *Co-ordination Committee* consists of member states' permanent secretaries responsible for EAC affairs who submit reports and recommendations to the Council and implement Council decisions. It can also establish *Sectoral Committees,* responsible for the preparation and monitoring of implementation programmes for their sector. The judicial body of the EAC is the *Court of Justice*. Appointed by the Summit, the Court is responsible for the interpretation and application of the EAC Treaty. Lastly, the *East African Legislative Assembly* (EALA) is the EAC's legislative organ. It is responsible for, amongst others, approving the budget. According to the Treaty,

it serves as a liaison with national assemblies, follows up on EAC matters and can make recommendations the Council (EAC, 2007).
Although the EAC Treaty allows for cooperation in several areas, EAC policies have prioritized strategies related to the facilitation of economic growth. The EAC Development Strategy 2011/12 – 2015/16 focuses on trade, infrastructure development and economic growth (EAC Secretariat, 2011a). Likewise, the EAC budget prioritizes market integration and the enhancement of productivity and value addition.
Trade is a central component of the EAC integration agenda. At the forefront of the ambitious EAC market integration agenda is the EAC Customs Union Protocol (the Protocol) launched on 2nd March 2004. It provides the political vision as well as legal basis for the establishment and implementation of the EAC Customs Union. The Protocol aims to eliminate charges imposed on imports (including customs duties), provide common rules of origin, remove Non-Tariff Barriers, and establish a common external tariff, in an effort to deepen integration and stimulate economic prosperity in the region (McIntyre, 2005). The Common Market Protocol was adopted in 2010, which led to the introduction of the Single Customs Territory in 2014. In March 2015, the East African Legislative Assembly passed the Elimination of Nontariff Barriers Act, providing a legal framework for the removal of Nontariff Barriers under the Common Market Protocol. This got the assent of the region's heads of state in July 2015 paving way for the implementation of the EAC Common Market Protocol. A protocol was adopted in 2013 which outlined a plan to launch a monetary union within ten years.
EAC policies have been implemented successfully when compared to other Sub-Saharan African RECs with regional trade proceeding at a faster rate than any other REC in Sub-Saharan Africa. A recent AfDB report stated that the "EAC has made the most linear progress toward economic union and the highest ambition of the eight RECs" (AfDB, 2014). The Africa Regional Integration Index Report 2016 also ranked the EAC first among all African regional economic communities (RECs) in terms of progress on regional integration. The EAC is implementing a free trade agreement (FTA), which contains significant exclusions, but is operational. Similarly, despite significant exclusions and exemptions and continued challenges, the customs union is functioning more comprehensively since Rwanda and Burundi joined in July 2009. There were some considerations of a fluid labour market,

freedom of movement and this had implications for citizenship/dual citizenship. However, challenges to the implementation of EAC policies by member states remain. As is reflected in Table 1, the 2014 EAC common market scorecard indicates that barriers to the movement of goods, services and capital still remain as a result of member state laws, regulations and capital controls, as well as membership in different regulations and capital controls (E A C, 2014a). This was about people/labour at the heart of the current citizenship research. Implementation of the Common Market has been constrained by exemptions, bans and non-tariff equivalent measures (AfDB, 2014). These include discretionary taxes and charges equivalent to tariffs and the non-recognition of Rules of Origin laws based on disputes over local content. For instance, in contravention to Customs Union regulation, Kenyan cigarette exports have faced duties in export to Tanzania on the grounds that they contain less than 75% local content and they have sporadically been banned for import into Uganda on the grounds of trademark disputes with local producers. In a similar vein, Kenya banned and later placed cash bonds on Ugandan sugar imports based on allegations of dumping duty free imports.

**Table 1:** EAC scorecard 2014: Main liberalization restrictions

| | Trade in goods | | | Trade in services[4] | Movement of Capital[5] |
|---|---|---|---|---|---|
| | Tariff[1] | Reported NTBs[2] | CET exemptions[3] | | |
| **Burundi** | 10% | 3 | 29 | 9 | 16 |
| **Kenya** | 15% | 16 | 41 | 16 | 3 |
| **Rwanda** | 9% | 5 | 56 | 11 | 5 |
| **Tanzania** | 34% | 18 | 11 | 17 | 16 |
| **Uganda** | 28% | 9 | 35 | 10 | 5 |
| **EAC** | | 51 | | 63 | |

*Source:* Compiled and adapted from EAC Secretariat (2014b).

Analysing EAC policy from the perspective of institutions, understood in terms of the formal and informal rules of the game, highlights a number of areas where policy implementation is affected by weak or absent formal institutions, as well as strong emerging informal institutions. First, a large number of formal rules to provide

checks and balances have not been institutionalized. In formal terms, power should be distributed between the Summit, Council and the EALA. In reality, however, power is vested in the Summit and Council, which are both composed of national politicians, rather than the member state representatives found in EALA. The Council in particular, uses technicalities and informal practices to maximize its power and constrain EALA (Mathieson, 2016).

Despite the Secretariat's mandate to monitor integration, it has no power or authority to check, control or sanction member states who are not complying with commitments. While proposals circulate on the replacement of the Secretariat with a more powerful Commission, it appears that member states have not committed to a clear position on this proposal. In the meanwhile, indecisiveness on key staffing positions have hindered Secretariat capacity even further. Although monitoring mechanisms have been set up at the national levels, implementation challenges remain, partly due to a lack of private sector engagement (see Table 1).

Formal institutions established to ensure member state compliance with EAC policies through penalties or sanctions are rarely used, and as such, states face few real challenges over their non-implementation of policies. While the Summit has the power to sanction member states over non-compliance with the treaty, this has not taken place to date. Likewise, while the East African Court of Justice formally has the power to adjudicate over disputes related to non-compliance, national courts have complete discretion in whether or not they refer a case to the Court of Justice (EACJ, 2011).

This analysis highlights the importance of setting appropriate levels of ambition in regional processes and the challenge of trying to alter incentives rather than adapting to existing interests. This is perhaps illustrated best by the accelerated integration efforts of the sub-group of the Northern Corridor countries. While the Northern Corridor Integration Project represents an opportunity to drive integration, it also entails a risk that it could result in divisions within the EAC (Nathan Associates Inc, 2011a). This suggests a need for policymakers to strike a balance between accelerated coordination, which can be driven by a limited number of states, and ensuring cohesion in the wider group of EAC states.

Interests have most clearly aligned among EAC countries around new large-scale regional infrastructure, supported by Chinese financing. However, it was also highlighted that much of such large-scale infrastructure development happens

outside EAC structures and plans (East African Community Secretariat, 2013). This suggests a potential role for regional policymakers and their supporters in regionally coordinating investment decisions with national governments and other actors where political interest is strong, and brokering joint arrangements with financiers such as Chinese banks where appropriate – for example, the EAC could play a role coordinating the concessions on the Standard Gauge Railway when it is fully established.

Growing private sector interest in EAC integration, particularly within the Kenyan private sector, might be built upon by working to strengthen the private sector consultation processes. This would require the EAC and traditional donors to adapt approaches to private sector engagement, being cognizant of opposing interests which may emerge both within and between countries, e.g., from the Tanzanian private sector.

Beyond this, donor support may create incentives for signalling intent, but encouraging informal practices that potentially undermine the ability of the EAC to undertake its mandate (East African Community Secretariat, 2013). These include the risk that donor funding to the EAC creates a dependency on such funds and disincentives member state financial contributions, and the risk that donor funding feeds the 'per diem culture'. This suggests the need for this to be taken explicit account of in policy design to avoid further dependency on donor funds within the EAC. Current incentive structures might be 'avoided' by working to improve revenue generation from member states to address potential dependencies on donor funding, though again this would need to build on an in-depth understanding of existing interests and incentives.

## 2.4 The Collapse, Revival and Expansion of the East African community.

Despite the history of close cooperation, the EAC collapsed in 1977. This came as a result of perceived Kenyan dominance but also diverging political positions and ideologies between Julius Nyerere's African socialism or 'Ujumaa' in Tanzania, Jomo Kenyatta's Kenyan capitalism and the despotic rule of Idi Amin in Uganda. More than twenty years later, and following considerable political change, the EAC was revived in 1999 with the Treaty for the Establishment of the East African Community. Arguably, this was the chemistry prevailing which allowed a revival. Burundi and

Rwanda became members in 2007, while South Sudan joined in April 2016.
The fundamental principles of the EAC include "good governance including adherence to the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights" (Article 6 (d)). The EAC Partner States also "undertake to abide by the principles of good governance, including adherence to the principles of democracy, the rule of law, social justice and the maintenance of universally accepted standards of human rights" (Article 7(2)). The EAC Court of Justice has confirmed the responsibility of the EAC, as an institution, to ensure that Partner States meet their obligations under the EAC treaty, which include their human rights obligations under the African Charter.

The EAC Treaty commits Partner States to adopt measures to achieve free movement of persons, labour and this has key implications for the present research around citizenship. Some of the above the factors were considered as modalities for making this possible. Although my research focuses on analysing the Dual Citizenship laws of Kenya and Uganda, without placing entire focus on those who themselves become Dual Citizens and to which countries they hold their 2nd citizenship, it is important to note that movement of East Africans within the region was itself not as easy as one would expect. By countries coming to a progress on this, there would be positive implications on other citizenship issues, regarding Dual Citizenship, Stateless persons and refugee persons too. The common market protocol, in force since 2010, elaborates on these commitments, providing for the free movement of goods, people, labour, services and capital from one EAC state to another, as well as for the rights of establishment and residence without restrictions (The East African Community Common Market, 2009). Under these agreements, citizens of any EAC Partner State have the right to visa-free travel and to stay in other Partner States for up to six months. They may accept employment or work self-employed in another state, though subject to obtaining a work permit. Implementation of these agreements remains incomplete, although some law reforms have been adopted. There is a general project to harmonize national laws in order to facilitate the creation of the common market in the region.
The common market protocol also provides for standardization of identification and travel documents (Articles 8 and 9). The second EAC development strategy for 2001–

2005 called on Tanzania and Uganda to adopt a national identity card (Second EAC Development Strategy 2001–2005). An East African passport was launched as early as 1999, with the aim of simplifying travel within the states. This document was not recognized as a travel document outside of the EAC, but it had a six-month multiple entry validity for travel among the states. Take-up was limited, since a person wishing to travel outside the EAC would in any event need an international passport, which also allows visa-free travel within the EAC. A new internationally valid EAC e-passport with increased security features was introduced from January 2018 (Joint Communiqué: 17th Ordinary Summit of the East African Community Heads of State, 2nd March 2016). Each Partner State will phase out its current national passports and replace them with documents issued according to the new standard format which could have big implications for citizenship. National identity cards are now recognized as travel documents by Burundi, Kenya, Rwanda and Uganda (Omondi, 2014). Proposals for further mutual recognition of national identity cards are under discussion (World Bank, 2018). As is the case for the proposed AU passport launched at the July 2016 summit in Kigali, EAC passports will be issued by Partner States to their own nationals. The rights and privileges that the passport gives to their bearers are as nationals of individuals states, based on the laws and policies of the Partner States and the treaties that establish the EAC (EAC Secretariat, 2015).

There is no EAC agreement on treatment of refugees who come from the Regions and other neighbouring states including those internally displaced within the region and on the status of convention travel documents (CTDs) issued to refugees, although the treaty envisages the development of common mechanisms for the management of refugees. In practice, there are problems with recognition of the rights of holders of CTDs issued by one Partner State in another: for example, Kenya does not recognize Ugandan CTDs issued to refugees for visa free admission into Kenya (Office of the Prime Minister, Kampala, 2016).

All EAC Partner States are also members of the International Conference on the Great Lakes Region (ICGLR). Although the EAC itself has no specific framework relating to statelessness, the ICGLR has recognized, from its first meeting in 2004, the contribution that issues relating to contested nationality have led to conflict in the Great Lakes region.

The 2004 Dar es Salaam Declaration that established the Conference committed states to “adopt a common approach for the ratification and implementation of the UN

Conventions on Statelessness, harmonize related national laws and standards, and provide refugees and displaced persons with identification documents enabling them to have access to basic services and exercise their rights.

In 2017, ICGLR Member States strengthened these commitments by adopting a Declaration and Regional Action Plan on the Eradication of Statelessness (2017–2019). The Declaration and Plan of Action commit ICGLR Member States to ratification of the UN conventions on statelessness, reform of nationality laws to bring them into line with international standards on nationality and statelessness, adoption of national action.

## 2.5 Political Ethnic Conflict and Its Impact to the East African Region

Carment (1994) admits that of the over 180 states of the world, only a small number are ethnically homogenous. This probably suggests that multi-ethnic states are likely to continue to be a feature of international politics and that ethnic conflict is not only a threat to the East African states but also a menace to the whole international community (Ryan, 1990). However, one cannot deny the fact ethno-political conflicts have been on the increase in East Africa over the years. This is probably not unconnected with the factor of ethnic diversity of most East African states and the resultant problem of ethnicity. Eminue (2004) and Osaghae (1992) submit that of all the factors, multi-ethnicity is the most frequently associated with conflict. Truly, given the fact that ethnic cleavages are already deep and political discrimination against minority groups is widely practiced in East Africa, ethnicity cannot but be a great potential for separatist activities. Much as tribes and ethnic origins provide great opportunities on the African continent, for diversifying cultures, belief systems among many others, there are challenges these could lead to more so, in regards to the citizenship debate.

Political ethnic conflict has bred the feelings of suspicion, hatred and distrust among members of the various ethnic groups in East Africa and has no doubt re traded political integration in the Region; notably in countries like Uganda, Rwanda, Burundi, Somalia, Sudan, Congo and other Africa states in the Great Lakes Region. Of paramount interest in the context of the current investigation the genocide which took place in Rwanda in 1994 involving the Interahamwe, Hutu and Tutsi where an estimated 800,000 lost their lives; the role of Uganda and the movement of persons around the boarders, and this could have influenced citizenship in these countries in

the 1990s. Further, the Congo war and now the South Sudan where an estimated 4.7 million Sudanese were displaced during the nation's prolonged civil war and the numerous immigrants has significantly contributed to their inability to easily naturalise in the region. The debate in East Africa concerning the role of ethnicity, religion and nationalism in national culture is fore grounded in socioeconomic decline and underlying contradictions between civic/territorial and ethnic/cultural conceptions of the Member States. This uneasy relationship is further complicated by the increasing global connectivity which promotes and sustains the flow of ideas, information, capital and technology within and across national and social boundaries (Appadurai, 1990).

Notorious examples of political and religious conflicts are the Al-Shabaab militia in Somalia. There are fewer known cases. In the Democratic Republic of Congo, the Bundu dia Kongo has demanded a religious state based on a syncretism form of Christianity. The Lord's Resistance Army that originated from Northern Uganda, originally held Christian demands, which arguably, have never been very salient. Other conflicts show a strong interreligious dimension, partially in conjunction with 'theological' incompatibilities. The Sudanese civil war was a showcase of how Muslims and Christians (and Animists) clashed in bloody confrontations (Basedau, 2017).

So, in the East African region the failure of nationalism and the post-colonial political programmes built upon it—whether 'socialist' or 'capitalist' has opened wide cracks in the hegemonic project of the political elite to dominate society and define the nature of national identity with its encoded understandings about citizenship that sustains the legitimacy of the political system. The result is that a new vista of possibilities for contemporary politics and identity formation has emerged in the 1990s which take as their starting point the state and its role in class and ethnic stratifications; and this could have hampered the concerned parties' chances of receiving citizenship since they were attached to their origin and terrorism.

## CHAPTER THREE

In this chapter, I present a discussion on the foundations of citizenship as a concept, its historical development, the nation state, and critical role of the two entities. In doing so, I argue in the chapters thereafter that a nation state, with weak institutional capacity, may enact inconsistent, or not all-encompassing citizenship laws. By presenting the conceptual debate on citizenship and nation state, I provide a ground for my argument that both Kenya and Uganda, may have enacted the dual citizenship bill prematurely and to the exclusion of several undocumented persons within their jurisdiction.

### 3.1 Citizenship

The origins of citizenship cannot be definitively credited to a specific group or groups of people. Different ethnicities, races and cultures understood 'citizenship' differently. The idea of who a 'citizen' was and was not, can be traced from numerous hypotheses ranging from history to philosophy, sociology and formation of the nation-state. While citizenship varies noticeably throughout history, the most shared element of it over time is that it (citizenship) is how an individual relates with the state in terms of civil, political, and social relations (Marshall, T. H., 1950). This relation also ranges from human migrations to global conventions that frame human struggles for belonging and identity into the languages of rights and recognition (Engin F. Isin, Bryan S, 2002). The sociological diversity between people and the state in time not only account for such variations in the understanding of citizenship but also the practice. Therefore, the status of the concept of citizenship, then, depended at least in part on the perceived legitimacy of the monarchy and later nation-state by those who resided in its borders (Bottery M., 2003).

### 3.2 Historical Hypothesis

The history of citizenship is difficult to conceptualize in isolation of the existence of groups of people and social order. Historically early humans were often unified by

systems of beliefs and behaviours that dealt with the meaning of existence later known as religion. People who identified themselves with similar or related set of beliefs and practices often found common ground and built mutual trust and respect. In some cases, the social order was founded on political leadership that was widely based on inheritance, wealth and power. In other instances, religion and politics were all accorded to a group or family that possessed the power to rule. Spodek (2006) observed that in Ancient Egypt, for example, the pharaohs practiced divine kingship, claiming to be representatives, or even human personifications, of gods. Both political and religious organization aided to create and reinforce social hierarchies, which are strong dissimilarities in status between individual people and between different societies (Spodek, H. 2006). Complex societies most often took the shape of cities or city-states, such as Uruk and Ur (Ömür H., 2013). Small communities were continually transformed from small villages to city-states with thousands of residents. They started to develop mechanisms of social organization for security against other communities and also to address more effectively obstacles, such as diseases and floods. Particularly the Greeks, for example, for example, were very conscious of the value of freedom and the scare of slavery; hence when the Greeks fought together to avoid being enslaved by warfare, and avoid being conquered by those who might take them into slavery (Hosking G., 2005).

Eman M. Elshaikh (2020) argued that to facilitate the organization and administration of these growing cities—dense communities—people began developing social infrastructures: economic, political, and religious institutions that created new social hierarchies and transformed the existing social order. These hierarchies were populated with people playing specialized roles. Most cities grew out of villages, and some eventually became city-states, that are self-governing urban centres and the agricultural territories under their control (Eman M. Elshaikh, 2020). Cities increasingly became the centre of all early civilizations. People from surrounding areas gathered in cities to live, work, and trade. large populations of individuals who did not know each other than that they started to co-exist and interact with one another, giving rise to shared institutions, in governance, religion, and language, which consequently created a sense of unity and also led to more specialized roles, such as bureaucrats, priests, and scribes. Cities concentrated political, religious, and social institutions, that were previously spread across many smaller, separate communities and that contributed to the development of states (Joshua J.M., 2011).

The origin of city-states is disputed (Joshua J.M., 2011). City-states differed from tribal or national systems in size, elitism, patriotism, and desire for independence. Earlier tribal systems probably broke up during a period of economic decline and the splintered groups established themselves between 1000 and 800 BCE as independent nuclei of city-states that enclosed peninsular Greece, the Aegean islands, and western Asia Minor. Although there is general acceptance that the first cities arose in Sumer (Joshua J., 2011) and, among the most important, were Eridu, Uruk, Ur, Larsa, Isin, China Lijiang Old Town, Pingyao Ancient City, Huizhou Ancient City and Langzhong Ancient City built in early ancient dynasties in Xia, Zhou and Tang Dynasties and India, Mohenjo-Daro and Harappa also lay claim to 'the first cities'. Africa was also home of cities Luxor (as waste, better known by its Greek name Thebes) in Ancient Egypt, Annaba in present-day Algeria and Axum in present-day Ethiopia, such as Harar in Ethiopia (Mann, Kristin, 2007). It is prudent to note that not all early cities constituted city-states. This is mainly because some of the cities were not more than settlement areas, trading areas and some cases geographical strategic areas with shared amenities, such as water. The word 'city' was originally given to the political form during the classical period of Greek civilization (Mann, Kristin, 2007). The city-state's ancient Greek name, polis, was derived from the citadel (acropolis), its administrative centre and the territory of the polis was usually fairly small. The rise of city-states not only accounts for cultivating landscapes, building watercourses, erecting monuments, and initiating public festivals but also influenced political thought and philosophy, which later determined citizenship (Joshua J.M., 2011).

## 3.3 Philosophical Hypothesis

The Encyclopedia Britannica., (2020) noted that the distinctive understanding of 'politics was marked by the historical emergence of the independent city-state. The initial organs of the city-state were the general assembly of all its members and the magistracy of the consuls. Later the council began to replace the assembly for ordinary political and legislative business; and, with the growing intricacy of the constitution, further councils emerged, yet these conditions varied considerably from town to town among Greek city-states.

According to the Stanford Encyclopedia of Philosophy, (2005), political theorizing started in arguments about what politics was good for, who could contribute in politics, and why, arguments that were tools in civic battles for ideological and material control

as well as efforts to provide logical or architectonic frameworks for those battles. Such battles were addressed by the idea of justice, which was fundamental to the city as it arose from the archaic age into the classical period. Justice defined the basis of equal citizenship and was said to be the obligation for human regimes to be acceptable to the gods. The ideal was that, with justice as a foundation, political life would enable its participants to flourish.

Hosking (2005) observed that among Greek city-states the sense of citizenship may also have arisen from military necessity. The idea of citizenship, then, was that if each man had a say in whether the entire city-state should fight an adversary, and if each man was bound to the will of the group, then battlefield loyalty was much more likely. Aristotle described citizens as those who 'rule and are ruled by turns' (Aristotle [335–323 BC], 1988). Aristotle's views on citizenship were founded on his conviction that humans are destined by nature to live in a political association. Although Aristotle's conception of citizenship appears to emphasize 'inclusiveness', a citizen was limited to an adult Greek male born in the polity. According to Finley, M., (1983), women, children, slaves, and aliens, were not to be excluded in political participation. Citizenship was not only a means of being free but also freedom itself. It was a valued escape from the home-world of the *oikos* to the political world of the *polis*. A citizen of Athens was to be a male aged twenty or over, of known genealogy, born to an Athenian citizen family, a patriarch of a household, a warrior. Therefore, gender, race and class were critical considerations of citizenship and these considerations have influenced later debates.

### 3.4 The Nation-State

The socio-political definition of citizenship starts from its modern, sociologically oriented and it's ordinary, meaning presented by (Marshall, 1992, p. 18) who described it as: "a status bestowed upon those who are full members of a community". Therefore, "it is a status that includes and excludes at the same time" (Figueroa, 2000, p. 50). The nation-state is perceived that the state is a territory, a place, a bordered area for equal rights. The political space is where all citizens are equal and this situation seems to be and to remain constant in time. In such a case, the state is the privileged space for individual and social rights comprehended through citizenship (Arona E, 2018).

Sassen (2002) observed a reformulation of citizenship in the contemporary world, where the status of Nation-State is in crisis, where residence and nationality do

overlap, and where granting of rights is not reserved entirely to citizens. Fukuyama (1989, p. 4) suggested that nation-states are "the most powerful actors in world affairs", while Huntington, (1993, p. 22) dismissed this view as secondary to "civilization." However, what the two arguments fail to notice, is the decline of the nation-state in time and space as it is the case in (Sassen, 2002). Sassen (2003) noted that the development of transnational identities and mass migration, the notions of the global economy, or the breakdown of the vision of the homogenous nation-state have led to a progressive undoing of the citizenship that branded much of the twentieth century, based on state sovereignty, social protection, and a common identity. Sociologically, citizenship is a mechanism for social-political closure, a deterritorialization of a person's rights, a legal mechanism regulating state membership that is not intrinsically concerned with civic and moral attitudes (Sassen, 2002).

### 3.5 Citizenship beyond Borders.

In the writings of Aristotle, Hobbes, and Rousseau, citizenship is observed in terms of "political institutions" (Rubenstein, Kim & Adler, Daniel, 2000, p. 520) which are free to act according to the will of, in the interests of or at least with authority over, of their citizenry. In the aftermath of World War II, comparative sociologists and political scientists, paid adjacent attention to state procedures and provided studies that are currently regarded as state-centred, and often referred to states through the prism, such as social systems concepts. The political applications of these theories have been advanced and tested using pragmatic cases of transnational policy convergence, such as citizen rights (Ramirez, 1997).

According to Clemens and Cook (1999) institutions are emergent national or international, higher-order factors above the individual spectrum, constraining or constituting the interests and political involvement of actors without requiring repeated collective mobilization or authoritative intervention to achieve these regularities. (North, Douglass C., 1990, p. 3) noted that "Institutions are the rules of the game in the society or, more formally, are the humanly devised constraints that shape human interaction. In consequence, they structure incentives in human exchange, whether political, social, or economic."

Clemens and Cook (1999) observed that institutional theories as applied to politics posit two distinct forms that are of influence over policy and political action. The

influence and durability of institutions is a function of the degree to which they are instilled in political actors at the individual or organizational level, and the extent to which they thereby tie up material resources and networks. Nation-states seeking practical resolutions may be constrained by the number of viable alternative institutional models that are available (Clemens, E.S. & James M. Cook, 1999). Rubenstein (2000), stated that global institutions are organizations with authority beyond single governments. These institutions include organizations established to manage the machinery of transnational activities, for example, United Nations (UN), World Trade Organization (WTO), World Bank (WB), United Nations High Commissioner for Refugees (UNHCR), World Health Organization (WHO), International Labour Organization (ILO), and International Monetary Fund (IMF).

Ramirez (1997) observed that states may be vulnerable to institutional influence and this can be a threat to a nation's autonomy. In his model on cosmopolitan governance, are three principles of individual autonomy, political legitimacy, and the democratic public law, can no longer be assured by a nation-state framework. Institutions sometimes "collide with the sovereignty of the state when they create new structures for regulating cross-border relationships" (Sterian, 2013:310). However, proponents of institutional behaviour argue that these institutions operate with neutrality, impartiality, and independence and that the decisions that bind on member states are often actualized through predictable apparatus and pursuing similar interests.

Majority of these institutions perform their functions to support cooperation between conferences, conventions, and protocols dealing with very key issues, as well as implementing a set of procedures (Williamson, 1985). The differences in perspectives generate the debate about the legitimacy of institutions with some authoritarian states unwilling to permit international organizations to make decisions for them, decisions that may interfere with their national policies. Furthermore, some countries feel barred or left behind by the conclusions of the international organizations and for most of the poor countries, involvement in the international system remains an aloof dream (Sterian, 2013). The main concern about the influence of international institutions is whether they can resolve global challenges (Tshuma, 2000) including the issue of dual citizenship (Spiro P. J., 2016).

# CHAPTER FOUR

In this chapter, I engage with the debates on the historical and theoretical discussion on dual citizenship. The origins, developments and their impact in the African context. As shown below, there is indication of initial rejection of dual citizenship in the Western democracies and then an acceptance which has an influence on several African countries. This chapter therefore extends insight on the role of different actors in the dual citizenship debate in Africa, and for my research Kenya and Uganda.

## 4.1. Dual Citizenship

Since the 19$^{th}$ century, international norms on citizenship have been unreceptive of dual-citizenship. In 1925 the League of Nations conference created the 1930 Hague Convention on concerns that related to the conflict of citizenship laws, stressing that it was in the interest of the international community to maintain that all member countries should acknowledge that every person should have a nationality and should have one nationality only (Koslowki R, 2003). Proof of this bias on dual citizenship in the 19th and early 20th centuries is consistent with the interpretation that was dominant in international affairs at the time. Koslowski, (2003) noted that dual citizenship was disallowed because it blurred diplomatic protection and military obligation and it was thought to indorse disloyalty and deceit, divided allegiances and torn psyches (Spiro, 2002, p. 22). However, this view of dual citizenship has changed over the last half-century as a result of cross-border travel, marriage, and integrated trade, investment relationships and human rights (Spiro P. J., 2016).
Sejersen (2008) noted that among 195 countries of the world nearly half now recognize dual citizenship, as compared to just a handful in the mid-1990s. The acceptance of dual citizenship is notably low in Asia and higher in Europe and the Americas. The trend in Africa indicates that there is increasing acceptance of dual citizenship. Manby (2010) observed that 30 of 53 African countries permit dual citizenship, particularly for their nationals who naturalize elsewhere. Whitaker (2011) added that African governments have accepted dual citizenship as a means to foster both economic and political ties with their Diasporas and chiefly to upsurge investment and remittances. However, dual citizenship raises concern on security, raising questions about whether dual citizens can be loyal to multiple countries. Less reflection has been given to political drives for the extension of dual citizenship rights, with regard to modernism,

the participation of emigrants in nation-states' politics, and the influence of transnational and regional blocs on legal reforms on citizenship. It is highly likely that the acceptance for dual citizenship may be driven as much by "self-serving political interests" as it is by broader concerns for nation-state development (Whitaker, B. E, 2011, p. 756).

According to the African Commission on Human and Peoples' Rights (2015), the Africa Union (AU) itself views the diaspora as a vibrant segment in a position to rally for the Continent, the necessary scientific, technological and financial resources and expertise for the positive management of the programs of the African Union Commission (AUC). This novel reality has encouraged many countries to amend their legislation and introduce legislation allowing for dual citizenship. However, in many cases, the rules remain highly multifaceted and problematic to interpret. Some countries demand individuals seeking to naturalize to relinquish a previous nationality but do not provide for those who have nationality from birth to lose it if they acquire another. Several countries provide for persons obtaining another nationality to drop their birth nationality but do not require those naturalizing to renounce their former nationality (ACHPR, 2015).

Manby (2018) noted that Uganda's dual citizenship provisions, as amended in 2009, are very intricate and create noteworthy conditions to be able to hold dual citizenship. It is not permitted to hold three citizenships, and the other country must permit dual citizenship. The provisions permitting dual citizenship relate to a person who has voluntarily acquired another citizenship, not to a person who is born with two citizenships (Citizenship and Immigration Control Act 1999, amended 2009, Section 19 A–G). Uganda has an intricate range of supplementary conditions that apply to people seeking to naturalize who wish to retain their other nationality, which is not applied to those who renounce (Manby, 2016). Kenya's 2010 constitution similarly introduced, at the same time as the general prohibition on dual citizenship was lifted, a ban on state officers, including the President and Deputy President, being dual nationals (Constitution of Kenya 2010, Articles 78 and 137). In practice, Kenya requires the other country to permit dual nationality before permitting it, although this is not stated in the legislation.

## 4.2 An Era of Perpetual Allegiance

Spiro (2016) observed how there was no regard to nationality in the medieval world. Instead, an individual was identified by personal allegiance tied to natural law. When Europe divided into territorial units, with each unit ruled by individual sovereigns, novel models of nationality were founded. The relationship based on putatively personal relations between the individual and the sovereign. This budding relationship between the individual and the unit, later known as the state finds the words subject and claim at the Centre of perpetual allegiance rather than the citizen and right. The obligation of the sovereign among many was the protection of subjects for which he was only answerable to God.

Spiro, (2016, p. 14) added that it was not until the French revolution of 1789 that the notions of a representative connection between the state and individual existed. The common law followed the rule of "*Nemo potest exuere patrian*": no man may abjure his country. The subject was denied the legal capacity to forsake his sovereign. Hence it was never in the power of any private subject to forfeit their allegiance and transfer it to a foreign prince. "It is only in the power of any prince to dissolve the bond of allegiance between the subject and crown" (Spiro, 2016, p. 14). This view was reinforced in 1797 when Lord Grenville wrote to the American minister in London, "a declaration of renunciation made by any of the King's subjects would, instead of operating as a protection to them, be considered an act highly criminal on their part" (Spiro, 2016, p. 13). The law disregarded dual allegiance, and dual citizenship was not only a problem, but it was also an offence to law and nature. The offenders were traitors (Spiro P. J., 2016). The British threatened to execute as a traitor any naturalized Englishman captured from American forces, a threat from which President Madison's threatened similar action against British prisoners on a two-for-one basis. He further noted that Russia penalized naturalization with banishment, and deported unauthorized returnees to Siberia.

Martin, (2014) noted how it was not until 1868, when the United States passed the Expatriation Act of 1868, declaring that "the right of expatriation is a natural and inherent right of all people, indispensable to the enjoyment of the rights of life, liberty, and the pursuit of happiness" (Martin, 2014, p. 3). The law made an end to the slavish judicial reception of the common law of citizenship and directed US executive action in case a naturalized citizen was deprived of their liberty by a foreign country. Britain response was signing a treaty agreeing to treat naturalized U.S. citizens as no longer

holding British nationality, and later Parliament voted for a statute that recognized individual choice in matters of citizenship (Martin, 2014). Britain was never the only power started to change its views on dual citizens; other European states negotiated international agreements, known as the Bancroft treaties, which resolved most of the naturalization issues. As parties pledged to treat naturalization as an act severing all prior citizenship ties, the theory of perpetual allegiance died a surprisingly speedy and unlamented death. There was a growing consensus among Europe and America to recognize that the medieval notion of perpetual allegiance no longer fitted the needs of a globe where rail and steamship travel, displacements of the industrial revolution, were characteristic of massive flows of permanent migration (Martin, 2014).
Midtbøen, (2019) observed about naturalization that one of the requirements was the renunciation of original nationality and individuals born with dual citizenship had to choose between two States. The number of dual citizens increased (Faist Thomas & Jurgen Gerdes, 2008). After naturalizing, (Spiro P. J., 2016) added that migrants held two nationalities in their new state of residence. Migrations, according to (Spiro P. J., 2016) resulted in dual British and American nationals. A British subject who migrated to, and naturalized in, the United States became a dual national and vice versa. Landau (2016) added to Spiro (2016) noting that the theories of "jus soli" born within a state's territory were a subject, and "jus sanguinis" citizenship by parentage fuelled conflict between states during periods of mass immigration. What remains indistinct is whether dual citizens were posing a threat to the state because they sought to divide allegiances or because they sought to transfer them from one state to another. Furthermore, it was and remains elusive as to whether dual nationality serves either the national interest or the interests of dual citizens or both without high social costs. What is clear is that dual nationals occasionally sought, and strategically used their other nationality for diplomatic protection, which justifies why states were so intent on eradicating dual citizenship (Spiro P. J., 2010).

Spiro, (2010) argued that while there were no easy or universal mechanisms for suppressing the dual citizenship status, States minimized the incidence of it because dual citizenship represented instability in an already conflicting world. In most parts of the nineteenth century into the twentieth, dual nationality was condemned as a moral abomination, which if the law could not stop, social norms went a long way toward suppressing the threat of dual citizenship posed to world order. This has

changed with time, as several countries later have had a shift in legislation regarding dual citizenship.

### 4.3 The 19th Century and Dual Citizenship.

In the 19th century, states viewed dual citizenship as a likely catalyst for treason, espionage and other subversive activities. Instead, the acquisition of new citizenship meant the loss of one's original citizenship. Dual citizenship was said to undermine state solidarities and self-governance norms (Yossi Harpaz & Pablo Mateos, 2019). Dual citizenship was problematic. What is clear is that historically, States were justified in suppressing the dual citizenship status due to the threat dual nationals would have been a hindrance to stable bilateral relations. In some cases, immigration countries made mandatory naturalization on the renunciation of the previous citizenship. Other states tried to overcome the problem of dual citizenship emanating from birth in their territory was that such individuals on reaching maturity had to choose one of the two citizenships or expatriation (Thomas Faist& Jurgen Gerdes, 2008).

The suppression of dual citizenship in the 19th Century and later acceptance in the 20th Century remains unclear as to whether States viewed the adoption of another citizenship as a prerequisite for modern nation-states integration or rather a process that threatens states´ bilateral relations. Therefore, this historical dilemma on acceptance of dual citizenships informs the current focus of the study to investigate why modern nation states accept dual citizenship. There is vast historical accountability as to states rejecting dual citizenship. However, little scholarly attention focuses on why states accepted and continue to amend their laws to accept dual citizenship. While there are hints to explain the acceptance of dual citizenship in modern times, empirical evidence and rationale of its acceptance are lacking. Bloemraad, I, et al., (2008, p. 167) comment that "One manifestation of deterritorialised memberships is the increasing number of states permitting, and even promoting, dual or multiple citizenships".

It is critical to observe that there are existing legal differences even among countries where dual citizenship is accepted. Bloemraad, I et al., (2008) observed that while countries are more familiar with emigration than immigration target their emigrants abroad, they fail to extend dual citizenship to immigrants who reside within their

borders. For example, in the case of Poland, traditional immigration countries are showing unbridled enthusiasm for dual citizenship, more concerned about the trade-off between political autonomy and transnational citizenship.

The rationale for states´ suppression of dual citizenship well documented. Spiro, (2010) noted that the increasing number of dual citizens sparked bilateral conflicts between the States, specifically in the US and Europe. Thomas Faist and Jürgen Gerdes (2008, p. 13) cautioned that "Dual citizenship is connected to the fear that national citizenship will lose its value"—adding that throughout the 20th century, state laws, bilateral international conventions and agreements on citizenship held consensus that dual citizenship should be avoided. Spiro, (2010) affirmed the view stating that because dual nationality entailed the right of diplomatic protection from the state, the likelihood of mistreatment by another state, created conditions of interstate conflict. In 1930, the League of Nations summed up the dominant transnational perspective in stating that all persons were entitled to possess one nationality and one nationality only. The declaration implied that the cost of citizenship was for one had to renounce the previous one (Faist Thomas & Jurgen Gerdes, 2008).

It's not until the 1970s that dual citizenship was accepted in the Americas inspired by countries with emigrants to the United States. Later in the 1990s, dual citizenship was adopted within state laws in Europe, Asia and Africa (Blatter et al., 2009). In countries where dual citizenship is acceptable, the transnational legality varies widely because dual citizenship is subject to geopolitical demands and strategic diplomatic relations (Busra Hacioglu et al., 2014). Countries that had accepted dual citizens still maintain exceptions to the rights, privileges and immunities of the dual citizen hence creating more divergent views in the understanding, implementation of dual citizenship, which further leads to individual state stance towards or against dual citizenship and the administrative practice on dual citizenship.

The debate on acceptance of dual citizenship is stirred by the divergence in conventional views, posing insuperable challenges and critical notions to the nation-states. The new reality of contemporary citizenship law amendments continues to increase the numbers of dual citizens. There is need to understand and differentiate between regulations to the acquisition of dual citizenship and the recognition of the rights, privileges, or immunities of dual citizens (Blatter et al., 2009) as a pathway to

empirically fathom regional, bilateral and unilateral agreements on dual citizenship and guide an international legal framework to govern dual citizenship.

## 4.4 Theories of Dual Citizenship

The growing acceptance of dual citizens raises normative and empirical questions about its nature. The gradual trend is subject to theorizing as to how countries determine dual citizenship? The impact trends have on legal reformation on citizenship and how trans-national institutions and global human rights norms undermine modern state sovereignty, and if so, is the significance of formal citizenship in decline? The reality of dual citizenship transcending the nation-state is viewed in scholarship on post-nationalism and transnationalism (Bloemraad, Korteweg, & Yurdakul, 2008).

Soysal, (1994) observed that post-national theory reflects different legal considerations on individual and corporate groups as the basis on determining the state incorporation. The era global expansion, the existence of transnational organizations and intensification of human rights agenda for the modern nation-states advance pressure to extend citizenship rights to stateless people. The post-national theory advances the view that rights are granted to people with no regard to national identity. Additionally, new state confirmation should be premised on personhood rather than nationhood as a determinant to political, civil and social rights.

Schlicht-Schmälzle et al. (2018) noted that post-national citizenship is of the view that an individual is a member of humanity in opposition to a social group based on nationality. Additionally, as official passports codify the legal bond to a nation-state, there is a variation in perspective on the value people assign to it and its connection to their identity affirming that reactions to citizenship are inherently subjective concerning post-national citizenship identities. Within this context, Schlicht-Schmälzle et al., (2018) argued that legal documents that attest to an individual's citizenship, such as passports, although existing, lack far-reaching legal implications. In this scenario, Spiro, (2010) argued that the increasing tolerance of multiple nationalities signifies a transition period to post-national membership, which attests to how nation-states no longer hold the critical basis of rights and membership. The transition well aided by transnational institutions is based on the assumption that an increasing number of nation-states will accept dual citizenship, in accordance to

human rights, to accommodate individuals with multiple national memberships (Bloemraad, Korteweg, & Yurdakul, 2008). This is evident as to the recent trend towards globalization with its economic, political, and sociological implications promote citizenship identities beyond national borders, with global citizenship education incorporation in the United Nations Sustainable Development Goals (United Nations, 2015).

Habermas (2001) noted how post-nationalism calls into question the role of the nation-state as a political organization and its institutional capacity in the era of globalization. As a result of globalization, there is an increasing cross-border connection in economics, culture, politics and technology, and beyond the confines of the nation-state, transnational institutional authorities have emerged and become increasingly influential. Bloemraad, I et al., (2008) added that the interplay post-national theory and transnational theory have, is the idea that dual citizenship is a crucial response to globalization. Transnational institutions continue to influence the internal affairs of states. Post nationalism, therefore, redefines the understandings of state sovereignty. The proliferation of international decision-making bodies has tended to extend the sphere of authority beyond the nation-state (Bloemraad, Korteweg, & Yurdakul, 2008).

Not all evidence points to the declining nation-state. Such a claim is questioned by several scholars. The idea of weakened state sovereignty in post-national theory is overstated and that despite the states accepting dual citizenship, nationality law is still the prerogative of the nation-state (Bosniak L, 2002). Schlicht-Schmälzle et al., (2018) added how most recent events, such as Brexit and the success of national protectionist parties in Europe and Africa, reflect a drawback against globalization and the acceptance of dual citizenship. The researchers went on to say that several states continue to reject citizenship identity beyond the nation. The divide in the scope of understanding citizenship identities in recent societal conflicts, including the refugee crisis or increase in stateless persons, make it salient to further discuss the impact and relevance of dual citizenship to the modern nation-states. This dilemma informed the focus of my study, which sought to examine how nation states of Kenya and Uganda, determine dual citizenship.

In contrast to post-nationalism, the proponents of the transnational theory argue that transnationalism focuses less on human rights as a determinant of nation-states' acceptance of dual citizenship. Instead, the increasing number of dual citizens is

justified by the interplay between international migration that creates transitional spaces in which individuals have connections, family ties and sentimental bonds to more than one nation-state (Bloemraad, Korteweg, & Yurdakul, 2008). According to the Oxford International Encyclopedia of Peace, (2010), transnational theory refers to direct linkages or activities, such as the flows of ideas, information, money credit, and people across national boundaries. It involves at least one actor that is non-state, like a non-governmental organization or transnational corporation. Adding to this definition, Catherine (2005) noted the increasing importance and interdependence between state and non-state actors and further observed that states are constrained in their actions from both domestic and external players. Transnationalism has altered politics through redistribution of power to include non-state actors and international organization. Bloemraad, I et al., (2008), noted transnationalism opens the possibility for acceptance of dual citizenship on multiple grounds as a means of liberalization. It is I therefore investigated the impact of transnational and regional blocs concerning citizenship reforms in the Kenyan and Ugandan context.

Faist Thomas and Jurgen Gerdes (2008) viewed transnationalism as the pathway where countries tolerate dual citizenship as a tool to advance the naturalization of immigrants and to close the gap between the resident population and the aliens. They also hold, on the other hand, that emigrants abroad retain their original citizenship because it is viewed as economically beneficial to keep connections with citizens abroad.

Building on the works of Thomas Faist and Jurgen Gerdes (2008) and of Spiro (2010, 2016), I advanced not only the distinction between fixed and porous boundaries of citizenship but also sought to investigate how the nature of dual citizenship in the modern nation-state. According to Faist Thomas and Jurgen Gerdes (2008), citizenship with porous boundaries extends tolerance to dual citizens and enables naturalization of non-nationals. On the other hand, fixed boundaries refer to citizenship policies that maintain restrictive laws dual nations including the renunciation of previously held citizenship, and bureaucratic terms of naturalization including long periods, strict qualifications to dual citizenship (Spiro P. J., 2016).

The boundaries dilemma, while rooted in nation-state laws of citizenship and acceptance of multiple nationalities has also been used to explain the peculiar case of Kenya and Uganda. Both accepted dual citizenships and eliminated the renunciation demand of original citizenship to extend citizenship to persons from other countries.

Citizenship law change demonstrates the change in both countries integration policies in general, moving from earlier conservative approach to a more assimilationist approach in the last decade, and aligning their laws on citizenship to global conventional laws and protocols.
Drawing on this body of theoretical work, I focused my study on understanding how Kenya and Uganda, both countries that once rejected dual nationality and upheld restrictive naturalization policies have reformed their constitutions to accept dual citizenship. I commenced by investigating the acceptance of dual citizenship before turning to analysis on the role of transnational institutions in the internal political process leading to the recent acceptance of dual citizenship.

### 4.5 Recognition of Dual Citizenship

Sejersen (2008) noted that among 195 countries of the world, nearly half now recognize dual citizenship as compared to just a handful in the mid-1990s. The recognition of dual citizenship is notably low in Asia and higher in Europe and the Americas. The trend in Africa indicates that there is increasing allowance of dual citizenship. Manby (2016) observed that 30 of 53 African countries permit dual citizenship, particularly for their nationals who naturalize elsewhere.
According to West's Encyclopedia of American Law (2008), dual citizenship is an equal claim, concurrently possessed by two nations, to the allegiance of an individual. Under International law, the determination of citizenship when dual nationality is involved is governed by treaty, an agreement between two or more nations (Sassen, 2002). Since the 19th century, international norms on citizenship have been unreceptive of dual-citizenship. In 1925, the League of Nations conference created the 1930 Hague Convention on concerns that related to the conflict of citizenship laws, stressing that it was in the interest of the international community to maintain that all member countries should acknowledge that every person should have a nationality and should have one nationality only (Koslowki R, 2003).

### 4.6 Dual Citizenship in Africa

African governments allow dual citizenship chiefly as a means to promote and stimulate investment and remittances as well as to foster both economic and political ties to their Diasporas. However, dual citizenship raises security concern, developing

questions about whether dual citizens can be loyal to multiple countries (Whitaker, B. E, 2011). Less reflection has been given to political drives for the extension of dual citizenship rights, about modernism, the participation of emigrants in nation-states' politics, and the influence of transnational and regional blocs on legal reforms on citizenship. It is highly likely that the allowance of dual citizenship may be driven as much by "self-serving political interests" as it is by broader concerns for nation-state development (Whitaker, B. E, 2011, p. 756).

According to the African Commission on Human and Peoples' Rights, (2015), the Africa Union (AU) itself views the diaspora as a vibrant segment in a position to rally for the continent, the necessary scientific, technological and financial resources and expertise for the positive management of the programmes of the African Union Commission (AUC). This different reality has encouraged many countries to amend their legislation and introduce legislation allowing dual citizenship. In many cases, the rules remain highly problematic to interpret. Some countries demand that individuals seeking to naturalize, relinquish a previous nationality, but they make no provision for those who could lose their birth nationality just by acquiring another nationality. Several countries require persons obtaining another nationality to drop their birth nationality but do not require those naturalizing to renounce their former nationality (African Commission on Human and Peoples' Rights, 2015).

Manby (2018) noted that Uganda's dual citizenship provisions, as amended in 2009, are very intricate and create noteworthy conditions for holding dual citizenship. Holding three citizenships is not permitted, and the other country must permit dual citizenship. The provisions permitting dual citizenship relate to a person who has voluntarily acquired another citizenship, not to a person who is born with two citizenships (Citizenship and Immigration Control Act 1999, amended 2009, Section 19 A–G). Uganda has an intricate range of supplementary conditions that apply to people seeking to become naturalized citizens who wish to retain their other nationality, but which do not apply to those who renounce their citizenship (Manby, B, 2016). At the same time as the general prohibition on dual citizenship was lifted, Kenya's 2010 constitution similarly introduced a ban on state officers (including the president and vice president) being dual nationals (Constitution of Kenya 2010, Articles 78 and 137). In practice, before permitting dual nationality, Kenya requires the other country to permit it, although this is not stated in the Kenyan constitution.

# CHAPTER FIVE

In this chapter, I analyse the historical development, changes and debates that have surrounded the citizenship laws in Kenya. I start by giving an analysis of the state

formation, as, this is a central part, under which laws are leveraged to determine citizenship. Important to note, that given its colonial history with Britain, Kenya adopted most of its legal structures based on the British system. This did not either spare the laws on citizenship as shown in sub sections below. Currently, Kenya has an estimated population of 47.6 million.[6]

### 5.1 Historical State Formation in Kenya

For many millennia the several communities in Kenya adjusted themselves to their ecological niches (Sheriff, 1985). As a result, communities such as the Agikuyu and the Miji Kenda developed agricultural economies. Others, including the Masaai and the Samburu practiced pastoralist forms of production. The majority such as the Luo and the Abagusii got involved in mixed agriculture. Besides there the Ogiek who thrived on hunting and gathering. Production was primarily for collective subsistence rather than individual accumulation (Odhiambo, 2004). The kinship system was the basis of ownership of factors of production which included land and labour. Labour was largely cooperative within the family and the larger kin group. It was also manual, and the surplus was quantitatively small and imposed limitations on trade (Mamdani, 1996). Regional and long-distance trade involved prestige goods and influenced society only minimally. The rewards of labour were mostly redistributed in kind and according to need. There existed little differences in wealth possession. Reciprocity and the egalitarian ideal ensured that individuals never slid into abject poverty (Young, 1995).

There was very limited impetus for large-scale state formation. Instead, the largest political unit was the collectivity of a few families related by blood and most communities were highly segmented (Ndege, 2008). Centralized kingdoms were mainly found in the inter-lacustrine region to the west of Lake Victoria. The ethnic boundaries among pre-colonial Kenyan communities were fluid. Inter-ethnic interactions were characterized by trade, intermarriages and limited and intermittent warfare (Ogot, 2000). The histories of migrations and settlement were about continuous waning and waxing of the various ethnic communities. Colonialism only gave new shape, meaning and direction to the communities' inherent dynamism.

With this background, I argue that the sense of belonging, identity, state was based

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[6] Results from the 2019 census available at 2019census.knbs.or.ke accessed on 2nd April 2021.

mainly on family. This as I will explore in my comparative chapter, has had a role in understanding the concept of citizenship over the years within the region. In one way it helped keep unity, yet in another it created divisions sometimes centred on ethnicity. The colonial idea of creating boundaries did not make things any easier. The critical inquiry I make, is on the question of why both Kenya and Uganda, allowed for dual citizenship with their constitutional reforms in 2009 and 2010, respectively, I also highlight the challenges, which are to do with naturalization in these countries. There are specific tribes living in both countries, which have not been able to be granted citizenship status for years. My question then, how are these countries are able to let others have the opportunity of duality of citizenship, when denying those that have been present in the countries for years the opportunity to naturalize?

### 5.1.1 Colonial Kenya

Colonialism developed from imperialism, which can be referred to as the highest stage of capitalism (Lenin, 1971). In Kenya's case, as with the rest of Africa, the starting point was the 1884/85 Berlin Conference, which set the rules of colonial occupation (Chinsinga, 2004). Together with the 1886 Anglo-German Agreement and other inter-European territorial arrangements, the conference was instrumental in not only creating artificial boundaries around Kenya but also in wresting diplomatic initiative from Kenyan people. In 1894 and 1894 Britain declared protectorate over Uganda and Kenya, respectively (Tarus, 2004). Kenya's boundaries were demarcated without the consultation of Kenya's people. It can be conceded that the colonial boundaries led to the establishment of a large territorial entity. But they arbitrarily brought together over forty previously independent communities into one territorial entity (Ogot, 2000). The colonial state, and later the post-colonial state, would find it a daunting task wielding these communities into one nation-state. Indeed, it took the Turkana, the Samburu and other marginalized communities the whole of the colonial period and even later into the post-colonial era to realize they were in Kenya. While looking at the history of Africa in general, its colonial past is central and definitive. In order to be able to analyse the development and changes within the citizenship debate in Kenya, I chose to critically analyse state formation during the colonial times. Murphy (1986) says despite emphasis on the colonial state, very little discussion of its distinctive political features has occurred. The economic functions of the colonial state are stressed, to the exclusion of the questions about the basis of its

legitimacy, of its citizenship principles and of its authority.

Murphy (1986) further argues that the colonial political contention in regard to Kenya, was that of African rights and representation. The colonial state had a particularly fractured notion of citizenship which derived from its structural position as a mediator between African and settler. Its unequivocal role was to try to organize these two blocs into a coherent and if possible, harmonious society. This meant for the colonial powers, that it could not be a modern state in the sense of recognizing and being bound to, universalized political rights. The colonial state was in quandary when it came to citizenship. To extend rights of speech, association, and participation in power to settlers alone would have been to deliver the polity into their hands. Imperial legitimation and the trusteeship made this impossible, while a distrust of the ethic of profit made this undesirable. To extend political rights to its subjects would have implied undermining the whole system, since it was a system based on inequalities derived from racial rather than class qualifications.

According to (Mamdani, 1996) Colonial Kenya, was run on a three-tier racial stratification. The Europeans, who governed and controlled commercial and business farming, occupied the top rung, in the middle were the Asians who dominated trade and commerce in urban areas, and the African native population came at the bottom. It has been strongly posited that in terms of the legal governance framework under British rule, there were two sets of laws. He further argues that, there was the formal and civic laws to govern the elite urban population considered as 'citizens' who enjoyed a wide array of civil and political rights, and the other set of native or customary laws to govern the 'tribes', each according to its traditional norms and customs. This enhances my argument that, the citizenship concept had a different meaning from the colonialists´ outlook as compared to the African populations for whom the customary or traditional sense of kinship and common ancestry continued to largely define belongingness to a specific ethnic community. Many scholars with regard to citizenship debates in Africa have agreed to this position, and this again generates the discussion on the conflict that sometimes arises in constitutional debates in Post Africa on procedural matters regarding the Jus Soli and Jus Sanguinis.

### 5.1.2 Post-Colonial Politics in Kenya

The struggle for Kenya's independence emanated from the oppressive and exclusive

structures put in place by the colonial administration. Many Africans were disgruntled with the exclusive colonial administration that took away their land and gave it to white settlers. Africans were not happy about the creation of reserves and the restrictions that came with these creations, they were not happy with the imposition of hut and poll tax; and most of all Africans were not happy with the fact that the 'chiefs' rounded them up to provide cheap labour in the settler farms. Empowered with the Western education and with their understanding of the true meaning of Livingstone's 'three Cs:' Civilization, Christianity and Commerce (Livingstone, 1857). In reality a tool used by colonialist to access Africa's riches, and with the awareness created by their experiences in World War II, where Africans served under the whites in the King's African Rifles, and where they overcame their misperception of the invincibility of whites, Africans sought independence (Ochieng, 1985; Mamdani, 1996).

After the Second World War, a political conflict arose between the white settlers, the British colonial office and the African nationalists. During the Second World War, Britain had interpreted its duty in Kenya as that of protecting the interests of the Africans because it was within its own interest to do so as Africans had been recruited to fight for the British against the Germans in the King's African Rifles. This view was incorrect because in reality, the British only changed tactic to continue pursuing their interests in Africa and many nationalists understood this very well. By the end of the Second World War, India was clamouring for self-government and the peaceful struggle waged by Mahatma Gandhi was not wasted on Africa. After winning their battle against the colonialists, the Indians showed the way for many countries in Africa, and independence movements sprang up all over Africa (Matunhu, J., 2011). It suffices to mention here that while the change of tactic in Africa was taking place, in the mentality of the British Colonial Office, white settlers still considered themselves to be the `superior authorities'; they openly resented any interference with their social and political exclusiveness and continued to call for Kenya to be self-governed by the British white settlers.

African nationalism also picked up pace at the same time with Francis Khamisi, the Kenya African Union (KAU) Secretary General declaring Kenya 'a black man's country'. Britain eventually granted Kenya independence on the basis of a Westminster model constitution after lengthy consultations at Lancaster House, in London. In making this decision, Britain considered giving Kenya independence as an African state rather than what the settlers contemplated as a multi-racial state (Ochieng, 1985). A proper involvement of Africans

in the administration was understood as crucial for peace to prevail in Kenya. A creation of an African bourgeoisie tied to the prevailing system of ownership of landed property was also considered. In order to protect the interests of the minority, the 1962 Lancaster House Conference agreed on a constitution with a strong central government with a federal provision for regional governments.

Kenya eventually attained its self-governance on 1st June 1963 with Kenyatta as Prime Minister and on 12 December 1963 Kenya became an independent African state. However, despite this independence, it was later to be learnt by a few enlightened Kenyans that it was only an 'independence of the flag' as most of the colonial structures remained behind to be perpetuated by the new African elitist group on behalf of the colonial powers. This resilience of colonial influence is what Lugard referred to as 'indirect rule' (Lugard, 1965). To begin with, Kenya's first president Jomo Kenyatta began by demonstrating clearly his ability to continue with the colonialist values by assuring the white settlers in Nakuru not to fear because their farms would not be touched. Kenyatta's arguments are clearly captured by Wrong (2009) as follows: 'There is no society of angels, black, brown or white, if I have done a mistake to you; it is for you to forgive me. If you have done a mistake to me, it is for me to forgive you'. Kenyatta stood for continuity and not changes. A Kikuyu who had trained in London for 15 years, he understood both British and Kenyan (or at least Kikuyu) societies. He had long during the Lancaster House conferences entertained the idea of the Kikuyu being settled in the Rift Valley. Kenyatta's political philosophy before independence had not changed according to Ochieng (1985, p. 146) below: What we do demand in Kenya is a fundamental change in the present political, economic and social relationship between Europeans and Africans.

Africans are not hostile to Western civilization; as such they would gladly learn its techniques and share in the intellectual and material benefits which it has the power to give. Kenyatta at the same time called upon Kenyans to work together in nation-building. He argued that there was no 'room for those who wait for things to be given for nothing', and that 'there was no place for leaders who hope to build the nation on slogans' (Ochieng, 1985). A policy of post-colonial multi-racial society (this was actually the perspective that was initially propounded by the white minority who called for white governance of Kenya) was pursued by Kenyatta to promote relations between races, at least as far as his interests and those of his close associates were concerned. Furthermore, within this Kenyatta regime's framework, a multi-racial approach to political, economic, educational and land problems was also encouraged (Ochieng, 1985).

The Kenyan society was elitist and comprised of white professionals such as doctors, lawyers, British farmers, architects as well as insurance agents. The Kenyatta government inherited and embraced the entire colonial economic system. By borrowing money from Kikuyu banks and Kikuyu businessmen, using Kikuyu lawyers, privileged Kikuyus rushed to buy land from the departing whites under a subsidized scheme. They settled in the white highlands in the Rift Valley in large numbers in complete disregard of the previously dispossessed Maasai and Kalenjin ethnic groups who thought they had been only temporarily displaced by the whites. The principle of 'willing buyer and willing seller' was so unfair to these poorer ethnic groups. This was the beginning of the Rift Valley land problems that Kenya is facing today (Odinga, 1967). The Kikuyu who settled in the Rift Valley knew that what they were doing was unfair, but their minds were clouded by the same superiority complex that had misled the white settlers in believing that 'Kenya was a white man's land'. The Kikuyu elite believe that they deserve the land in the Rift Valley because they had bought it, in the same way that the white settlers believed that they deserved this land in Kenya because they had bought it too. The Kikuyu elite also believe that they suffered, even though it is known that some of them were a privileged, collaborating home guard unit. They argue that it is their community that rose up against the oppression of white settlers. In fact, those Kikuyu who did, under the Mau Mau movement, were not from the home guard unit. They believed that because they were closest to the missionaries, they were better educated and politically aware and therefore were superior to other tribes in Kenya. They had led the way and of course in the process believed they should eventually lead Kenya, so they felt that they had the right to dominate politically, economically and socially. In short, Kenyatta's government struck the right note with the colonialist from the beginning. In line with my current study, therefore, granting of independence could have advanced citizenship rights, legal reforms on citizenship and property ownership to all Kenyans equally.

The former home guards who had embraced the white man's ways formed part of Kenyatta's kitchen cabinet. This act clearly planted the seeds of the first Kenyan elitist group that had pro-Western values and that abandoned the struggle that bound them together with the rest of the oppressed Kenyans: The European elite undertook to manufacture a native elite. They picked out promising adolescents; they branded them, as with a red-hot iron, with the principles of western culture; they stuffed their mouths full with high-sounding phrases, grand glutinous words that stuck to the teeth. After a short stay in the mother's country, they were sent home, white-washed. These

walking lies had nothing left to say to their brothers; they only echoed (Fanon, 1965). This African elitist group learnt and inherited the colonial government structures and education and continued to subjugate fellow Africans (Mamdani, 1996). This elitist core of the periphery has continued its relationship with the former colonial powers through protection of the former colonial powers' continued presence and investments in the country even after independence; thereby jeopardizing the would-be citizenship rights, legal reforms on citizenship and property ownership among the rest (majority) of Kenyans.

Foreign aid, therefore, for a long time after independence represented an important source of finance in Kenya where it supplanted low savings, narrow export earnings and thin tax bases, especially during the Cold War era (Wrong, 2009). Subsequent governments after Kenyatta's government, have maintained the same kind of politics of exclusion that benefit themselves and trusted associates, mainly a selection of ethnic associates. This is a manifestation of the crises of post coloniality that afflicts Kenya. When Moi took over power from Kenyatta he declared his philosophy of following in the 'footsteps' of Kenyatta. He built his power around smaller ethnic groups and his Kalenjin ethnic group believed it was their turn to exploit the opportunities that come with political power. The Kikuyu elite continued to dominate in non-political spheres such as the transport business, hotel, real-estate and so on. The Kikuyu elite blamed Moi for the economic problems in the coffee industry, tea factories and Kenya cooperative creameries in central province (Wrong, 2009). They also blamed Moi's regime for the land clashes in the Rift Valley that mainly targeted Kikuyu as 'foreigners' in the region. Moi's Kalenjin ethnic group continued to prosper in education and in getting lucrative jobs in government; an airport and bullet factory were constructed in Moi's region. It is within this framework of ethnicity, greed and corruption that Kibaki's regime was ushered in during 2002. The Kikuyu elites once again celebrated Kibaki's regime as the Kikuyu elite's 'turn to eat' again, as Kibaki is from the Kikuyu ethnic group (Wrong, 2009). Therefore, ongoing debate could have some serious equity and legal implications on citizenship rights, legal reforms on citizenship and property ownership.

### 5.2 Citizenship Acquisition in Kenya

Kenya, after independence which took place, in 1963 had certain critical defining moments which in a greater sense impacted on the citizenship debates. Not only did

constitutional amendments take place, as I will shortly elaborate, but also the introduction of a one-party state which lasted for a while and then a return to a multi-party state.

In Kenya, the constitutional framework governing the transition to independence provided a theoretically complete system for determining who among the residents of Kenya obtained citizenship automatically on succession of states or who had the right to register as citizens if certain facts were established (Ellis, 2006). Those who automatically became citizens of Kenya at independence were people born in Kenya who had one parent also born in Kenya and who was at that time citizens of the UK and colonies or British protected persons. According to the Constitution of Kenya (1963), others born or resident in Kenya, including those from non-British territories in Africa, could register as Kenyan under certain conditions.

I argue, that there were certain misgivings with the transition to independence and the shift in citizenship laws. There seems to exist a continuous unclear legislation on either Jus soli or Jus sanguinis, in regard to the Kenyan citizenship debate. This too, in part forms the question, I wish to answer in my research regarding the legal implications of allowing for Dual Citizenship. I concur with (Ng'weno and Obura, 2019) who argue regarding the Kenyan case: "Initially framed in racial terms, soon the tool of jus sanguinis was used against minorities or unwanted populations of other sorts, enabling denial of citizenship as well as the deportation of large number of people, through legislation regarding who ought to be a citizen" (Ng'weno and Obura, 2019, p. 161). This debate continues when it comes to dual citizenship and the reform of the Kenyan law in 2010. There continues to be unresolved issue right from independence for persons, who were kept out of the law and denied the possibility to naturalize, as I indicate in the sub-chapters below. Hence, by reforming the laws and accepting for dual citizenship, the mechanisms ought to cater first and foremost for a clear citizenship law.

Many, however, did not apply to register: only around 20,000 people applied to register as Kenyan citizens during the transitional two-year period, most of them from South Asia, out of an estimated 230,000 Asians and Europeans who would have been eligible (Rothschild, 1968). Very few African migrants applied, yet there had been much labour recruitment into Kenya, to work on the pyrethrum farms, tea estates, and other large commercial enterprises. These transitional provisions continue to have an important role in determining access to citizenship today, because of the decision in

1985 to adopt (with retroactive effect) a purely descent-based citizenship law (Constitution of Kenya Amendment Act No. 6 of 1985). Despite the arguably illegal nature of such retroactivity, there was no legal challenge to the amendment, perhaps because interpretation of the law had already moved that way in practice (Shah, 2012). Many thousands of people today struggle to obtain documentation of Kenyan citizenship either because of the restrictive nature of citizenship law, or because of discrimination in its application.

Kenya successfully promulgated a new constitution in August 2010 to replace the one which was negotiated between the British major political parties of the time at the Second Lancaster House Conference in 1962 and promulgated in 1963. One of the key features of the Constitution of Kenya, 2010 is the provision for dual citizenship. Various implementation aspects of this provision have been discussed and a number of relevant bills presented in parliament. While dual citizenship in the 2010 Constitution is a reality, effective implementation to maximize national and individual benefits remains to be seen. The dilemma of maintaining state sovereignty is evidenced in Kenya in three ways. First is the large number of nationals who have migrated to other countries, especially in the western hemisphere. Most of these nationals have sought citizenship in their domicile countries. Though there are no accurate statistics on the number of Kenyan citizens in the Diaspora, there is anecdotal evidence that this section of the population is rapidly growing, with those in the United States of America alone estimated to be over 100,000 (US Census Bureau, 2010). Other regions with equally large numbers include Canada, Europe, Australia, and Southern African countries such as South Africa and Namibia. Second is an even faster growing section of the population from the offspring of the Kenyans abroad. That form of birth citizenship granted based on parentage (referred to as jus sanguinis, the rule of the blood in contrast to jus soli, right of the soil) is also a growing form of citizenship, based on descent/blood relationships (Shah, 2012) which can apply to the Kenyan situation. Thirdly, due to political instability in the Horn of Africa, particularly in Somalia and Southern Sudan, Kenya has experienced a significant in-flow of foreign nationals from these regions. This emerging section of the population is evidenced by some places in Kenya, such as Eastleigh in Nairobi being referred to as "Little Mogadishu" (Rothschild, 1968). Thus, in order to conceptualize a workable dual citizenship policy, Kenya needs to consider not only their nationals in the Diaspora,

but also the offspring of these nationals, as well as other nationals who have migrated into Kenya.

The provision of dual citizenship in the Constitution of Kenya, 2010 seems to have been motivated by potential economic benefits given the larger number of Kenyan emigrants in North America, Europe, Australia, and other African countries. The somewhat weak Kenya economy stands to gain if Kenyans in the Diaspora were engaged and encouraged to invest back home from their earnings abroad. The country already benefits substantially from remittances from the Kenyan Diaspora, which in 2017 and 2018 was in excess of US$ 1.57 and US$ 2.23 billion respectively, a jump of 42.5 percent (Central Bank of Kenya, 2019). With these benefits notwithstanding, the question which remains is whether there are serious backlashes at the individual as well as at the national level associated with such dual citizenship. A thorough cost-benefit analysis in the context of the Constitution of Kenya, 2010 of this phenomenon is deemed necessary as the country continues to refine laws and policies related to dual citizenship (Bagaka J., Otiso W. & Epiche M., 2020).

In agreement with Jürgen Mackert and Bryan S. Turner´s argument on the Transformation of Citizenship, the case of Kenya would be a part of this, not only in the economic realm, but also in the political realm. As I argue below, a colonial Kenyan citizenship regime left a lot of unresolved debates that continue in a post-colonial Kenyan citizenship regime. For example, colonial Kenya had "citizens" and "subjects" and with the coming of Independence, post-colonial Kenya had to deal with citizens in general. This implied a need to formulate laws that would accommodate everyone without leaving others out. Given the political, ethnic and geographical factors, this seemed not to have worked. This, to me, further brings up the discussion of Aristotle, who was concerned with the "original citizen of a new state." This debate continues not only in Kenya or Africa, but in many other nation states or entities. I argue, such a debate then generates another discussion on who can be a dual citizen and who cannot, what conditions are required, and which actors influence this. Belonging has not fully been defined in Post-Colonial Africa, and this has led in some parts to exclusionary citizenship laws. Legitimacy then becomes another issue of contention, especially where weak states exist, which to date, in my argument, are central to the citizenship debate. This is partly due, to the emerging states or weak states, formulating laws including those on citizenship, based on the needs, mainly of the political actors, who in certain instances, in parts of Africa, are focused on keeping a firm hold on to power.

The issues surrounding ethnicity and citizenship, which were carried over from the colonial actors, are neither left out. From the functioning on the successor nation, then comes the debate of who a citizen is and who a subject is. Further comes the question of who a citizen at independence was, keeping in mind, that British Citizenship Act was functional.

### 5.2.1 Role of Ethnicities: Historical perspective to the current debate

One of the most persistent aspects of colonial legacy in post-colonial Africa and Kenya, in particular, was the ethnic division that manifested itself both as a group identity and as a mobilizing agent in the quest for economic and political gains. The intricate process of group and class configuration merged with the colonialists' attempt to handle traditional societies and their attempt to develop sophisticated capitalist economies in various colonies (Kitching, 1980). Therefore, it would be difficult to gain an understanding of the ethnic intricacies in Kenya's political development unless we go back down memory lane to examine the impact of colonialism on ethnic groups' organization (Leys, 1975).

Ethnic consciousness, as well as the intense ethnic rivalry in Kenya's political arena, derives somewhat from the manner in which the colonialist established local governments and administrative borders on the basis of linguistic and cultural orientation. This was informed by an erroneous colonialist's understanding of Africans which was premised on the idea that Africans organized themselves along tribal lines (Sandbrook, 1985).

Like most African countries, Kenya which became a republic in 1963, was a product of European machinations. The conference in Berlin (1884) laid the ground for official demarcation of the continent of Africa into different territories that would be put under the influence of various European powers (Rosenberg, 2004, pp. 16–18). For the first time, several pre-existing African societies (ethnic nations) with independent and diverse social, political, and cultural spheres were within the same territory — Kenya just as other African countries was born during this period (Mamdani, 2018, p. 9; Mungeam, 1978). Critics of European countries' actions during and after the Berlin conference that led to the formation of multi-ethnic states in Africa have argued that lack of consultation or involvement of the locals during the

process of determining who they would be merged with had far-reaching consequences (Ogot, 2000, p. 13).

Interestingly, the consequences of merging different ethnic groups to form different countries did not have an immediate negative impact, at least for the continent since ironically; it is these same ethnic groups that collaborated to form liberation movements that ejected Europeans from Africa. During its establishment, Kenya had over 40 different ethnic groups which were previously independent of each other but had now been merged to form the British Crown Colony of Kenya that was first administered by Sir William Mackinnon, and later a series of administrators, commissioners, and governors appointed by the Queen from England took charge (Cohen & Middleton, 1970). Some of the ethnic groups under Sir William Mackinnon had already established mutual hostility between them but this did not manifest itself as a threat to the stability of the new nation-state. As such, conflicts are not solely based on cultural differences and cultural homogeneity is not a necessary condition for political stability. The animosity between ethnic groups that led to the 1992 ethnic clashes and 2008 post-election violence is a product of both ethnicization of politics and politicization of ethnicity, factors that can be traced back to the colonial era. These factors were later inherited by post-colonial political leaders who failed to inculcate a national culture due to their pursuit of sectarian and self-interests. The burden of ethnic rivalry and ethicised politics was later passed to their contemporaries who to an extent failed in the nation-building project.

As it was clear that the exit of the British from Kenya was inevitable, and that the country was destined for independence, cracks began to emerge among the political elites. Their division played out openly in England during the third Lancaster conferences as the representatives of Kenya African National Union (KANU) which was dominated by the majority ethnic communities, and those of Kenya African Democratic Union (KADU) which was representing minority ethnic groups, differed on the post-independence political and economic structure of Kenya (Anderson, 2005).

Upon independence, it seems that the country was not able to come up with an elaborate action-building project that would bind the people together. Instead in less than a decade after independence, social trust, which is a crucial element in nation-building, was lost and the hopes for a better country started to fade giving way to the

uneasy relationship between political elites as well as between the ethnic groups, especially the major ethnic groups (Hazelwood, 1979). The nature of politics that was being practiced during the early years of the new republic exacerbated the situation. The idea of winner takes all in Kenyan politics transformed elections to a fiercely contested affair (De Smedt, 2009) placing ethnicity at the centre of the political struggle.

The stringent requirement of the 2010 new constitution that a presidential candidate had to garner 50% +1 of cast votes to win an election created another period of intense ethnic mobilizations. This is due to the realization that a presidential candidate could not win a national election by merely depending on their ethnic blocs. This is because even the largest ethnic groups in the country consist of roughly 10–18% of the total population. For example, according to the 1999 population census, the following communities could be considered as the largest with each having more than a 10 percent share of the population, Kikuyu (17.15%), Luhya (13.82%), Kalenjin (12.86%), Luo (10.47%), and Kamba (10.07%). This means that the major ethnic groups made up 64% of the total population while the over 35 remaining ethnic groups share made up 36% of the total (Republic of Kenya 2009). These figures mean that to win an election in Kenya, different ethnic groups must form pre-election coalitions to face off with their opponents (Elischer, 2008).

Valuable lessons were learned during the 1997 general elections when opposition political parties, Forum for the Restoration of Democracy (FORD-Kenya), Labour Democratic Party (LDP), Social Democratic Party (SDP) and the Democratic Party, failed to defeat the incumbent KANU. This loss was attributed to the fact that the opposition political parties had divided votes among themselves giving the incumbent a slim win. Both the ruling party and the opposition parties during the 1997 general elections were associated with different ethnic groups and not ideologies (Foeken, & Dietz, 2000, pp. 126–30). To put it in context, FORD-Kenya was related to the Luyha community, SDP was associated with the Kamba community, NDP (later LDP) was associated with the Luo, KANU was linked to the Kalenjin community, and DP was associated with the Kikuyus.

The table below will explain the correlation between ethnicity, party affiliation and voting patterns;

| Province | Ethnic Composition | Comment |
|---|---|---|
| Nairobi | 47% Kikuyu<br>16% Luhya<br>15% Luo<br>15% Kamba | Nairobi is the most ethnically diverse region<br>in Kenya |
| Coast | Smaller coastal communities | The coast is equally diverse |
| Eastern | 55% Kamba<br>39% Meru/Embu | 87% of all Kamba live in Eastern<br>97% of all Meru/Embu live in Eastern |
| North-Eastern | 96% Somalis | 95% of all Somali live in North-Eastern |
| Rift Valley | 51% Kalenjin<br>15% Kikuyu<br>7% Masai | 95% of all Kalenjin live in Rift Valley<br>97% of all Masai live in Rift Valley |
| Western | 88% Luhya | 80% of all Luhya live in Western |
| Nyanza | 63% Luo | 87% of all Luo live in Nyanza |

**Source:** National Census report, Kenya Bureau of Statistics (2009)

Diamond and Gunther developed a framework to analyse political parties in Africa. They came up with three categories of political party membership namely mono-ethnic, the multi-ethnic alliance and the multi-ethnic integrative parties (Diamond and Gunther, 2003). They examine factors such as the leadership of the party, functions of the party in terms of whose interest they support, electoral cleavages and national coverage. A keen look at the political parties in Kenya allows one to conclude that most of them are mere ethnic formations—going by Diamond and Gunther's categorization. The polarisation of ethnic identity and political party affiliation means that even those smaller ethnic political parties that do not have a presidential candidate and therefore must vote for another party in a presidential contest, have higher chances of winning a majority of the parliamentary and civic seats through their political party in their ethnic backyard.

### i) Ethnicity and Development

Kenya provides a good case study of how ethnicity and politics have impacted on the development and more importantly the unequal distribution of resources (Yieke, 2010; Ajulu, R.2002). The Kenyatta and Moi presided over discriminatory regimes in

which dissenting leaders and their ethnic groups were subjected to economic deprivation that saw major infrastructural projects carried out in regime-friendly regions. But this did not result in significant economic developments in regime-friendly regions including those that produced the presidents since the infrastructure developments were of a substandard quality and were marred by scandals, yet more infrastructural developments were promised during presidential campaigns.

Bayart (1993), develops the argument that when states are seized by an ethnic group, upward mobility is preserved for members of such ethnic groups who end up using state machinery and protection in pursuit of self-interest instead of national development. In the case of Kenya, an overzealous pursuit of self-interest has led to the loss of trillions of Shillings in major corruption scandals like Anglo Leasing, Goldenberg, Grand Regency, Triton, and the maize scandal, to mention but a few. Interestingly, ethnicity has prevented the individuals involved from facing criminal prosecutions and many of them are still walking free, bathing in ill-gotten wealth. Such individuals have often used the ethnic card in their defence claiming that their ethnic groups are being targeted ironically in scandals where the members of the groups had little or no benefits.

The recent establishment of devolved governments, as a constitutional requirement, has become synonymous with devolved corruption as political leaders together with their cronies in the county governments misappropriate public funds for personal gains. County governors have engaged in the overpricing of equipment like wheelbarrows and pens as well as infrastructure projects. In ethnic homogenous counties, nepotism is rife while in heterogeneous counties, ethnicity has taken over. In essence, the national government together with county governments have merged to form a rapacious state where nepotism and ethnic identities are used as benchmarks in the awarding of tenders and state contracts.

However, with the establishment of the Office of the Auditor General under the new constitutional dispensation (Constitution of Kenya, 2010), a number of scandals and misappropriation have been revealed to the public. There have also been pockets of good practices in which county governments have endeavoured to provide essential services to the locals. A good case in point is Makueni County which was given a clean bill of health in 2018 with regards the proper utilization of county funds. Other counties, especially in the former North Eastern province, that were initially marginalized, have also endeavoured to provide the much-needed essential

infrastructure and services. In short, there have been significant improvements in various sectors like health, education, and industry in regions that had been previously neglected. Even though the situation is slowly changing as a result of a historical handshake, the public and private sectors are still dominated by members of ethnic groups allied to the president and his deputy. The impact of such dominance of politics and economy by a small number of ethnic groups has resulted in the ethnicization of public institutions and enterprises as evident in the National Cohesion and Integration (NCIC) report of 2011. The report painted a grim picture of ethnicization of public service, four out of 42 ethnic groups in Kenya sat in 58% of the positions in the public sector (NCIC Report, 2011). Corruption, little or no accountability, blithe disregard of merits and impunity become tolerated because of ethnic cronyism in the public sector.

### 5.2.2 Dual Citizenship in Kenya

There have been reforms in Kenya on citizenship, from naturalization, to gender nationality laws and to dual citizenship. Here I give specific focus to the dual citizenship debate:

"(1) A citizen of Kenyan by birth who acquires the citizenship of another country shall be entitled to retain the citizenship of Kenya subject to the provisions of this Act and the limitations, relating to dual citizenship, prescribed in the Constitution. (2) A dual citizen shall, subject to the limitations contained in the Constitution, be entitled to a passport and other travel documents and to such other rights as shall be the entitlement of citizens. (3) Every dual citizen shall disclose his or her other citizenship in the prescribed manner within three months of becoming a dual citizen. (4) A dual citizen who fails to disclose the dual citizenship in the prescribed manner commits an offence and shall be liable, on conviction, to a fine not exceeding five million Kenya shillings or imprisonment for a term not exceeding three years or both. (5) A dual citizen who uses the dual citizenship to gain unfair advantage or to facilitate the commission of or to commit a criminal offence, commits an offence and shall be liable, on conviction, to a fine not exceeding five million Kenya shillings or imprisonment for a term not exceeding three years or both. (6) A dual citizen who holds a Kenyan passport or other travel document and the passport or other travel document of another country shall use any of the passports or travel documents in the manner prescribed in

the Regulations. (7) A dual citizen shall owe allegiance and be subject to the laws of Kenya" (Kenya Citizenship and Immigration Act No .12, 2011). Arguably, the above debate forms a basis in some way of my present study research questions of why did Kenya and Uganda allow for dual citizenship, what were the legal implications of this reform and what was the role of transnational actors?

### i) Dual Citizenship Policies for the Stability and Prosperity of Kenya

Kenya's Constitution Article 16, 2010 that permits dual citizenship in Kenya states that "A citizen by birth does not lose citizenship by acquiring citizenship of another country." Further it states that procedure and substantive law that regulate and facilitate the issue of dual citizenship will be provided by Legislation (Article 18). Pursuant to Article 18, the Kenya Citizenship and Immigration Act of 2011 (KCIA) has been enacted to implement further the provisions of the Constitution regarding the issue of citizenship. In general, therefore, the Constitution of Kenya, 2010 contains sufficient provisions for Kenyan-born nationals who reside in various countries to acquire dual citizenship. There is no doubt, however, that the spirit of the constitution neither provides for the offspring of these Kenyan national nor nationals of other countries who have immigrated and reside in Kenya. Evolution of the concept in regards to, acceptance of dual citizenship in most countries is an apparent turnaround from the situation in mid-19$^{th}$ to mid-20$^{th}$ century when dual citizenship was deemed an evil that had to be stopped (Blatter et al., 2009). For instance, the 1941 Act on Acquisition and Loss of Finnish Nationality was mainly aimed at prohibiting dual citizenship and statelessness in Finland. Before the advent of globalization, dual and multiple citizenship was generally considered a forbidden fruit, with Theodore Roosevelt terming it a "self-evident absurdity" (Bagaka J., Otiso W. & Epiche M., 2020).

I further argue, that although both Kenya and Uganda, allowed for Dual Citizenship, there are still shortfalls within the procedures, legislation and implementation. This I will expound on, in my comparative chapter on both countries. However here, I wish to bring to light the context of Kenya. For example, whereas the main regulatory documents with the legal authority on citizenship in Kenya, that is to say, the Kenyan 2010 Constitution and the 2011 Citizenship and Immigration Act, have made progress, in certain aspects, they continue to discriminate others. There continues to be

pertinent questions on the issue of discriminated ethnic groups, who have no or limited access to Kenyan citizenship. These include and not limited to; the Nubians, Boranas, the Somalis, among others. On a rather positive note, the new citizenship act provides for issues such as gender equality by bringing to the fore the possibility of children born to Kenyan mothers to acquire citizenship from their mothers. Previously this was not possible and citizenship would only be acquired from the father, who should of course be Kenyan.

There are other non-conclusive factors, in the legal debates on Kenyan citizenship which provides basis for dual citizenship. For example, the Kenya Children Act of 2001 explicitly avails for the right of children to a name and a nationality, but does not mention of the possibility of birth registration. I argue, that is in itself a contradiction. Further, the Citizenship and Immigration Control Act provides for a right to a birth certificate, however this is only for Kenyan citizens. I argue, that by limiting the possibility of children born in Kenya to access a birth certificate that in itself, blurs the proper documentation, access and right to belonging.

This is hence where I critique the Kenyan legal, political actors for having reformed the law to provide for Dual Citizenship, yet living out the critical aspects of the law, which until now, in my argument, is exclusionary. It is estimated that only 60% of births are registered, creating additional challenges to proving nationality.

### 5.2.3 Transnational Actors on Dual Citizenship (EAC /AU/UN): Looking at the Critical Debates and How These Have Influenced Reforms.

According to the United Nations (2008), a number of reasons have been postulated for the presumed growth in dual citizenship in recent decades. These include large and circular migration flows, growing rates of naturalization, provisions for *jus sanguinis* ("right of blood") in national legislation, children from increasing international marriages, and less direct reasons, like reduction in warfare between countries and demise of military conscription, as well as expansion of the international human rights regime (Kivisto and Faist, 2007). AU (2014) recognizes that dual citizenship is allowed with no restriction. This is the case in the majority of countries that provide for dual citizenship in their legislation. The countries are Algeria, Angola, Benin, Burkina Faso, Burundi, Cape Verde, Chad, Comoros, Congo, Djibouti, Gabon, Ghana, Guinea Bissau, Kenya, Mali, Mozambique, Niger, Nigeria, Rwanda, Sao Tome and Principe,

Seychelles, Sierra Leone, Somalia, South Sudan, Sudan, Egypt, Libya, South Africa and Uganda and Tunisia. Some countries require individuals seeking to naturalise to renounce a previous nationality, but do not provide for those who have nationality from birth to lose it if they acquire another.

The African Union Migration Policy Framework adopted in 2006 included among its other recommendations that AU Member States should 'incorporate key guidelines as recommended in the 1954 and 1961 Statelessness Conventions', and 'develop national legislative and policy frameworks to counter statelessness, particularly in cases of long-term residents, by reforming citizenship legislation and/or granting rights similar to those enjoyed by foreigners residing in the country.

Many the problems related to statelessness and nationality in the African continent can, as noted above, be traced to the provisions adopted in the 1960s when African States achieved their independence and international sovereignty. The question of the impact of changes in sovereignty on the nationality of the people living there has created new interest among African jurists.

Although East Africa was the first to experiment with regional integration as of 1967, as a means to promote co-operation (between African States) in all fields of human endeavour in order to raise the standard of living of African peoples, and maintain and enhance economic stability, foster close and peaceful relations among Member States and contribute to the progress, development and the economic integration of the Continent, it is in West Africa that this form of cooperation has truly taken shape with the adoption of a certain number of measures by the ECOWAS Member States, intended not only to bring about a rapprochement between the people of the region, but also and above all to establish the legitimacy of the idea of the emergence of an African citizenship. As the AU said so well, "the choice before the peoples of Africa is not so much to unite or not to unite, but to forge ahead in the journey towards African integration" (AU, 1991).

### i) The Role of International Partners

I argue that different UN agencies and other international partners of East African states, including UNHCR, UNICEF, UNDP, UNFPA and the Office of the Special Envoy for the Great Lakes Region should strengthen coordination and collaboration around the right to a nationality both at international and East

African levels and among national offices, in particular by ensuring the different interventions to address lack of documentation are coordinated both with governments and with each other, based on gaps identified through a common baseline assessment and analysis, in particular of qualitative data, adopting regulations or guidelines on statelessness and nationality law as it interacts with other relevant systems, including border management, identity documentation, birth registration and supporting the implementation of the recommendations.

### ii) Identification of Populations at Risk of Statelessness, and Prevention and Reduction of Statelessness

EAC Partner States should seek to identify and provide solutions for those persons who are stateless or at risk of statelessness, and in particular they should conduct research into populations at risk of statelessness, in order to identify those groups or individuals who require confirmation of their right to nationality of the country they live in, or interim protection as stateless persons prior to facilitated acquisition of nationality, conduct specific awareness raising activities among populations at risk of statelessness to encourage individuals to acquire those documents that would confirm their nationality, including birth certificates, and to apply for confirmation of nationality through the procedures available, whether of the country of residence or another relevant country, in case of forced population movements caused by conflict or other crises, ensure documentation of those who have been forced to move at the earliest moment, and take particular measures to provide access to birth registration for their children, in line with the 1951 Refugee Convention (Article 25) and where individuals cannot be confirmed to have a nationality under existing laws, provide them with a temporary protective status in accordance with the procedures required by the Convention relating to the Status of Stateless Persons, and facilitate their acquisition of nationality.

### iii) An Integrated Approach to Nationality Systems

EAC Partner States should address nationality and statelessness from a systemic perspective, seeking to put in place coherent initiatives on documentation and identity management that provide access to a nationality for all, both in theory and

in practice. Such a process requires a system wide action plan among nation states, which not only is impactful for citizenship debate per se, but other aspects too including dual citizenship, establishment of relevant legal frameworks.

### iv) Accession to and Implementation of UN and AU Treaties

EAC Partner States should take steps to fulfil the commitment they adopted, as ICGLR Member States in the Brazzaville Declaration and Action Plan, to accede to the 1954 Convention relating to the Status of Stateless Persons and the 1961 Convention on the Reduction of Statelessness, and to review national law and practice to ensure it is compliant with their requirements, based on UNHCR's Handbook on Protection of Stateless Persons and guidelines on prevention of childhood statelessness. Uganda acceded to the 1954 Convention in 1965; Rwanda to both conventions in 2006; and Burundi's National Assembly unanimously approved accession to both conventions in September 2018, as this report went to print. No action had been taken by other EAC Partner States. All EAC Partner States except South Sudan are already party to the African Charter on the Rights and Welfare of the Child, of which Article 6 deals with birth registration and the right to a name and nationality. They should review their laws and procedures in line with the General Comment on Article 6 of the Charter adopted by the African Committee of Experts on the Rights and Welfare of the Child in 2014. Burundi and South Sudan should consider acceding to the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa. South Sudan should additionally consider acceding to the ACRWC.

### v) The East African Community Legal and Policy Framework

An EAC was first established in 1967 by the post-independence leaders of Kenya, Uganda and Tanzania, and lasted ten years before dissolving in 1977. While other forms of cooperation continued, it was not until 1993 that heads of state signed new agreement for a Tripartite Commission for East African Cooperation, and 1996 before a secretariat was put in place. In November 1999, negotiations among the three states finally resulted in the signing of a new Treaty for the Establishment of the East African Community, which entered into force on 7 July 2000. Rwanda and Burundi acceded to the treaty and joined the Community in 2007; South Sudan acceded to the treaty in April 2016 and formally joined the organization in October

2016. The EAC Treaty envisages a customs union, a common market, a monetary union, and ultimately a political federation; protocols to the treaty create the framework for the customs union (2004); the common market (2009), and the monetary union (2013). Most progress has been made towards the customs union, which entered fully into effect in 2010.

- **Uganda**

Uganda's independence provisions on citizenship followed the standard Commonwealth model. Those born in Uganda with one parent also born there became citizens automatically. Those who did not fulfil these requirements but were themselves born or ordinarily resident in Uganda had the right to register as citizens if they were citizens of the UK and colonies or British protected persons. Unlike Kenya and Tanzania, Uganda did not provide for registration of those originating from other non-Commonwealth African countries.

- **Tanzania**

As in Kenya, the transitional provisions put in place at independence continue to have relevance today in Tanzania. In particular, the distinction between those who were automatically attributed citizenship on the independence of Tanganyika and those who were required to register or naturalise in order to acquire citizenship is still dominant in the understanding of citizenship for those on the mainland. The situation in Zanzibar is somewhat different, because of the much older legislative framework for citizenship, but the pre-independence rules still impact the interpretation of the laws currently in effect.

- **Rwanda**

Rwanda's 2008 nationality law provides the most complete protection against statelessness among all the Partner States of the East African Community. The law provides that both a child of unknown parents and a child born in Rwanda who cannot acquire the nationality of his or her parents shall be presumed to be Rwandan (Article 9); and it specifically provides for stateless persons who marry a Rwandan national to be able to acquire nationality (Article 11), as well as stateless children adopted by a Rwandan (Article 12). In a provision introduced in the 2004 nationality code, children born in Rwanda of foreign parents have been able to apply for nationality on majority

(Article 9). Deprivation of citizenship is not permitted from a person who was attributed Rwandan nationality at birth (nationality of origin) (Article 19). In the case a naturalised person, an individual can be deprived of Rwandan nationality if it was acquired fraudulently even if this results in statelessness (Article 19); while this provision nevertheless complies with the requirements of the 1961 Convention on the Reduction of Statelessness, the permitted extension of deprivation to the individual's spouse and children does not (Article 21).

- **Burundi**

Although nationality law in Burundi, as established by the nationality code of 2000 and the constitution of 2005, contains no explicit ethnic element, it provides an exclusively descent-based system, with the exception only of children of unknown parents. In the absence of a framework to govern the succession of states at independence, and the continuing existence of a Burundian monarchy, there were no rules on who became Burundian on 1st July 1962. This omission leaves those who are descendants of migrants to the country—potentially dating back generations—at risk of statelessness.

The first Burundian nationality code was only adopted in 1971, nine years after independence. It drew heavily on the Belgian descent-based model and discriminated on the basis of the sex of the parent: attribution of nationality at birth depended on being the child of a father with the "status of a Murundi" ("*ayant la qualité de Murundi*"). There were exceptions in favour of children of unknown parents, and of a person born in Burundi and domiciled there for at least 15 years, *unless* it was established that the person was the national educated in Tanzania), Anatoli Amani (the leader of the ruling Chama Cha Mapinduzi (CCM) party in the north-western Kagera region), and Mouldine Castico (a former publicity secretary of the CCM in Zanzibar).

### vi) Dual Citizenship

Dual citizenship is allowed under the law in most circumstances in Burundi (since 2000), Kenya (since 2010), Rwanda (since 2003), South Sudan (since 2011), and Uganda (since 2009). In Uganda, however, dual citizenship is permitted only with the permission of the authorities, whilst in Kenya failure to disclose dual citizenship to the authorities is an offence punishable by imprisonment and/or a fine.

Dual citizenship is not permitted for adults in Tanzania; recent constitutional debates rejected the inclusion of this change in a proposed new draft constitution, but the issue remains under discussion. Uganda's dual citizenship provisions, as amended in 2009, are very complex and create significant conditions to be able to hold dual citizenship. It is not permitted to hold three citizenships, and the other country must permit dual citizenship. Uganda is also unusual in providing that dual citizenship is only allowed for adults, not for children; even a child born and resident in Uganda until majority who has another citizenship has to apply for Ugandan citizenship as an adult as would be the case for any other foreigner (Citizenship and Immigration Control Act 1999), (The more usual provision where dual citizenship is prohibited, as in Tanzania, is for children to be permitted to hold two nationalities until they reach majority, when there is a period during which they must opt for one or the other). The law provides additional conditions that apply to people seeking to naturalise who wish to retain their other nationality, that are not applied to those have been Ugandan citizens from birth but naturalise in another country. The amendments established a list of public offices that cannot be held by dual citizens.

Kenya's 2010 constitution similarly introduced, at the same time as the general prohibition on dual citizenship was lifted, a ban on state officers, including the President and Deputy President, being dual nationals. In practice, Kenya requires the other country to permit dual nationality before permitting it, although this is not stated in the legislation (Kenya Citizenship and Immigration Act No. 12 of 2011).

### vii) The Role of the East African Community

The EAC Treaty commits Partner States to adopt measures to achieve free movement of persons, labour and services and to ensure the enjoyment of the right of establishment and residence of their citizens within the community. Implementation of these agreements remains incomplete, although some law reforms have been adopted.

The EAC Treaty also commits Partner States to adhere to "the principles of democracy, the rule of law, accountability, transparency, social justice, equal opportunities, gender equality, as well as the recognition, promotion and protection of human and peoples' rights in accordance with the provisions of the African Charter on Human and Peoples' Rights". Both the free movement agenda and the obligation of EAC Partner States to respect human rights imply the need to eradicate statelessness and respect

the right to a nationality. Without recognition of nationality, residents of the EAC Partner States will enjoy neither their rights to free movement nor respect for their human rights more generally. Moreover, both the African Commission on Human and Peoples' Rights and the African Committee of Experts on the Rights and Welfare of the Child have developed strong interpretations of the right to a nationality under the two treaties.

The EAC as an institution and Partner States can individually and collectively build on the positive steps already taken in order to reduce and ultimately eradicate statelessness in the region. This will not be achieved in a few months or even years, but should be a long-term objective, to ensure not only respect of the rights of the individuals concerned, but also the economic development and peace and security of the societies as a whole.

The states making up the EAC derive their nationality laws from two main legal traditions: the Belgian civil law and the British common law (as influenced most recently by Sudanese law in South Sudan). Although the laws adopted at independence have been amended several times in five of the six countries (with the exception of newly independent South Sudan), the institutional and procedural framework is still based on these systems.

Uganda, Tanzania and Kenya were all British territories, though with differences in status. Tanzania's federal structure today reflects the fact that the mainland, Tanganyika, became a German colony, while the islands of Zanzibar (Unguja and Pemba) remained under the internal control of the Sultan of Zanzibar (a branch of the Omani royal family), as a British protectorate (Manby, 2018). The strip of territory on the mainland controlled by the Sultan was partially incorporated by Germany into Tanganyika, while the northern part fell under British control. After the German defeat in 1918, Tanganyika became a British League of Nations Mandate and subsequently UN Trust Territory, gaining independence in 1961. Today's Kenya was administered by the British, but divided in two parts: the formerly Zanzibari coastal strip, stretching from the Tanganyika border up to Lamu, was governed as a protectorate, notionally remaining under the Sultan's administration for internal matters. The remainder of what became Kenya, however, was designated a colony, and came under direct rule from London (Laurie Fransman, 2011).

Tanganyika gained independence in 1961; Zanzibar in 1963. The Kenyan colony and the northern part of the Zanzibari coastal strip were merged by agreement, and became

independent simultaneously in 1963. Uganda was a British protectorate, and gained independence in 1962. A decree on Zanzibari nationality was adopted as early as 1911. The decree provided that "'Zanzibari' shall mean one of our [i.e., the Sultan's] subjects" and that a person was Zanzibari by birth if born (anywhere) of a Zanzibari father born in Zanzibar, or if born in Zanzibar of an alien father also born in Zanzibar; a child born in Zanzibar had the right to apply to become a subject if born and resident in Zanzibar until majority, and naturalization was also possible based on long residence.

In 1952, this was replaced with a decree that provided for nationality to be attributed on the basis of birth in the Sultan's dominions (with exclusions for those who were subjects or citizens of certain listed states, including France, Belgium, and Portugal), as well as for nationality by descent through the father for those born outside. The independence constitution of Zanzibar, which took effect in December of 1963, provided for nationality based on birth in Zanzibar before or after independence. The Sultan was overthrown and a new revolutionary government established in Zanzibar just one month later. The new government then agreed the merger of Zanzibar with Tanganyika, to create the United Republic of Tanzania in 1964. The provisions of Tanganyika citizenship law were extended to apply in Zanzibar. Kenya, Uganda and Tanganyika shared the same transitional framework on nationality at independence, included in the independence constitutions negotiated with Britain. These constitutions established three ways of becoming a citizen of the new states on transfer of sovereignty: some became citizens automatically; some became entitled to citizenship and could register as of right; while others who were potential citizens could apply to naturalize, a discretionary process. Those who became citizens automatically were: firstly, persons born in the country before the date of independence who were at that time "citizens of the United Kingdom and colonies" or "British protected persons" (statuses defined in British law) and who had at least one parent also born in the territory; and secondly, persons born outside the country whose fathers became citizens in accordance with the previous provision. Those persons born in the country whose parents were both born outside the country were entitled to citizenship by way of registration, as were other British protected persons or citizens of the UK and colonies ordinarily resident in the country—a category extended by legislation to people originating from other African states in all three countries of East Africa. Others could be naturalized on a discretionary basis, based on long residence and other conditions that equally applied to those acquiring

citizenship after the standard two-year transitional period.
Provisions relating to married women made them dependent on their husband's status. These transitional rules remain relevant today to the determination of who is a citizen of the three countries. Examining the characteristics of dual-citizens is necessary, though most publicly available data only provide counts, disaggregated by sex, age, and sometimes country of dual nationality (United Nations, 2013). From what is available, patterns seem to differ based on different country contexts.
Countries of dual nationality often tend to be from neighbouring countries, which is consistent with findings on migration in general (migrants tend to move shorter distances).

# CHAPTER SIX

In this chapter, I analyse the historical formation of what is the present-day Uganda. In doing so, the development on citizenship, political and social, cultural aspect is reflected, not only in aspects of culture, tribe, and religion but also by the actors, such as the colonialists, or traders who appeared in the region in its formative years. They influenced the political and social terrain, leaving some unanswered questions on citizenship, which still are existent via Uganda´s constitution. This forms part of my research to establish, the legislation on dual citizenship, who qualifies for it, of what benefit is it to the citizenry and who the main actors were in the legislation, and further how the implementation has taken place. Important to note in Uganda´s constitution on acquisition of citizenship, stipulates the tribal and ethnic groupings that are considered a priority. There are also aspects on changing of citizenship, naturalization, revoking among others.

## 6.1 Historical State Formation in Uganda

The history of Uganda's birth and formation can be traced back in the late 1800s when the British succeeded in establishing a protectorate in the country. In the 1890s, the Imperial British East Africa Company, which was the administrative arm of the British

Empire made presence in the area and ensured early Anglo-Ganda collaboration in the state-building project (Lugard, 1893). The British government succeeded in establishing a protectorate in Uganda and new territorial units that were not rooted in the pre-existing state structures were created. At the helm of these events were patterns of development and migration of people both within and outside the country. The British protectorate of Uganda as was the case with most other British-controlled territories in Africa was nominally a foreign territory controlled by local government structures established under British protection.

The country has since maintained the colonial boundaries created by Europeans; grouping together a wide range of people with varied ethnic groups, religion, different political systems and cultures. This population is made up of 65 different ethnic groups, with unique customs and norms which play a significant role in shaping the behaviour and ways of life of the people in the country.

Pre-colonial Uganda consisted of many different polities, some of which were centralised, hierarchical societies, such as the Buganda or Bunyoro Kingdoms. These were headed by a king who controlled the state through a network of hierarchical leaders. Other societies were a cephalous, such as Lango in the North, which consisted of hundreds of clans based upon a loosely formed horizontal structure, where group identity was based upon territorial and kinship ties (Tosh, 1973). This area's main activities were pastoral with many households moving in small groups in order to search for land, water or grass (Mamdani, 1996). However, by the late eighteenth century, the disasters in the Northern regions had created an impetus for greater societal structure, 'it had become virtually impossible for lineages to exist on their own outside one of the chiefdoms' (Atkinson 1994, p. 80). However, these chiefdoms never reached the structural and social scale as the kingdoms further south. In contrast, the southern areas had long benefited from a better water supply and climate, which lent itself to a feudal mode of production based within the kingdoms (Mamdani, 1976). The success of the state of Buganda was 'founded upon its ability to marshal economic and human resources for what was perceived to be the common purpose' (Reid 1998, p. 351). This involved having an army, a road network and a navy of canoes, making it the 'most powerful of the Great Lakes kingdoms' by 1800 (Reid, 1998). Prior to the creation of the Protectorate, the Buganda Kingdom was organised into ten administrative units, called *saza*, these were headed by *saza* chiefs who were appointed by the Kabaka (Tosh, 1978). The

voice of the king was more important than that of any religious gods (although they were also worshiped). People turned to them mainly during an individual or national crisis, with the Kabaka remaining the central figure of the state (Karugire, 1980).

The nineteenth century saw a significant number of new visitors to the East African region. Arab traders from the Zanzibar coast and from Khartoum to the north came to Buganda in search of ivory and slaves in the early 1800s (Low, 1954). In return they offered goods which previously had not been available in Uganda, such as guns, cotton cloth and other manufactured items. Moreover, Islam became a new ideological force in the region. In 1862 the first European explorers, John Speke and James Grant, followed soon by Sir Samuel Baker and Henry Morton Stanley, arrived searching for the source of the River Nile and plotting geographical formations (Low, 2009). It was Stanley, a journalist originally, who established a clear connection with the Buganda Kabaka, Mutesa and the missionaries of Britain and France, writing a letter to the Daily Telegraph in 1875, encouraging church leaders to come to Buganda and teach the word of God (The Daily Telegraph, 1875).

British and French missionaries soon arrived in the region in 1877. As the missionaries started their long journeys across East Africa to Buganda, it is worth mentioning that the region was on Britain's radar, and as German and other European powers started to make claims, the British very quickly adopted a defensive strategy to secure the Nile, as the route to India had to be protected. This included safeguarding not only Egypt and the Suez Canal but also the Nile and its sources (Lugard 1922, p. 4). However, it was not until the arrival of the Imperial British East Africa Company (IBEAC) in 1890 when British interests were secured (Low, 1954).

The bankruptcy of the Imperial British East Africa Company was a make-or-break moment for the British acquisition of Uganda. Over the years between 1892–4, a number of British government officials were sent over to the area to conduct reports on the financial viability of the government acquiring the demarcated area from the IBEAC, whilst at the same time providing financial support to the company in order for them to continue having a presence in Buganda (Hansen 1984, p. 58). Eventually, the Protectorate of Uganda was ratified by Parliament in 1894, although at this point it only covered the area pertaining to Buganda, 'the presence of the missionaries and the future of the Christians being decisive factors

in the debate' (Hansen 1984, p. 58). The wheels were now in place for a Ugandan state to be formed.

### 6.1.1 Colonial Uganda

It took over thirty years for the boundaries of Uganda to be drawn out and administered within the Protectorate (Karugire, 1980). In the years that followed 1894, the British organised the political and geographical structure of the hitherto many kingdoms, satellites and other regions of Uganda into five kingdoms, Buganda, Bunyoro, Toro, Ankole and Busoga and the Northern region (Low 2009, p. 21). The borders of which hardly reflected the social and political make-up prior to the British arrival. The Kingdom of Bunyoro proved to be the most difficult to pacify. In the end, it lost a significant amount of territory, known as the Lost Counties, to its greatest rival, Buganda.

The Uganda Agreement of 1900 was essentially an agreement between the British, represented by Sir Harry Johnston and the Baganda. The *Kabaka* was a minor, therefore three representatives from the highest offices in Buganda negotiated with the British, Apollo Kaggwa, Stanislaus Mugwanya and Zakaryia Kizito Kisingiri (Twaddle, 1969). The result was an agreement which favoured the Protestant religion and the Buganda hierarchical style of governance, later replicated in other regions as they were acquired by the British (Twaddle, 1969). Furthermore, the 1900 agreement established the *mailo* land system, designating estates of freehold land to significant elites within Buganda, establishing a 'landed aristocracy' in the central region of the Protectorate (Twaddle, 1969, p. 310; see also Mamdani, 1996). The British implanted the Baganda hierarchical system of political organisation in Uganda which they (wrongly) felt reflected custom throughout the Protectorate (Gartrell, 1983). In the early years of the colonial state, Baganda were used as the main chiefs in external areas, reporting to the district commissioners. The areas of the North became a resource for labourers to work on the new cash-crop farms in the South and as soldiers for the colonial armies. It was believed by the British officers that people from the North were more suitable for military activities especially as most of them would be stationed in the southern areas of the Protectorate, which conformed to British colonial policy of having a military force which was racially or tribally different to the area in which they would be deployed

(Lwanga-Lunyiigo, 1987). In contrast, the southern areas benefited from greater commercial activities to make the colony pay its way and many Baganda had opportunities for employment within the colonial administration Moreover, many Indians were encouraged to migrate to East Africa to become the main merchants in the colony (Mamdani,1984).

Economically, the early colonial administrators were tasked to ensure that the colony did not cost anything to the British Government. As a consequence, various hut taxes were introduced and eventually the cash crops of cotton and coffee took hold to overcome the surplus of the cowrie shell currency and plough the way for a monetary system and a railway infrastructure (Ingham, 1958). Cotton soon became Uganda's most valuable export, reaching 60,000 tonnes in the 1930s and making Uganda the biggest exporter of the crop in sub-Saharan Africa by the 1960s (Nayenga, 1981; Baffes, 2009).

The years leading up to independence were fraught with negotiations between the colonial government and the Buganda Kingdom which wanted to secede from the geographical entity known as Uganda (Karugire, 1980). The other kingdoms also followed suit in trying to sway independence negotiations in their favour and curb Baganda ambitions. These discussions were further compounded by the Lost Counties boundary dispute between Buganda and Bunyoro. The Buganda government refused to participate in both the 1958 and 1961 elections to the Legislative Council, encouraging their citizens to follow suit (Karugire, 1980). The Catholic Democratic Party (DP) won the majority in the latter election, creating a fear amongst the Protestants within the Protectorate that a Catholic Party would preside over them once the British had left (Karugire, 1980). As a result, the Protestant dominated party, the Uganda People's Congress ( UPC), started to negotiate with the Kabaka for the possibilities of forming a coalition as the proceedings started in London to determine the nature of self-government. The final elections of colonial Uganda were held in April 1962; this time the UPC won the majority and formed an alliance with the Kabaka Yekka (KY) party from Buganda to ensure that the DP did not have any say in the new Uganda. The country gained its independence in October 1962.

## 6.2. Citizenship Acquisition in Uganda

### 6.2.1 Historical Context

While the Uganda nation-state was formally recognized as early as the late 1880s, the concept of citizenship held limited meaning because the country was still under British colonialism which fundamentally deprives people of the inherent rights ingrained in the concept of citizenship. Terms such as dependants, subjects, protected persons or native Africans were used on a variable scale by protectorate officers, imperial rulers, and Asians representing the British Imperial Crown. Until 1948, when the first major reforms of citizenship law in Britain were adopted, the single status of "British subject" was applied to all those born in the British crown dominion including the United Kingdom (Manby, 2010). In fact, at the end of World War II, British colonial states initiated a legal process of enacting the British Citizenship Ordinances, the British Nationality Act 1948 (Application) Ordinance 21/1949, which applied the British Nationality Act 1948[7] to the Uganda Protectorate. This was administered in line with the British Protectorate, Protected States and Protected Persons Order-in-Council 1949 (BPPPO) which was enacted by the British government on 28th January 1949.[8] These acts created the differing status of citizenship between British Protected Persons and British subjects in that the citizenship of the United Kingdom and colonies was of a greater status compared to the citizenship of British Protected Persons which were governed by BPPPO through the interpretation of the colonial courts.

Towards the dying moments of colonialism, registration of non-Africans most particularly Asians became an issue of contestation in the country. Just before independence the Citizenship Ordinance 1962 was passed on 18th September 1962 providing that British Protected Persons (including Asians) can register as citizens if they had applied before 9th October 1964[9] and satisfied the minister of being resident for five years, suitability and good character, knowledge of English or a prescribed vernacular language, among others. This sparked debate because indigenous Ugandan Americans acquired citizenship automatically. Asian representatives argued unsuccessfully in the legislative council for an easier application and registration process but a more rigorous process of revoking citizenship.

[7] The British Nationality Act 1948 was passed by the parliament of the United Kingdom and defined the status of the United Kingdom and colonies as the National citizenship of the United Kingdom and its colonies. See http://www.legislation.gov.uk/ukpga/1948/56/pdfs/ukpga_19480056_en.pdf last accessed 10/12/2020

[8] Uganda Protectorate, Proceedings of the Legislative Council, Official Report, 26 July 1949:43

[9] See article 8 of the 1962 Uganda Constitution

Barya (2000) argues the premise of Article 10 to determine the indigenous communities in Uganda was unclear. He states that "the decision as to which community or citizenship should be regarded as an indigenous one should be open and clear; and scientific criteria should be established for any community to be scheduled." Article 10 (a) of the constitution states that "every person 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 as at the first day of February, 1926…" It's of the view that the scheduling done by the Constituency Assemble in 1995 was, in many ways, arbitrary or merely "politically circumscribed.

Uganda's independence provisions on citizenship followed the standard Commonwealth model. Those born in Uganda with one parent also born there became citizens automatically. Those who did not fulfil these requirements but were themselves born or ordinarily resident in Uganda had the right to register as citizens if they were citizens of the UK and colonies or British protected persons (Constitution of Uganda, 1962). Unlike Kenya and Tanzania, Uganda did not provide for registration of those originating from other non-Commonwealth African countries. Uganda was the site of one of the most widely-publicized episodes of mass expulsion during the post-independence period: the expulsion of the Ugandan Asians in 1971/72. At the time the expulsion was announced by President Idi Amin, the population of Asian descent recorded in Uganda was just under 75,000, of whom around one third were Ugandan citizens with no other nationality; the non-citizen population, including people who had applied to register as citizens, was more than 500,000, mainly Kenyans and Tanzanians (in a total population of 9.5 million) (James S. Read, 1975). In 1982, a new government passed legislation for the restoration of confiscated property (Uganda Expropriated Properties Act, No. 9 of 1982) and enabling the return of Ugandan Asians. There have also been:

- Review of the constitutional provisions on citizenship to ensure that they comply with international and African standards related to non-discrimination and provide for access to citizenship at birth to the children of those who are not members of named ethnic groups but have other forms of long-term connection to Uganda.
- Amend the law to permit automatic transmission of citizenship to the child of registered or naturalized citizens born after the parent acquired citizenship, and to allow those born before the parent naturalized to acquire citizenship as

part of the same application.

- Identify and facilitate access to nationality for long-term migrants and their descendants, especially those entitled to register at independence and those promised citizenship in the past whose formal paperwork was never completed.
- Address the situation of those individuals and groups whose citizenship is questioned during the registration process for the new national identity card, such as the Maragoli, by adopting legal reforms that provide access to citizenship for those with access to no other citizenship, even if they are not members of one of the ethnic communities listed in the constitution.
- Permit periods of time resident in Uganda as a child, student or refugee to count towards the legal residence required to register or naturalize as a citizen.
- Permit dual citizenship for children.

### 6.2.2 Legal Context

The legal context gives the true meaning of citizenship and the various ways through which it can be attained. In Uganda, the legal context to citizenship can be traced in the dying moments of British colonial rule when nationality laws were first enacted in the country. At the end of colonialism, various groups of people made choices about their stay in the country. Some immigrants left the country yet others stayed, consequently identifying with the land, and choosing to make their futures in the country. The immigrants that stayed came from diverse origins. The challenge for the newly independent Uganda was to forge a common citizenship for all those who choose to live in the new nation. An Independence Act was enacted in 1962 by the House of Lords on the presumption that all those who meet a residency requirement of 5 years would qualify to be citizens of Uganda.

When Obote took over power in 1966, his government replaced the Independence Constitution with the 1967 Republican Constitution, which maintained the citizenship categories created by the Independence Constitution. The provisions in the 1967 constitution were maintained by several governments until 1986 when the government of Yoweri Museveni introduced a new legal regime and issued a Legal Notice No. 1 of 1986 which repealed many parts of the 1967 Constitution. In 1988 the National Resistance Council (NRC) enacted Statute No.5 of 1988 which established the Uganda

Constitutional Commission and gave it the responsibility of developing a new Constitution.

A new Constitution was promulgated in 1994 and became functional in 1995 after adoption by the constituent assembly. The constitution of Uganda, 1995 (amended in 2005), distinguishes between two categories of citizens: the indigenous people and the immigrants. The third schedule of the constitution; 'Uganda's Indigenous Communities as of 1st February 1926' provides a list of "indigenous groups." This list comprised 56 groups in 1995 and nine more were added to the list when the Constitution was amended in 2005. This definition of "indigenous people" has been an issue of controversy and debate among people who had been in Uganda by 1900 and not identified as indigenous people who lived in the country as of 1st February 1926 (Mamdani, 2011).

### 6.2.3 Current Context

The constitution of the republic of Uganda defines who the citizens of Uganda are. The current citizenship regime is based on the 1995 constitution of the republic of Uganda. According to the Uganda citizenship and immigration control Act, Cap 66, part 3 (12), a person "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 as at the first day of February, 1926, as set out in the Third Schedule of the Constitution; and every person born in or outside Uganda of which one of whose parents or grandparents was at the time of birth of that person a citizen of Uganda by birth." A person can also become a citizen of Uganda by foundling/adoption and registration or naturalization. The Uganda citizenship Act 1962 provides in Part 2 that a person who is ordinarily resident in Uganda and has been so resident for a period of five years, adequate knowledge of a prescribed vernacular language or of the English language, of good character and 'suitable' citizen of Uganda. The section also provides that "subject to subsection (3), a citizen of any country to which section 13 of the Constitution of 1962, applies or of the Republic of Ireland or a protected person, being a person of full age and capacity, on making application therefore to the Minister in the prescribed manner" When a person seeks to be naturalized as a citizen of Uganda, they should apply to the National Citizenship and Immigration Control Board

(NCICB)[10] .
A person can also become a citizen by foundling or adopted under Article 11, if and when a child not more than five years of age in Uganda whose parents are not known. If a child under the age of eighteen years is adopted by a citizen of Uganda shall on application, be registered as a citizen of Uganda. Article 15 of the constitution provides that a citizen of Uganda who is eighteen years and above can voluntarily acquire citizenship of another country and retain citizenship of Uganda. It states that a citizen of Uganda who wishes to acquire the citizenship of another country while retaining his/her citizenship shall give notice in writing to the National Citizenship and Immigration Board of his or her application for the citizenship of another country

### 6.2.4 Role of Ethnicities (Historical Perspective to Current Debate)

Humanity is grappling with many social issues that seem to have eluded solutions up to today. One of these key problems facing contemporary society is that of co-existing with the various forms of difference that characterize it. Difference animates key conflicts of our time. Claims about difference breathe life into cultural, ethnic, religious and values conflict (Lwanga-Lunyiigo, 1987). Among the key developments on account of which such tensions and conflicts are becoming more pronounced today are the increased global and national contacts and interactions, and in particular extensive migrations, which have placed diverse practices of different cultures next to each other. According to Mamdani (2001), the diversity from which tension emerges in different societies could certainly be acknowledged as a permanent feature of all human societies, manifested in different forms and dynamics over time.
In Uganda, ethnicity has manifested itself in overtly negative terms and has been a source of conflict rather than unification. Throughout Uganda's political history, ethnicity has been a major factor behind murderous campaigns, social-economic exclusion and political control.
In contrast to the widespread focus on ethnicity in relation to engagement in offending, the question of whether or not processes associated with desistance – that is the cessation and curtailment of offending behaviour – vary by ethnicity has received less

[10]The National Citizenship and Immigration Board established by article 16 of the Constitution shall consist of a chairperson, and not more than six other persons appointed by the President with the approval of Parliament.https://www.ulii.org/ug/legislation/consolidated-act/66 accessed 10/12/2020. Any person to who section 14(1) or (2) applies may apply to the board in writing in the prescribed form, and the board shall, on proof to its satisfaction that section 14 applies to that person, register that person as a citizen.

attention. This is despite known ethnic differences in factors identified as affecting disengagement from offending, such as employment.

The above situation raises nagging questions about the possibility of pluralism in the area. Within the painful memories (history) of the Banyoro in relation to domination by the ethnic other (Baganda), do possibilities remain for living in ethnic difference even when the 'new other' becomes politically or/and economically influential? It raises a query on how the different ethnic groups in the area feel and what they make out of the situation. This query is further raised by the observation that the people of Kibaale have harmoniously co-existed at some points of their history (1960s–2000) when they went to the same schools, churches, markets and even intermarried (Lwanga-Lunyiigo, 1987). The questions specifically concern the possibilities of pluralism in Kibaale and the conclusive suggestion is that these are best answered through a study that focuses on the perceptions of the people themselves. This suggestion is grounded on the researcher's constructivist theoretical outlook by which social reality is viewed as constructed by the people through whose agency meaning and relations are formed. In that a part of a population with strong historical ties like tribe, language stands out and their beliefs suppress others so that theirs are viewed as the norm or social realities.

From Uganda´s 56 ethnic groups, the largest is the Baganda, occupying the northern shores of Lake Victoria, and the smallest are the Ik, who are found in the north-eastern corner of the country. All cities and towns of Uganda as well as state institutions are known for high levels of heterogeneity and the country's politics has been a reflection of its ethnic plurality. However, peace, tranquillity, stability, regional economic equity and orderly transfer of political power have been elusive in Uganda. In my research, I argue that dominant ethnic groups, do not only retain or influence political power, they are central to the legal set up of their countries to which citizenship debates arise as well.

In Uganda, ethnicity has proved to be more salient as a political entity than in many other African states. Not only has the absence of any significant non-African settlement limited the racial tensions that have plagued other former settler colonies, but it has a very high level of ethnic diversity, with one recent data on ethnic fragmentation recording it as the most ethnically fractionalized country in the world (Lwanga-Lunyiigo, 1987).

Uganda, along with a number of other African states, is a state struggling with the task of bringing a vast range of ethnic minority groups into one nation state decided by geographical borders drawn by European colonial masters. The effects of these colonial decisions and policies are widely known to have plagued the native population during the course of history (Lwanga-Lunyiigo, 1987). Ethnicity has been such a powerful political force in Uganda that it is reflected in the political parties, the military, local and national governments. Indeed, ethnic differences within the military and political parties have been contributing factors in Uganda's numerous military coups.
Uganda in the pre-colonial period, ethnic rivalries were minimal because people were largely confined within their ethnic cocoons where the sense of kith and kin (*wat obeno*) was strong. Ethnicity is a term that has greatly suffered in equal parlance from polysemy and synonymy; it has been accorded multiple definitions by different scholars yet it is also collective proper name; a myth of common ancestry; shared historical memories; one or more differentiating elements of common culture; an association with a specific homeland; and a sense of solidarity for significant sectors of the population.
According to Lynn (2004), ethnicity is mainly a conflictual social phenomenon which is linked to Aristotle's epistemological problem that the world is both permanent and changing at the same time. In this regard, ethnicity is similar to nationalism, racism and social class, all of which are inherently conflictual, linked by notions of difference. Thus, when Aristotle's interpretation of the universe is mapped onto the existing major theoretical constructions of ethnicity, there is evidently a relationship of coincidence and synonymy. In other words, while primordialism coincides with the material cause assumed to remain permanent, constructivism coincides with the formal or changing aspect of the universe.
Primordialism contends that ethnic identities are ancient, determinate and natural phenomena. It refers to a peoples' devotion to the conditions which existed at creation or in ancient times. In the opinion of Lynn (2004), the concept of primordialism can be described as one that stems from the 'givens' or, more precisely, as culture is inevitably involved in such matters, the assumed 'givens' of social existence: immediate contiguity and kin connection and beyond these, the assumptions that stem from being born into a particular ethnic community, speaking a particular language, or even a dialect of a language, and following particular social practices. These

congruities of blood, speech, custom, colour, physical appearance and so on, are seen to have an ineffable and, at times, overpowering coerciveness in and of themselves. Theories of primordialism, in relation to ethnicity, argue that ethnic groups and nationalities exist because there are traditions of belief and action towards primordial objects, such as biological factors and especially territorial location. This argument relies on a concept of kinship, where members of an ethnic group feel they share characteristics, origins, or sometimes even a blood relationship. Primordialism assumes ethnic identity as fixed; one is born in an ethnic group and remains a part of it until death. The 'primordialist' view asserts that ethnic identity is part of our essential human constitution and that our desire to identify with a group whose characteristics we possess is simply reflexive. Furthermore, the argument suggests that we as humans identify ourselves in opposition to other ethnic groups: the urge to reject 'the other' was encoded in our oldest human ancestors (Artkinson, 1994). That urge has often resulted in oppression of weaker ethnic groups by more powerful ones, as well as xenophobia, and violent 'ethnic cleansing', the removal of one ethnic group from the land by another group who wants exclusive rights to the same land. According to (Mamdani, 1976) ethnicity is partly expressed as being bone of their bone, flesh of their flesh and blood of their blood. The human body itself is viewed as an expression of ethnicity…it is crucial that we recognize ethnicity as a tangible living reality that makes every human a link in an eternal bond from generation to generation—from past ancestors to these in the future. Ethnicity is experienced, a guarantor of eternity. The second theory the paper employs is instrumentalism. Under this theory, ethnicity is fluid. Individuals have multiple identities and these identities shift according to context. Ethnic mobilization is about getting something tangible, such as political gain. In order words, people join ethnic groups because there is a pay-off to doing so. Furthermore, when it is useful to them, they may even invent new identities. Ethnicity leads to conflict when someone has something to gain from going to war. This has been vivid in most of the conflicts in Sub-Saharan Africa.

Ethnic identities, according to the theory of instrumentalism, are formed in pursuit of political and economic goals: Do individuals identify more strongly with an ethnic group when they perceive economic advantages to group membership? This question is rooted firmly in an instrumentalist approach to ethnicity that posits a purposive and largely voluntary conceptualization of identification. Actors are seen to weigh the advantages and disadvantages of ethnic membership consciously, and do identify on

the basis of ethnicity when an ethnic group is seen to provide the means for attaining desired, social, political, and or economic goals. The correspondence of shared interests and shared identities promotes group solidarity and thereby provides the basis for ethnic organization and mobilization, Lynn (2004). Thus, to the instrumentalist theorists, ethnic groups are individual's affiliations to the communities which are beneficial to them or bring them practical advantages (mostly economic and political). They are based on rational needs and objectives, not closeness or kinship. The individual understands the community as an instrument for achieving their goals. These bonds of an individual to a community are characterized as cool-headed, formal, intentional, purposeful, requiring conscious loyalty and formed on the basis of choice, but also as vague, temporary, intermittent and routine. They prevail in organizations such as trade unions, political parties, professional unions, sports clubs, local interest groups, parent-teacher associations, and armed rebel groups. These groupings can be established, maintained and then just as easily cease to exist. In other words, they are not universal and historically lasting. The attachment to them consists more in cool-headed calculation of interests. No emotions are assumed in the membership.

Instrumental groupings are segmentary and simultaneous membership of an individual in several instrumental communities is therefore possible. (Lynn, 2004) posits that ethnicity should be understood as a conflictual social phenomenon. He writes:

"It is not ethnic groups that are negative but the conceptual scheme held about them and the practical approaches consequently adopted. Therefore, ethnic groups should be nurtured rather than destroyed which is concurrent with Aristotelian epistemological paradigm". Atkinson (1994) differs in this view: Ethnicity is one of the most intractable problems facing Africa today. The political upheavals including civil wars, rebellions and massive human displacement and dispossession, which have bedevilled the continent during the last forty years, can, to a large extent, be attributed to ethnic rivalries, tensions and varying degrees of confrontation. No single country in Africa has been immune to the dynamics of ethnicity.

The contradictory views of Lynn and Atkinson, as stated in the preceding argument, show that ethnicity is double-edged: it can be both a curse and a blessing. In pre-colonial Uganda, ethnic identities were basically primordial but during and after

colonial rule many instrumentalist identities emerged as people began to struggle for national resources and positions in government.

- **Role of Ethnicity on Citizenship Debates in Uganda**

The ethnic factor is part and parcel of the human existence and should be accepted and perhaps tolerated. Even when we want to downplay or ignore it, our roots are traced to an ethnic source. Because ethnicity implies common ancestry, kinship is the most obvious objective indicator of membership in an ethnic group. However, since many people cannot trace their genealogy through more than three generations, language, culture and territory often become more common signs of membership of a larger group, as stated by Mamdani (2011).

Ethnicity has been at the forefront of defending and promoting Uganda's rich and diverse cultures. Languages like Luo, Luganda and Lutoro have survived the onslaught of Western languages, especially English, during the colonial and even post-colonial eras because of the strength of ethnic bonds. Artkinson (1994) argues that 'ethnicity is of its nature, a single language community'. Among the Acholi, one of the most important long-term consequences of the establishment and spread of the new socio-political order was that the response of any group to that order determined the groups' ultimate ethnic-identity.

In general, two broad theories have been used to explain the rise of ethnic identities. These are the natural/biological theory of primordialism and the man-made/situational theory of constructivism (Amone, 2015). Overtime, each of the two theories has been split into several sub-theories. I argue in my thesis, hence, that influential tribal fractions both in Kenya and Uganda, have been central in the debates regarding citizenship. Their ability to influence the political landscape of their countries, is and continues to be determinant to the legal, social and political discourse. This is backed by the fact, for example that the Ugandan constitution for example, explicitly mentions tribes that are given priority and considered for citizenship. There are eventually some controversies, with alienation of the indigenous persons, such as the Batwa of western Uganda.

### 6.2.5 Dual Citizenship in Uganda

Since independence, the concept of dual citizenship has been a highly contested issue in Uganda. The 1962, 1967 and the 1995 Uganda Constitutions prohibited dual

citizenship for Ugandan citizens of any category. It was only after the amendments to the 1995 constitution in 2005 and 2009 that dual citizenship was recognized and accepted in Uganda. Article 15 of the Constitution was amended providing for dual citizenship in Uganda. The Act defines dual citizenship under section 2 as 'the simultaneous possession of two citizenships, one of which is Ugandan'. This therefore means that once one acquires a third citizenship, he/she is automatically disqualified from being a citizen of Uganda.
The constitution thus stipulates conditions for one to become a dual citizen of Uganda as follows;

i. *Any person holding Uganda citizenship and seeks citizenship of another country that allows dual citizenship and also fulfils the requirements for dual nationality OR*
ii. *Any person who holds a citizenship of a country that permits dual nationality and also seeks Uganda citizenship and satisfies the requirements for grant of dual citizenship*

- **Acceptance of Dual Citizenship**
- **Legal Interpretation**

The 1995 Constitution of the republic of Uganda as amended in 2005 allows both Ugandans and non-Ugandans to acquire dual citizenship. This can partly be attributed to the growing global trend where an increasing number of countries are removing restrictions on dual citizenship, and there is growing tolerance and acceptance of the status. Bloemraad et al. (2008) attributes this to the effects of trans-nationalism while Spiro (2010) argues that it is due to the growing concerns of international human rights issues. Article 15(6), section 19 of the citizenship Act, states that a citizen of Uganda of 18 years and above, who voluntarily acquires the citizenship of a country other than Uganda, may retain the citizenship of Uganda. Additionally, a person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to the Constitution and any law enacted by parliament, retain the citizenship of another country.
Section 19d of the Act, prohibits certain categories of persons with dual citizenship to hold specific positions in government. These include, inter alia, the position of the president, vice president, prime minister, cabinet ministers, inspector general of

police, inspector general of government, chief of defence forces, and membership of the National Citizenship and Immigration Board.

- **Conceptualization**

The question of dual citizenship was originally dismissed in the constitutions of 1962, 1967 and 1995. It is worth noting that the Uganda Citizenship Act of 1962 put in place restrictions on dual citizenship which was later reinforced by the 1995 Constitution of the Republic of Uganda. On this issue, the 1995 constitution initially made it clear that[11],

a. *"A Uganda citizen shall not hold the citizenship of another country concurrently with his or her Uganda citizenship".*
b. *"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".*
c. *"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".*

Barya (2000) notes that these acts on dual citizenship followed the Constitution Assembly (CA) debate where both the positive and negative aspects of dual citizenship were assessed to yield a negative position on the subject. The CA mostly relied on the security impact of dual citizenship and sovereignty of the state, noting that dual citizenship creates the possibility of neighbouring Mrican people to compromise the security of Uganda and take away indigenous people's land, jobs and, eventually dominating them.

However, over the years, various groups especially the Ugandans living abroad lobbied and advocated for a change in policy on dual citizenship. While the processes stagnated for some time, in the year 2005, the parliament of Uganda passed the Constitutional Amendments Act of 2005, lifting the restriction on dual citizenship which was put in place by the Uganda Citizenship Act 1962.

- **Practice of Dual Citizenship.**

The amendments to the 1995 constitution provided the opportunity for one to become a Uganda citizen again (for those who had lost their citizenship because of acquiring

[11] See Article 15 of the 1995 Constitution of the republic of Uganda

the citizenship of a foreign country), those that had wanted to obtain citizenship of another country but also formally retain the citizenship of Uganda and foreign nationals who wish to retain their citizenship in a foreign country, the option to acquire Ugandan citizenship. The process entails taking an oath of allegiance as the Fourth Schedule of the Constitution indicates (Article 15, Section D). Additionally, a person applying for dual citizenship shall, before being registered, satisfy the National Citizenship and Immigration Board that they: are not engaged in espionage against Uganda; have not served in the voluntary service of the armed forces or security forces of a country hostile to or at war with Uganda; and have not attempted to acquire Ugandan citizenship by fraud, deceit or bribery or by intentional or otherwise deliberate false statements in an application for citizenship. They are further required to show that they have: no criminal record; dual citizenship is permitted by their country of origin; are over 18 years of age at application, and of sound mind; do not hold more than one citizenship; and that they are not bankrupt or insolvent.
According to the Uganda citizenship and immigration control (amendment) act, 2009, an Act to amend the Uganda Citizenship and Immigration Control Act, to provide for dual citizenship; to provide for the citizenship board to have a vote of its own; to amend the provisions of the Act relating to the loss of Uganda citizenship by registration or naturalization; to provide for the offices of state which a person holding dual citizenship is not qualified to hold; to provide for former Ugandans who wish to re-acquire Ugandan citizenship and for related matters.
(1) A citizen of Uganda of eighteen years and above who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to the Constitution, this Act and any law enacted by Parliament.

(2) A person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to the Constitution, this Act and any other law enacted by Parliament, retain the citizenship of another country."

- **Persons with Dual Citizenship not to Hold Certain Offices of State**

(1) A person who holds the citizenship of another country in addition to the citizenship of Uganda is not qualified to hold any of the offices of State specified in the Fifth Schedule to this Act.
(2) Parliament may by resolution amend the Fifth Schedule. (3) A resolution

passed under this section shall, as soon as possible, be published in the *Gazette*.
(The Uganda Citizenship and Immigration Control (amendment) Act, 2009.

## 6.3 Transnational Actors on Dual Citizenship (EAC/AU/UN).

### 6.3.1 Historical Context

The most notable historical origins of transnational actors within the citizenship arena can be traced in the early 1900s when a number of international organizations were formed. These have had significant impact on the practice of citizenship especially in this age which is characterized by immigrant populations (Riva, 2005). Transnational actors in the citizenship arena are regional or international organisations established to manage and promote the agendas and missions of their activities. Examples of such actors include: the East African Community, the African Union, various bodies of the United Nations (UN) such as the World Bank (WB), United Nations High Commissioner for Refugees (UNHCR), International Labour Organisation (ILO), and International Organization for Migration among others.

Many regional trade blocs offer citizens of member countries reciprocal rights to live, work and study across a region. Although regional or supranational citizenship is a relatively new concept (most fully developed in the setting of the EU) a number of emerging regional citizenship groups are emerging (Spiro, 2010).

ECOWAS was founded in 1975. In 1979 the Community adopted a Free Movement Protocol giving all citizens of member states the right to enter, reside and work across the community. The ECOWAS Free Movement Protocol still faces many challenges. Immigration officials in member states are sometimes unaware (or unwilling to recognize) that ECOWAS nationals holding valid documents can enter their country freely. ECOWAS rights are not equivalent to national membership. For example, in 2002 questions regarding national citizenship (and the refusal to offer this to the descendent of migrants from other West African states) played a role in precipitating civil war in the Cote d'Ivoire.

Nevertheless, ECOWAS offers a possible model for balancing the needs of migrants for reciprocal rights to foster peaceful and inclusive societies, with concerns about protecting national identities (Manby, 2010).

### 6.3.2 Current Context

The nationality laws of partner states of the EAC have been substantially modified since independence. Now Uganda, Tanzania, Kenya Constitution provides for every child to have the right to a name and nationality[12]. UNHCR recommends that provisions of foundlings should, "apply to all young children who are not yet able to communicate accurately information pertaining to the identity of their parents or their place of birth"[13]. In 2005, the UN Committee on the elimination against non-citizens, outlines states' obligation in relation to providing access to citizenship. To regularize the status of former citizens of predecessor states who now reside within the jurisdiction of the state party; {.....}[14]

In 1982, ECOWAS State adopted community citizenship. Thirty years after the adoption, the progress achieved by ECOWAS has prompted a reaction among the other regional economic communities such as the East African Community (EAC)[15] and Southern African Development Community (SADC). However, the initiative falls far short of what we now view as the gold standard of regional citizenship.

[12]Kenya Constitution 2010, Article 53, Rwanda Constitution 2003, revised 2015, Articles 25.

[13] UNHCR, Guidelines on statelessness No.4: Ensuring child's Right to Acquire a Nationality through Articles 1-4 of the 1961 Convention on the Reduction of Statelessness, HCR/Gs/12/04, 21 December 2012, paragraph 58.

[14] Committee on the Elimination of Racial Discrimination, General Recommendation No.30: Discrimination against Non-Citizens, 2005.

[15] With the introduction of a regional flag, anthem and travel documents.

# CHAPTER SEVEN

In this chapter, I compare the dual citizenship debate in both Kenya and Uganda, the processes that facilitated the discourse and the outcomes. By doing so, I indicate the problem of a shortfall in the processes, the legal and political loopholes, and how these affected the outcome, with a specific outlook on the historical aspects. Specific comparison is made on the l*egislation, implementation, the actors, and the incentives*. The citizenship laws during and post colonialism left a gap of undocumented persons, due to the history of the successor state. Ethnicity among other factors has further facilitated a sort of "hierarchy" of citizenship and now dual citizenship.
My argument and discourse in this comparative outlook are guided by the interviews I conducted from key actors in this process. These included and not limited to, the initiators of the debate (political actors/legislators), the legal experts or interpreters of the law (the judicial officers) and the implementers (the immigration officers and other law enforcement actors).

## 7.1 Methodological Framework.

To conduct the comparative outlook, I adopted an expert survey. The survey was further intended to generate more quantitative and qualitative views on current regulations, understanding, interpretation and practice on dual citizenship in Kenya and Uganda, get a better understanding of the historical, philosophical, political contexts of the changes in dual citizenship regulations within the two countries. The holistic nature of the study and the scarcity of broad-based empirical data beyond individual case studies demanded the use of semi-structured individual and group interviews (total n = 30) with key informants (n = 15) and general legislators and opinion leaders (individual interviews n = 15, four focus groups with n = 45) in both Kenya and Uganda. I further analysed official government gazettes in Kenya and

Uganda, as well as the Hansard Documents, Parliament of Uganda, and Parliament of Kenya. The study gathered data on the Kenya Citizenship and Immigration Act and Uganda Immigration Act, UNHCR Official documents as well as on International Organization for Migration (IOM) documents and data concerning Africa and Migration.

To generate a clear understanding of the impact of transnational institutions on dual citizenship, I sought primary information from 10 experts on citizenship in Kenya and Uganda with the use of a questionnaire. The experts were purposively selected after conducting an extensive on-line literature survey with a focus on recent publications that contained details of dual citizenship regulations in Kenya and Uganda. The fact that primary evidence from different experts on citizenship was generated on the two countries provided for reflection on the reliability of the data.

Considering the geographical scope and characterization of the different facets of dual citizenship, the study focused on the comparative case of Kenya and Uganda. The two East African countries have both changed their citizenship laws to allow dual citizenship in recent times (Manby, 2016). Both countries are part of the East African Community (EAC) and ascend to international conventions and protocols on Nationality and Statelessness, and the International Convention on the Elimination of All Forms of Racial Discrimination.

Transnational and post-nationalism are theories that inspired my research with a keen interest to establish the impact, implications and effects of migration, cross boarder movements, the role of regionalisms coupled with the impact of globalism. Citizenship as an outcome of personal attributes, for instance gender, age, and educational attainment, is not included as indicators of the understanding, interpretation and practice of dual citizenship. To contextualize the theory concerning current understanding, interpretation and practice on dual citizenship, the study was framed around the characteristics of the theory of change. The theory of change forms a framework that allows for a longitudinal analysis of a problem context and includes multi-disciplinary inputs in its analysis with key analytical components, such as understanding what the situation was like before to inform the problem and context; to determine what changes are occurring or have occurred in relation or response to that problem; what is happening; what the nature of that change is; who the players in that changing process are; what the dynamics of that change are, that is, any evolving solution or response to the problem; where this change is heading and what kind of

impact is emerging or has emerged (Vogel, 2012). Therefore, the Theory of Change provides an effective framework around which data analysis was undertaken (Stanford Encyclopedia of Philosophy, 2005). I provided a critical interpretation of the concept of citizenship from its earlier inception to how it has evolved, including the emergence of dual citizenship.

The theory of change provided for the analysis of citizenship status, laws, complexities and issues as they existed in Kenya and Uganda up to 2010, which incorporated both historical influence (from colonial to post-independence times) and the more active 2000 to 2010 period where the citizenship issues emerged, and there was a strong move to deal with them. *This is the problem and context;* Analysis of the dynamics of the change processes that have occurred as a result of the citizenship issues that emerged before 2010. This includes the complexities around citizenship at birth, descent and naturalization as well as considering the emergence of dual citizenship as a response to dealing with these issues. This component looks at the rationale for changes in both Kenya and Uganda, the key players driving the changes, and the processes that enshrined these changes in the legislative, judicial and bureaucratic systems. I did not only look at the nation-states of Kenya and Uganda in this phase of the research but also the influence of the transnational/regional institutions, such as the EAC, the African Union (AU) and the United Nations (UN), and relevant experiences from other nation-states among others. *This is the evolving solution or response to the problem*; Analysis and assessing where this process of change has led, what the current situation in Kenya and Uganda concerning citizenship and the development of dual citizenship is. I explored further what impact this process of change has had on the nation-states of Kenya and Uganda (and any divergence between the two), individuals in those nation-states and those nation-states participation in the transnational/regional organizations, i.e., EAC, AU, UN. Benefits as well as issues that have emerged as a result of dual citizenship developing as a key change outcome are also considered.

In this frame of reference, any long-term goals that may have been articulated by the current Kenyan and Ugandan transnational actors are being achieved through the processes that this research has analysed. These are *processes of change* responding to the problem that existed before and ultimately producing the goal that has been achieved now. I explored the dynamics of change in Kenya and Uganda around the

emergence of dual citizenship and whether these were problem-driven (framed within transnationalism or post-nationalism) or Goal-Driven (framed within the Theory of Change).

The framework employing these elements of transnationalism, post-nationalism and change theory enabled me to draw together multi-disciplinary inputs from the areas of law-constitutional and dual citizenship, history-ethnicity, administrative, colonial and post-colonial, migration, sociology and ideology, parliamentary deliberations, political advocacy and activism in Kenya and Uganda.

Bloemraad, Korteweg, and Yurdakul (2008) noted that sociologists of citizenship and immigration are confronted with the dilemma of methodology, measurement, and reference points that inform the heart of normative and theoretical debates around citizenship. The study of dual citizenship cannot be viewed as uniquely as the domain of citizenship rather, its understanding, legal interpretation and practice continue to rise broad issues of inequality, state power, and social cohesion. I reviewed broad-based empirical data on global trends on dual citizenship. The review focused on analysing the regulations, understanding, interpretation and practice of dual citizenship in both Kenya and Uganda.

The evidence reveals that acceptance of dual citizenship is on the rise in the 21st century, and many of the countries, for which data exist, accept, or at least tolerate dual citizenship (Spiro, 2016). I provided evidence and commentary on existing data on dual citizenship, globally, in Africa, and widely focusing on Kenya and Uganda. Although this data reveals a clear and broad-based trend on citizenship and dual citizenship, it also reveals many ambiguities and gaps exist. For example, it is unclear as to the processes, procedures that inform how Kenya and Uganda determine dual citizenship, the impact of legal reforms on citizenship on the state in Kenya and Uganda, and what impact do transnational and regional blocs have on citizenship reforms, particularly focusing on dual citizenship.

## 7.2 Comparative Outlook on State Formation in Kenya and Uganda

It is imperative to note that for State Formation in Kenya to occur, several communities adjusted themselves to their ecological niches (Sheriff, 1985). As a result, communities such as the Agikuyu and the Miji Kenda developed agricultural economies. Others, including the Maasai and the Samburu practiced pastoralist forms of production. The majority such as the Luo and the Abagusii got involved in mixed

agriculture. Production was primarily for collective subsistence rather than individual accumulation (Odhiambo, 2004). The kinship system was the basis of ownership of factors of production which included land and labour. Labour was largely cooperative within the family and the larger kin group. It was also manual and the surplus was quantitatively small and imposed limitations on trade (Mamdani, 1996). Regional and long-distance trade involved prestige goods and influenced society only minimally. The rewards of labour were mostly redistributed in kind and according to need. There existed little differences in wealth possession. Reciprocity and the egalitarian ideal ensured that individuals never slid into abject poverty (Young, 1995).

There was very little impetus for large-scale state formation. Instead, the largest political unit was the collectivity of a few families related by blood and most communities were highly segmented (Ndege, 2008). Centralized kingdoms were mainly found in the inter-lacustrine region to the west of Lake Victoria. The ethnic boundaries among pre-colonial Kenyan communities were fluid. Inter-ethnic interactions were characterized by trade, intermarriages, limited and intermittent warfare (Ogot, 2000). The histories of migrations and settlement were about continuous waning and waxing of the various ethnic communities. Colonialism only gave new shape, meaning and direction to the communities' inherent dynamism.

On the other hand, pre-colonial Uganda consisted of many different polities, some of which were centralized, hierarchical societies, such as the Buganda or Bunyoro Kingdoms. These were headed by a king who controlled the state through a network of hierarchical leaders. Other societies were acephalous such as Lango in the North, which consisted of hundreds of clans based upon a loosely formed horizontal structure, where group identity was based upon territorial and kinship ties (Tosh, 1973). This area's main activities were pastoral with many households moving in small groups in order to search for land, water or grass (Mamdani, 1976). However, by the late eighteenth century, the disasters in the Northern regions had created an impetus for greater societal structure, 'it had become virtually impossible for lineages to exist on their own outside one of the chiefdoms' (Atkinson 1994, p. 80). However, these chiefdoms never reached the structural and social scale as the kingdoms further south. In contrast, the southern areas had long benefited from a better water supply and climate, which lent itself to a feudal mode of production based within the kingdoms (Mamdani, 1976). The success of the state of Buganda was 'founded upon its ability to marshal economic and human resources for what was perceived

to be the common purpose' (Reid 1998, p. 351). This involved having an army, a road network and a navy of canoes to make it the most powerful of the Great Lakes kingdoms by 1800 (Reid 1998, p. 372). Prior to the creation of the Protectorate, the Buganda Kingdom was organised into ten administrative units, called *saza*, these were headed by *saza* chiefs who were appointed by the Kabaka (Tosh, 1978). The voice of the king was more important than that of any religious gods (although they were also worshiped). People turned to them mainly during an individual or national crisis, with the Kabaka remaining the central figure of the state. The nineteenth century saw a significant number of new visitors to the East African region. Arab traders from the Zanzibar coast and from Khartoum to the north came to Buganda in search of ivory and slaves in the early 1800s (Low, 1954). In return they offered goods which previously had not been available in Uganda, such as guns, cotton cloth and other manufactured items. Moreover, Islam became a new ideological force in the region. In 1862 the first European explorers, John Speke and James Grant, followed soon by Sir. Samuel Baker and Henry Morton Stanley arrived searching for the source of the River Nile and plotting geographical formations (Low, 1954). It was Henry Morton Stanley, a journalist originally, who established a clear connection with the Buganda Kabaka, Mutesa and the missionaries of Britain and France.

British and French missionaries soon arrived in the region in 1877. As the missionaries started their long journeys across East Africa to Buganda, it is worth mentioning that the region was on Britain's radar, and as German and other European powers started to make claims, the British very quickly adopted a defensive strategy to secure the Nile, as the route to India had to be protected. This included safeguarding not only Egypt and the Suez Canal but also the Nile and its sources (Lugard 1922, p. 4). However, it was not until the arrival of the Imperial British East Africa Company (IBEAC) in 1890 when British interests were secured (Low, 1954).

The bankruptcy of the Imperial British East Africa Company was a make-or-break moment for the British acquisition of Uganda. Over the years between 1892–4, a number of British government officials were sent over to the area to conduct reports on the financial viability of the government acquiring the demarcated area from the IBEAC, whilst at the same time providing financial support to the company in order for them to continue having a presence in Buganda (Hansen 1984, p. 58).

Eventually, the Protectorate of Uganda was ratified by Parliament in 1894, although at this point it only covered the area pertaining to Buganda, 'the presence of the missionaries and the future of the Christians being decisive factors in the debate' (Hansen 1984, p. 58). The wheels were now in place for a Ugandan state to be formed.

This historical comparison dully brings to attention the following issues, which have been recurrent in my field findings on the role of the non-state actors, the institutional framework, societal ordering. For example, the respondents to my interviews, were indicative that the debate on dual citizenship, was not necessarily grassroots influenced but rather, a top to bottom initiative. This appears in the instances of both countries, Kenya and Uganda. Of the (n = 15) key respondents interviewed in Kenya, (n = 9) agree to the fact that there was a wide spectrum of actors in the debate but not necessarily the local communities. This trend seems to be so in the case of Uganda too. Of the (n = 15) key respondents interviewed (n = 10) of them agree to the same pattern.

Another aspect worth nothing is the Kenyan context is that of familial relation by blood. Much more attention even to the citizenship aspect has and continues to be, as my field findings established, based on family as compared to state law. In the Ugandan context however, as shown above and as field interviews established, the tribal, clan affiliation played a central role in the understanding of citizenship. To several interviewees, before providing responses to the 2009 and 2010, citizenship reform on dual citizenship, the data I transcribed indicates a rather common pattern argument on their identification, understanding of citizenship in the local context. Hence a common factor, to my comparative findings is that there seems to be a conflict on the Jus Solis and Jus Sanguinis interpretation in both countries. This effect plays in part to the dual citizenship legislation.

The dimensions of a *legal bond, political agent* and *membership in a political community* are intertwined and sometimes conflicted. Closely analysing the dual citizenship law reform, the risk as I indicate in my conclusions, is that the reform may have, until now only served in terms of travel for the beneficiaries, limiting them from participating directly in the affairs of their countries of origin, Kenya and Uganda. In this context therefore, observation was made, that with more state-initiated reform, the dual citizens' rights would be rather limited and mainly relying at the mercy of the state, in both incidences.

### 7.3 Comparison of Citizenship Acquisition Laws in Kenya and Uganda

As far as citizenship acquisition Laws in Kenya are concerned, the constitutional framework governing the transition to independence provided a theoretically complete system for determining who among the residents of Kenya obtained citizenship automatically on succession of states or who had the right to register as citizens if certain facts were established (Steven G. Ellis, 2006). Those who automatically became citizens of Kenya at independence were people born in Kenya who had one parent also born in Kenya and who was at that time citizens of the UK and colonies or British protected persons. According to the Constitution of Kenya (1963), others born or resident in Kenya, including those from non-British territories in Africa, could register as Kenyan under certain conditions.

Many, however, did not apply to register: only around 20,000 people applied to register as Kenyan citizens during the transitional two-year period, most of them South Asian, out of an estimated 230,000 Asians and Europeans who would have been eligible (Rothschild, 1968). Very few African migrants applied, yet there had been much labour recruitment into Kenya, to work on the pyrethrum farms, tea estates, and other large commercial enterprises. These transitional provisions continue to have an important role in determining access to citizenship today, because of the decision in 1985 to adopt (with retroactive effect) a purely descent-based citizenship law (Constitution of Kenya Amendment Act No. 6 of 1985). Despite the arguably illegal nature of such retroactivity, there was no legal challenge to the amendment, perhaps because interpretation of the law had already moved that way in practice (Shah, 2012). Thousands of people today struggle to obtain documentation of Kenyan citizenship either because of the restrictive nature of citizenship law or because of discrimination in its application.

Kenya successfully promulgated a new constitution in August 2010 to replace the one which was negotiated between the British major political parties of the time at the Second Lancaster House Conference in 1962 and promulgated in 1963. One of the key features of the Constitution of Kenya, 2010 is the provision for dual citizenship. Various implementation aspects of this provision have been discussed and a number of relevant bills presented in parliament. While dual citizenship in the 2010 Constitution is a reality, effective implementation to maximize national and individual benefits remains to be seen. The dilemma of maintaining state sovereignty is evidenced

in Kenya. Pertinent to the field interviews I conducted, something noticeable in the Kenyan case, was that alongside the dual citizenship reform, birth citizenship granted based on parentage (referred to as jus sanguinis, the rule of the blood in contrast to jus soli, right of the soil) is also a growing form of citizenship, based on descent/blood relationships. Hence, I argue that, to conceptualize a workable dual citizenship policy, the Kenyan state ought to consider not only their nationals in the Diaspora, but also the offspring of these nationals, as well as other nationals who have migrated into Kenya.

The provision of dual citizenship in the Constitution of Kenya, 2010 seems to have been motivated by potential economic benefits given the larger number of Kenyan emigrants in North America, Europe, Australia, and other African countries. The country already benefits substantially from remittances from the Kenyan Diaspora, which in 2017 and 2018 was in excess of US$ 1.57 and US$ 2.23 billion respectively, a jump of 42.5 percent (Central Bank of Kenya, 2019).

A thorough cost-benefit analysis in the context of the Constitution of Kenya, 2010 of this phenomenon is deemed necessary as the country continues to refine laws and policies related to dual citizenship (Bagaka J., Otiso W. & Epiche M., 2020).

On the other hand, Uganda's independence provisions on citizenship followed the standard Commonwealth model. Those born in Uganda with one parent also born there became citizens automatically. Those who did not fulfil these requirements but were themselves born or ordinarily resident in Uganda had the right to register as citizens if they were citizens of the UK and colonies or British protected persons (Constitution of Uganda, 1962). Unlike Kenya and Tanzania, Uganda did not provide for registration of those originating from other non-Commonwealth African countries. Uganda was the site of one of the most widely publicized episodes of mass expulsion during the post-independence period: the expulsion of the Ugandan Asians in 1971/72. At the time the expulsion was announced by President Idi Amin, the population of Asians recorded in Uganda was just under 75,000, of whom around one third were Ugandan citizens with no other nationality; the non-citizen population, including people who had applied to register as citizens was more than 500,000 mainly Kenyans and Tanzanians, in a total population of 9.5million (Read, 1975). In 1982, a new government passed legislation for the restoration of confiscated property (Uganda Expropriated Properties Act, No. 9 of 1982) and enabling the return of Ugandan Asians.

There has also been a review of the constitutional provisions on citizenship to ensure that they comply with international and African standards related to non-discrimination and provide for access to citizenship at birth to the children of those who are not members of named ethnic groups but have other forms of long-term connection to Uganda. Amend the law to permit automatic transmission of citizenship to the children of registered or naturalized citizens born after the parent acquired citizenship, and to allow those born before the parent naturalized to acquire citizenship as part of the same application (Uganda Citizenship and immigration Act, 2009); identifying and facilitate access to nationality for long-term migrants and their descendants, especially those entitled to register at independence and those promised citizenship in the past whose formal paperwork was never completed, address the situation of those individuals and groups whose citizenship is questioned during the registration process for the new national identity card, such as the Maragoli, by adopting legal reforms that provide access to citizenship for those with access to no other citizenship, even if they are not members of one of the ethnic communities listed in the constitution; permit periods of time resident in Uganda as a child, student or refugee to count towards the legal residence required to register or naturalize as a citizen and permit dual citizenship for children (Uganda Citizenship and immigration Act, 2009).

This comparison, which is a central theme of my research, highlights a critical challenge, which has been reflected in the field findings I conducted. The challenge of inconsistencies in the post-independence transitional citizenship procedures. Although Kenya and Uganda seem to have followed different procedures then, a persistent legal limbo of undocumented, or not clearly documented persons remains to date. In the case of Kenya as to the filed findings on the dual citizenship debate, the "Somali Kenyan" community was of focus, to establish their duality both in Somalia and Kenya. However, from the respondents, the opportunity for dual citizenship to this community is limited as compared to the Kenyan community living in the Western hemisphere. In Uganda on the other hand, the dual citizenship reform in several ways remains unclear, a case in point is for the formerly expelled "Indian-Ugandans." Those who returned would have been required to re-apply for Ugandan citizenship and as to whether they had attained citizenship elsewhere, and if at all their recipient countries would have allowed for dual citizenship, is an unexplained issue. A unique positive difference however in the case of Uganda as compared to Kenya, is a consistent and

explicit mention on children born to parents, whose citizenship or dual citizenship status is unclear. The ability for Uganda to make provisions for such children, is indicative of a compliance to the international citizenship regime.

Another argument I raise, is that although nation states are signatories to international treaties and agreements, the dual citizenship debate is not binding and this comparison, is indicative of this. Kenya and Uganda, being members of the East African Community at a regional level, the African Union at a continental level and the United Nations at a global level, the field findings show that each of these countries followed a procedure of their choice, more influenced by their legal colonial history/framework as opposed to the developments in the global debates around the citizenship regime. Nonetheless there were influences too from the three institutions mentioned, as well as from the civil society and other non-state actors, however from my findings, much influence on Dual citizenship reform was state sanctioned.

### 7.4 Analysis of Ethnic Debates in Kenya and Uganda, Regarding Citizenship

Ethnicity is one of the most difficult concepts to grasp, and one of the most essential in understanding contemporary Africa. (Lamb, 1984) argues that African leaders deplore ethnocentrism in public by calling it the cancer that threatens to eat out the very fabric of the nation. Yet almost every African politician practices it. Experience shows that most African presidents are more ethnic chiefs than national statesmen, and it remains perhaps the most potent force in day-to-day African life. One of the most persistent aspects of colonial legacy in post-colonial Africa and Kenya, in particular, was the ethnic division that manifested itself both as a group identity and as a mobilizing agent in the quest for economic and political gains. The intricate process of group and class configuration merged with the colonialists' attempt to handle traditional societies and their attempt to develop sophisticated capitalist economies in various colonies (Kitching, 1980). Therefore, it would be difficult to gain an understanding of the ethnic intricacies in Kenya's political development unless we go back down memory lane to examine the impact of colonialism on ethnic groups' organization (Leys, 1975).

Ethnic consciousness, as well as the intense ethnic rivalry in Kenya's political arena, derives somewhat from the way the colonialists established local governments and administrative borders based on linguistic and cultural orientation. This was

informed by an erroneous colonialist´ understanding of Africans which was premised on the idea that Africans organized themselves along tribal lines (Sandbrook, 1985).
Like most African countries, Kenya which became a republic in 1963, was a product of European machinations. The conference in Berlin (1884) laid the ground for official demarcation of the continent of Africa into different territories that would be put under the influence of various European powers (Rosenberg, 2004, pp. 16–18). For the first time, several pre-existing African societies (ethnic nations) with independent and diverse social, political, and cultural spheres were put under the same territory — Kenya just as other African countries was born during this period (Mamdani, 2018, p. 9; Mungeam, 1978). Critics of European countries' actions during and after the Berlin conference that led to the formation of multi-ethnic states in Africa have argued that lack of consultation or involvement of the locals during the process of determining who they would be merged with had far-reaching consequences (Ogot, 2000, p. 13).
Interestingly, the consequences of merging different ethnic groups to form different countries did not have an immediate negative impact, at least for the continent since ironically; it is these same ethnic groups that collaborated to form liberation movements that ejected Europeans from Africa. During its establishment, Kenya had over 40 different ethnic groups which were previously independent of each other but had now been merged to form the British Crown Colony of Kenya that was first administered by Sir William Mackinnon, and later a series of administrators, commissioners, and governors appointed by the queen from England took charge (De Smedt, 2009). Some of the ethnic groups under Sir William Mackinnon had already established mutual hostility between them but this did not manifest itself as a threat to the stability of the new nation-state. As such, conflicts are not solely based on cultural differences and cultural homogeneity is not a necessary condition for political stability. The animosity between ethnic groups that led to the 1992 ethnic clashes and 2008 post-election violence is a product of both ethnicization of politics and politicization of ethnicity, factors that can be traced back to the colonial era. These factors were later inherited by post-colonial political leaders who failed to inculcate a national culture due to their pursuit of sectarian and self-interests. The burden of ethnic rivalry and ethicized politics was later passed to their contemporaries who also failed in the nation-building project.

In Uganda, ethnicity has manifested itself in overtly negative terms and has been a source of conflict rather than unification. Throughout Uganda's political history, ethnicity has been a major factor behind murderous campaigns, social-economic exclusion and political control. In Uganda, ethnicity has proved to be more salient as a political force than in many other African states. Not only has the absence of any significant non-African settlement limited the racial tensions that have plagued other former settler colonies, but it has a very high level of ethnic diversity which has a resultant impact (Mamdani, 2001).

Uganda, along with a number of other African states, is a state struggling with the task of bringing a vast range of ethnic minority groups into one nation state decided by geographical borders. The effects of these colonial decisions and policies are widely known to have plagued the native population during the course of history. Ethnicity has been such a powerful political force in Uganda that it is reflected in the political parties, the military, local and national governments. Indeed, ethnic differences within the military and political parties have been contributing factors in Uganda's numerous military coups.

According to Lynn (2004) ethnicity is mainly a conflictual social phenomenon which is linked to Aristotle's epistemological problem that the world is both permanent and changing at the same time. In this regard, ethnicity is similar to nationalism, racism and social class, all of which are inherently conflictual, linked by notions of difference. Thus, when Aristotle's interpretation of the universe is mapped onto the existing major theoretical constructions of ethnicity, there is evidently a relationship of coincidence and synonym. In other words, while primordialism coincides with the material cause assumed to remain permanent, constructivism coincides with the formal or changing aspect of the universe (Lynn, 2004, p. 253).

Ethnic identities, according to the theory of instrumentalism, are formed in pursuit of political and economic goals: Do individuals identify more strongly with an ethnic group when they perceive economic advantages to group membership? This question is rooted firmly in an instrumentalist approach to ethnicity that posits a purposive and largely voluntary conceptualization of identification. Actors are seen to weigh the advantages and disadvantages of ethnic membership consciously, and do identify on the basis of ethnicity when an ethnic group is seen to provide the means for attaining desired, social, political, and or economic goals. The correspondence of shared interests and shared identities promotes group solidarity and thereby provides the

basis for ethnic organization and mobilization. Thus, to the instrumentalist theorists, ethnic groups are individual's affiliations to the communities which are beneficial to them or bring them practical advantages (mostly economic and political). They are based on rational needs and objectives, not closeness or kinship. The individual understands the community as an instrument for achieving their goals. These bonds of an individual to a community are characterized as cool-headed, formal, intentional, purposeful, requiring conscious loyalty and formed on the basis of choice, but also as vague, temporary, intermittent and routine. They prevail in organizations such as trade unions, political parties, professional unions, sports clubs, local interest groups, parent-teacher associations, and armed rebel groups. These groupings can be established, maintained and then just as easily cease to exist. In other words, they are not universal and historically lasting. The attachment to them consists more in cool-headed calculation of interests. No emotions are assumed in the membership. Instrumental groupings are segmentary and simultaneous membership of an individual in several instrumental communities is therefore possible. Lynn (2004) posits that ethnicity should be understood as a conflictual social phenomenon. He writes:

It is not ethnic groups that are negative but the conceptual scheme held about them and the practical approaches consequently adopted. Therefore, ethnic groups should be nurtured rather than destroyed which is concurrent with Aristotelian epistemological paradigm (Lynn, 2004, p. 253). Atkinson (1994) differs in this view:

Ethnicity is one of the most intractable problems facing Africa today. The political upheavals including civil wars, rebellions and massive human displacement and dispossession, which have plagued the continent during the last forty years, can, to a larger extent, be attributed to ethnic rivalries, tensions and varying degrees of confrontation. No single country in Africa has been immune to the dynamics of ethnic identity.

Ethnicity has been at the forefront of defending and promoting Uganda's rich and diverse cultures. Languages like Luo, Luganda and Lutoro have survived the onslaught of Western languages, especially English, during the colonial and even post-colonial eras because of the strength of ethnic bonds. Kasfir (1979) argues that 'ethnicity is of its nature, a single language community.

By making a comparison on ethnicity and the inter-link to dual citizenship in both Kenya and Uganda, I indicate the complexities around a definition, institutionalization

of citizenship in certain African countries. While State actors, play a critical role, the way in which politics is conducted, has a direct implication to drafting of laws and societal ordering. Although there are legal influences from the commonwealth historical model, right from when these nations attained independence to-date, a clear indication still persists on impacts of a society built around ethnic identities. The risk to the dual citizenship debate is that with laws or legislation not clearly definitive, certain groups could be excluded for whatever reasons. I argue, that while dual citizenship is of great importance in the citizenship and democratic realm, has multiple benefits not only to the nation but to the recipients too, there is still a need for an international framework inclusive of all state parties. It is an irony that while states reform laws to allow for dual citizenship, there are still stateless persons.

## 7.5 Comparison of Dual Citizenship Reforms in Kenya and Uganda

According to the Constitution of Kenya (2010), a citizen by birth does not lose citizenship by acquiring the citizenship of another country. (1)A citizen of Kenyan by birth who acquires the citizenship of another country shall be entitled to retain the citizenship of Kenya subject to the provisions of this Act and the limitations, relating to dual citizenship, prescribed in the Constitution. (2) A dual citizen shall, subject to the limitations contained in the Constitution, be entitled to a passport and other travel documents and to such other rights as shall be the entitlement of citizens.

(3) Every dual citizen shall disclose his or her other citizenship in the prescribed manner within three months of becoming a dual citizen. (4) A dual citizen who fails to disclose the dual citizenship in the prescribed manner commits an offence and shall be liable, on conviction, to a fine not exceeding million Kenya shillings or imprisonment for a term not exceeding three years or both. (5) A dual citizen who uses the dual citizenship to gain unfair advantage or to facilitate the commission of or to commit a criminal offence, commits an offence and shall be liable, on conviction, to a fine not exceeding million Kenya shillings or imprisonment for a term not exceeding three years or both. (6) A dual citizen who holds a Kenyan passport or other travel document and the passport or other travel document of another country shall use any of the passports or travel documents in the manner prescribed in the Regulations. (7) A dual citizen shall owe allegiance and be subject

to the laws of Kenya (Kenya Citizenship Migration Act No. 12 2011).
On the contrary, according to the Constitution of Uganda (1995), a Uganda citizen shall not hold the citizenship of another country concurrently with his or her Ugandan citizenship.

(2) A citizen of Uganda shall cease forthwith to be a citizen of Uganda if, on attaining the age of eighteen years he or she, by voluntary act other than marriage acquires or retains the citizenship of a country other than Uganda.

(3) A person who:

(a) becomes a citizen of Uganda by registration; and (b) upon becoming a citizen of Uganda, is also a citizen of another country, shall cease to be a citizen of Uganda unless he or she has:

(i) renounced his or her citizenship of that other country;

(ii) taken the oath of allegiance specified in the Fourth Schedule to this Constitution;

(iii) made and registered such declaration of his or her intentions concerning residence as may be prescribed by law; or.

(iv) obtained an extension of time for taking those steps and the extended period has not expired.

(4) A Uganda citizen who loses his or her Uganda citizenship as a result of the acquisition or possession of the citizenship of another country shall, on the renunciation of his or her citizenship of that other country, become a citizen of Uganda.

(5) Where the law of a country other than Uganda, requires a person who marries a citizen of that country to renounce the citizenship of his or her own country by virtue of that marriage, a citizen of Uganda who is deprived of his or her citizenship by virtue of that marriage shall, on the dissolution of that marriage, if he or she thereby loses his or her citizenship acquired by that marriage, become a citizen of Uganda
However, according to the Uganda Citizenship and Immigration Control (amendment) act of 2009, a provision for dual citizenship was initiated, further amendments were made such as: to provide for the board to have a vote of its own; to amend the provisions of the Act relating to the loss of Uganda citizenship by *registration or naturalization*; to provide for the offices of state which a person holding dual citizenship is not qualified to hold; to provide for former Ugandans who wish to re-acquire Ugandan citizenship and for related matters.

(1) A citizen of Uganda of eighteen years and above who voluntarily acquires the citizenship of a country other than Uganda may retain the citizenship of Uganda subject to the Constitution, this Act and any law enacted by Parliament.
(2) A person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to the Constitution, this Act and any other law enacted by Parliament, retain the citizenship of another country."
(3) Persons with dual citizenship not to hold certain offices of State
(4)A person who holds the citizenship of another country in addition to the citizenship of Uganda is not qualified to hold any of the offices of State specified in the Fifth Schedule to this Act**.**
The above comparison of the dual citizenship legislation both in Kenya and Uganda, is indicative, first of a progress on the liberal regime of dual citizenship that both countries were able to achieve. The field interviews I conducted especially with the focus groups in both countries and with legal experts, are indicative in both countries of a "dual citizenship limbo" due to seemingly stringent conditions placed on parties interested in dual citizenship. In both instances, there is prohibition to participation of "certain" political state offices/positions to dual citizens. I argue, therefore, that in such instances is a risk for politicization of dual citizenship or ethnicization of dual citizenship by influential political actors. A case in point in Kenya is that of a Kenyan lawyer, Miguna Miguna's 2018 deportation case. In the ruling, Judge Luka Kimaru directed the government to deposit Dr. Miguna's revoked passport at the court within seven days. However, the Kenyan government argued that the verdict was not in the best interest of the country and that he was no longer a citizen of Kenya because he had renounced his citizenship and never bothered to reclaim it (Kiprop, 2018). Interior Ministry spokesman Mwenda Njoka claimed Miguna lost citizenship when he acquired a Canadian passport in 1988 after his application for a Kenyan one was denied on September 12, 1987 (Asamba, 2018). Further as indicated in the constitutions of both countries, declarations are required within a given framework of time, failure of which carrying hefty financial fines and risk of jail sentences. Field interview findings in both instances were indicative of a disparity or disconnect from the legislators, judicial actors that spearheaded the amendments and the implementers the dual citizenship reform, police officers, immigration officers, among others.
Whilst the Ugandan case is specific of instances of those who attain its citizenship by registration, naturalization, marriage, and the clear path to dual citizenship in those

specific instances, the Kenyan case falls short of this. I argue though in that both countries, there is a risk of statelessness, for parties that may wish to *revoke, renounce, or invoke* (reclaim) their citizenship status. The constitutions in both instances do not provide specific input in that regard. Further with the comparison in both countries, I argue that the Jus sanguinis category of citizenship is not fully catered for. It is probable that most citizens of the Kenya and Uganda living abroad especially in the Western hemisphere, will have children, who in this case are born out of Kenya and Uganda. The risk, I argue would be for their children not to be granted an opportunity for dual citizenship. From my findings, the inability by both Kenya and Uganda, to extend dual citizenship processes directly to their embassies abroad, is challenging to applicants who may not be able to travel directly to Kenya and Uganda, to pursue the processing of applications.

In this section, my analysis is specific on the legislation, implementation and the actors that influenced the reforms on dual citizenship. My conducted filed interviews enriched the perspective on what could have been the incentives for the reforms in a quite similar time frame (2009 and 2010), for neighbouring countries and both members of the East African Community.

- **The Legislation**

According to Hansard Parliament of Kenya, the debates on dual citizenship reform of 2010, commenced around the year 1998 and these lasted for a period of 12 years.
There were several parliamentary debates and to my notice, the noticeable arguments advocating for dual citizenship included:
1. Economic contribution: ‘Kenyans in the Diaspora (KIDS) are said to contribute substantially every year through remittances, which accounts for over 25% of Kenya’s annual budget. Proponents for dual citizenship argue that this amount can only increase with the legalization and full implementation of dual citizenship. Estimates for 2019 stood at US$2.7 Billion’ (Bagaka J., Otiso W. & Epiche M., 2020, p. 5).
2. Taxation: ‘Countries usually use a combination of 3 factors when determining whether a citizen is subject to taxation: (a) Residency: a country may tax the income of anybody who resides in the country regardless of whether that income was earned in the country or abroad. (b) Source: a country may tax any income generated in the

country whether the earner is a citizen resident or non-resident. (c) Citizenship: a country may tax the worldwide tax of their citizens regardless of their source of income or their residency for the relevant tax period' (Bagaka J., Otiso W. & Epiche M., 2020, p. 6).

3. Better Living Standards: 'The world is increasingly recognized as a global village. Kenyans acquiring citizenship of other countries are enabled to enjoy certain benefits right to work, earn and enjoy "better living standards." For example, a British passport would enable one the right of abode in the UK and the right to live and work anywhere in the European Union' (Bagaka J., Otiso W. & Epiche M., 2020, p. 6).

The parliamentary committee that led this discussion was the Constitution Assembly. Looking at the Ugandan case in which dual citizenship was enacted in the constitution in 2009, commencement of the debate was in 1995 and the period for which it lasted was 14 years.

In the Ugandan case the main arguments for dual citizenship by the legislators included:

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 wherever they are, to the development of Uganda. 'It would also ensure that their children and grandchildren born abroad can enjoy dual citizenship' (Constitution of the Republic of Uganda, 1995 Article 15(3)). 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. Indeed, in the Constituent Assembly itself several delegates raised the same argument (Barya, 2000).

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. Their argument was that such a situation helps to reduce the undesired increase of numbers of refugees.

The third argument was that it would assist Uganda attract wealthy foreign investors. This is indicative of the economic motives for which the reforms could have been made. With the transformation of citizenship, I argue that this ought not to be premised on economic reasons, or more so create a "corporate citizenship" which enables a few

acquire duality or multiplicity of citizenship while others are denied the opportunity on financial grounds. I argue that a human rights-based approach should be followed as opposed to an approach that favours the wealthy.

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 (Barya, 2000). While I agree with Barya on this justification, I argue that with the creation of regionalisms, membership and identity are redefined, as is the case of the East African Community, could in some way enable living, working and integrating in neighbouring countries in the region. This is in part dependent on the factors for which the regionalisms have been formed: economic, social, political or cultural. I further argue that for dual citizenship to have a meaningful impact, political stability and peace ought to exist. While citizens from neighbouring countries to Kenya and Uganda, could relocate for work, residence and other factors, absence of peace and continued civil strife in their countries of origin, makes it impossible for them to return to their countries or even to have dual presence or participation. This brings to the fore debate that has surrounded liberal aspect of citizenship as opposed to the republican aspect of citizenship.

The members who participated in the proceedings of the Constituent Assembly (1995), argued that the neighbouring Mrican peoples compromising the security of Uganda or swamping the indigenous peoples taking away their land, jobs and, indeed, dominating them. 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. I however argue that given the stringent dual citizenship laws in both Kenya and Uganda, loyalty to the nation state is kept.

The Parliamentary committee tasked with chairing this debate was the Constituent Assembly and Uganda Constitutional Commission (also known as the Odoki Commission after its chair Justice Benjamin Odoki), which held countrywide hearings in preparation for the drafting of the 1995 constitution. The Commission, on a statistical assessment of the views submitted to it, recommended that dual citizenship

be rejected. A new Constitutional Review Commission (CRC) was set up from 2001 to 2003 and re-examined the provisions on citizenship.

In 2005, the 1995 constitution was amended and it allowed both Ugandans and non-Ugandans to acquire dual citizenship. The Act amended in 2009 defined dual citizenship under section 2 as 'the simultaneous possession of two citizenships, one of which is Ugandan (The Uganda Citizenship and Immigration Control Act, 2009).

From the key filed interviews, I conducted on the legislation process, the following issues came out as having been and to date continue to be central.

Whereas in legal terms citizenship is an individual right, in Uganda it is more of a collective right than the individual because it is when the individual is located in the collective, his/her community or nationality, that he/she assumes identity. Further it is this identity that seems to matter than the individual rights attendant to citizenship. In fact, more significantly, it is tacitly and implicitly agreed that one derived one's “Ugandan-ness” from the primary identity in his nationality (or tribe).

Questions arose regarding who true indigenous Ugandans are with the changing geo-political terrain and on the granting of citizenship to refugees, which by Ugandan law requires long waiting times. With increased movement of persons and forced migration, a need for protection will expand. This is not only for Kenya and Uganda.

In the context of Uganda, I argue that the conditions required to be considered for dual citizenship are to some extent, exclusive. In situations where the state wishes to reject applicants that may not conform to the political realm of the time, the conditions availed provide a suitable ground.

A person applying for dual citizenship shall, before being registered, satisfy the board that:

a) He or she is not engaged in espionage against Uganda;

b) He or she has not served in the voluntary service of the armed forces or security forces of a country hostile to or at war with Uganda;

c) He or she has not attempted to acquire Ugandan citizenship by fraud, deceit or bribery or by intentional or otherwise deliberate false statements in an application for citizenship;

d) He or she does not have a criminal record;

e) The laws of his or her country of origin permit dual citizenship;

f) He or she is, at the time of application, of or above 18 years of age;

g) He or she is of sound mind;

h) Does not hold more than one citizenship;

i) Is not an undischarged bankrupt or insolvent.

And lastly a person with dual citizenship is prohibited from holding certain offices like; being President, Vice President, Prime Minister, Cabinet Minister and other Ministers, The Inspector General and the Deputy Inspector General of Government, Technical Heads of the Armed Forces, Technical Heads of Branches of the Armed Forces, Commanding Officers of Armed Forces Units of at least battalion, Officers responsible for heading departments responsible for records, personnel and logistics in all branches of the Armed Forces, Inspector General of Police and Deputy Inspector General of Police, Heads and deputy Heads of National Security and Intelligence Organisation, (ESO), ISO and CMI), Members of the National Citizenship and Immigration Board(The Uganda Gazette, 2009).

- **The Implementation**

The process to manage, implement and pass the dual citizenship reform seemed to have differing processes both in Kenya and Uganda.

In Kenya, this was tasked to the Kenya Citizens and Foreign Nationals Management Board and the process lasted a period of 1 year before the constitutional amendment could be effected.

In Uganda, the Uganda Citizenship and Immigration board of 2009 was tasked with this duty. The board worked alongside the Uganda Law Reform Commission.

This process lasted a period of 1 year before it could be amended into the constitution.

From some of the implementers I interviewed during my fieldwork, the following issues came out as outstanding;

While dual citizenship in the Constitution is a reality, effective implementation to maximize national and individual benefits remains to be seen.

Besides being used by states to promote their national interests abroad, and for individuals seeking freedom of movement, cultural and economic capital, as well as migrants clinging to the "myth of return," the phenomenon continues to face implementation challenges at two fronts. First, it can be viewed as a threat to classical territorial sovereignty as well as being a security risk. Secondly, the motives and expectations of the states in allowing dual citizenship does not often match the expectations of individuals seeking dual citizenship. Such a mismatch of expectations may result in dual citizenship policies that violate the norms of democratic equality by

enfranchising non-resident citizens. Often, dual citizenship policies are put in place for economic factors while at the same time, there is a fear of diasporic interference in domestic politics.

There is still need for critical interpretation of the scope and content of dual citizenship under the Constitution.

In general, therefore, the Constitution of Kenya, 2010 contains sufficient provisions for

Kenyan-born nationals who reside in various countries to acquire dual citizenship. There is no doubt, however, that the spirit of the constitution neither provides for the offspring of these Kenyan nationals nor nationals of other countries who have immigrated and reside in Kenya.

- **The Actors**

In an interest to probe who the main actors in the debate on dual citizenship and eventual legislation were, it required a critical analysis in the contextual aspects of both countries Kenya and Uganda. This is more so, because the legal reforms happened around the same time, so did the constitutional amendments in 2009 and 2010 respectively.

In the case of Kenya, right from the initial public discussions to the parliamentary debate, to the legislation and eventual amendments, the following actors were central: The Parliament of Kenya, local political leaders, the executive, the judiciary and the legislature, EAC, Uganda's Justice Benjamin Odoki as consultant (The Judicial Integrity Group, 2000).

In the case of Uganda, the following institutions played an active role:

The National Resistance Movement (NRM) government, the Uganda Constitutional Commission, the Constituent Assembly and the people, including civil society (Odoki, 2001).

From my field findings on this issue:

Having crossed the hurdle of adopting the new Constitution, Kenya now faces the challenge of realizing its promise of more inclusive citizenship through the new devolved system of government, reduced presidential powers and better separation of powers between the three arms of the government; a restructured and vetted judiciary; an expanded, enforceable bill of rights that includes social, economic, and cultural

rights; security sector and land reforms; environmental protection; and other key changes.

It should also be noted that the constitutional guarantee of private property is imposed on a political and cultural context in which territory is synonymous with ethnic citizenship. In practice, this has meant that one is only free to own private property anywhere in the country so long as the "native" owners of the land permit. The perception here is that individual ownership of "community" land by "outsiders" reduces the territory of the ethnic community, thereby undermining its continued existence. This circumstance is a legacy of the colonial experience, which created 'dual citizenship' under which one is first and foremost a citizen of his or her ethnic community, and then a citizen of Kenya. By the logic of this bifurcated citizenship, there *must* be a territory that each native can call home. In a context in which the constitution protects even private property that has been acquired illegally or illegitimately, the foregoing considerations of ethnic citizenship complicate and politicize land matters even further.

- **The Incentives**

Important in my comparative analysis, is to critically establish the incentives for which both countries Kenya and Uganda, reformed their rather previously stringent laws on dual citizenship, to allowing for it. It is vital to note that Kenya has an estimated number of 102,000 of its diaspora citizens mainly in the USA (Rockefeller Foundation, 2015). On the other hand, the World Bank estimates Ugandan migrant stock of 2.2% of its population in the same regions (World Bank, 2011). These figures do not include those Kenyans/Ugandans who emigrated and changed their citizenship status without retaining their original status. Rather these are nationals who emigrated and still retain their original citizenship status despite living the in the Western world. These figures do neither include children born to these emigrants while in the diaspora. My study hence analysed as to whether the incentives were, political, economic or social.

In the case of Kenya, since 2007 the Kenyan diaspora has been pushing for reforms to allow for dual citizenship. This is in part due to the huge remittances they send home each year. The World Bank estimates an increment from $538 million in 2003 to $1.69 billion in 2008 of Kenyan diaspora remittances (World Bank, 2008).

Further their interest to participate in the political processes of their countries which has not been possible to date. Voting rights, identity cards, among others, are issues

that their governments back home are yet to address. Although the dual citizenship law has been reformed, the implementation is such aspects is still unclear and inconclusive.

For Uganda, apart from the huge remittances that are heavily taxed by the Ugandan government, comes another debate regarding the political participation of its diaspora. It is estimated by the World Bank that Ugandans living in the diaspora, send a close to US$ 1.4bn a year back home (Muwanga, 2019). There is also another challenge of land reform policy in Uganda, with the diaspora who own land at home (in Uganda) risking losing it due to lack of documentation, residence within the country among other factors.

In the field interviews I conducted on this factor, observable findings made indicate that Ugandans who constituted the mass exodus and other nationals who left the country during the periods of conflict and unrest now form part of the Diaspora community living in different countries abroad. The most notable persons of this category of Ugandans in Diaspora include past national leaders who fled for their lives when their governments were overthrown. Some of these former leaders like Sir Edward Mutesa II, Milton Obote and Idi Amin lived the rest of their lives and finally died in exile. It has been a common trend in Uganda whenever governments changed for the ousted leaders to flee into exile and in so doing join and become part of the external enemies of the new government. Ugandans in the Diaspora can therefore not be ignored in the wider context of resolving and finding a lasting solution to conflicts affecting their country of origin. Some groups in the Diaspora are viewed with suspicion (normally by the government in power) due to their linkages to opposition groups of the government and their past involvement in human rights abuses and violations. Rebuilding trust among the different parties involved in conflict remains one of the biggest challenges for any peace building initiative aimed at promoting reconciliation and unity in Uganda.

Ugandans in the Diaspora have played an important role in advocacy for justice and protection of the rights of minorities and vulnerable groups in their country of origin. An example is the campaign which was led by the Diaspora to draw the world's attention to the rights of children and women affected by armed conflict in Northern Uganda. Some of the activities carried out by the Diaspora involved peaceful demonstrations in their host countries and presenting petitions to leaders in their host

countries and other world leaders to take action, intervene in the northern Uganda civil war and seek peaceful solutions to conflict (Bulwaka, 2009).

Ugandans in the Diaspora have also been instrumental in organizing conferences for peace and exchanging ideas on the way forward for national reconciliation and development. An example is the “Kacoke Madit” (a big gathering) conference, the first of which was held in London, United Kingdom in 1996. This conference was aimed at finding a lasting solution to the armed conflict in northern Uganda between the Lord’s Resistance Army (LRA) rebels and Uganda government. The conference drew participants from Government, Civil Society, Members of Parliament, Cultural Leaders, Local Authorities and other community leaders.

Subsequent Diaspora conferences have continued to be held annually to strengthen dialogue and exchange of ideas on peaceful means of resolving conflict.

The Diaspora has also been active in disseminating information and networking between stakeholders in their country of origin and those in the host countries. This information is passed on through various channels of communication especially through the internet and media fraternity and is helpful in updating all parties involved about new developments and ongoing initiatives in peace building and reconciliation. This is evident from the activities of the Kacoke Madit Secretariat and its structures established in 1996 by the Uganda diaspora community in London, United Kingdom to coordinate the open forum of various stakeholders seeking a peaceful solution to the conflict in Northern Uganda (Lucima, 2002). “The Secretariat works through a network of regional coordinators in Uganda, South Africa, United States of America, Canada, Scandinavia and the rest of Europe. The Secretariat also works with local partner groups in Uganda including the Acholi Religious Leaders Peace Initiative (ARLPI), the Acholi Parliamentary Group (APG), Acholi Development Association (ADA), People’s Voice for Peace (PVP), the Council of Acholi Chiefs (Rwodi Moo) and other local stakeholders” (Nyeko, 2002).

In a bid to draw international attention to the conflict in Northern Uganda, the war crimes and atrocities committed against women and children, some Diaspora groups in partnership with Civil Society and other stakeholders in the host State started the “Gulu Walk” event (Gulu Walk, 2008). This was an event aimed at mobilizing funds and other support to help the war affected children of Northern Uganda. The first Gulu Walk event was held in the year 2005 in Toronto, Canada. The Gulu Walk has since then been held as an annual event and evolved into a worldwide movement for peace.

In the year 2007 alone, over 30,000 people in 100 cities in 16 countries took to the streets to urge the world to support peace in Northern Uganda. Walkers have raised over US$1 million for programs that provide education and rehabilitation to Uganda's war-affected youth (Gulu Walk, 2008). In China, the Gulu Walk 2008 event was held in the capital city, Beijing. The event took place at one of the most popular tourist and cultural sites in China, the Mutianyu section of the Great Wall. The participants in the Gulu Walk event each contributed a minimum of Yuan 150 part of which was donated to the affected communities in Northern Uganda. All participants in Beijing and other cities where the Gulu Walk event took place were dressed in orange t-shirts with the words "Gulu Walk" engraved on to show solidarity and support for the war-affected children and people of Northern Uganda.

The Diaspora together with local community leaders and Civil Society in Uganda were instrumental in convincing the government of Uganda to grant general amnesty to those involved in armed rebellion against the State through enacting the Amnesty Bill in 1998. This was aimed at encouraging perpetrators of violence and conflict in the country to renounce their armed rebellion, make peace and hence enable reconciliation and forgiveness take place for past injustices. This is in the spirit of solving deep rooted conflicts in society through traditional methods that encourage forgiveness, compensation and reconciliation over contemporary justice systems that demand punishment of the wrong doers. This has brought about hope for peaceful settlement of conflicts in Uganda and encouraged more persons both in the Diaspora and at home, previously involved in armed rebellion against the State to renounce their activities, receive pardon for their offences and be reintegrated in society.

Some Diaspora Associations like the Uganda North America Medical Society (UNAMS) that is composed of health workers (Doctors and Nurses) in the U.S.A and Canada have made significant contributions to local communities in Uganda. They have contributed through donating medical equipment and sending experts to train health workers in Uganda. I therefore argue that the legal reforms to allow for dual citizenship has a multiplier effect, not only in economic benefits through remittances, but through skills training, knowledge transfer and creation of transnational networks.

In conclusion, Ugandans in Diaspora are key partners in promotion of their home country's Public Diplomacy, Culture and Community development. The above examples of activities and engagements of the diaspora is indicative of a growing

interest and urge to participate in the affairs of their countries of origin. This is not only political but cultural, social and educational.

The comparative findings on the law reform in Kenya and Uganda, to allow for dual citizenship exposed (based on field interviews) the following noticeable divergences as indicated in the table below:

| KENYA | UGANDA |
|---|---|
| There is a general understanding that something called dual citizenship exists but there is a haziness around what purpose such an arrangement exists for. (From Practitioner Interviews) | There seemed to be a lack of proper grasp on the legal reform to allow for dual citizenship- Based on responses from the practitioners. |
| A clear dynamic pathway of advocacy---to---provision is not clear in the minds for the Respondents. This has implications for general understanding and can lead to real elements of discretion and, therefore, abuse of the system. | There does not appear to be uniform clarity over where the pressure has come from for Dual citizenship. Clearly there are elements of self-interest ((for business people, Ugandan nationals living abroad) as well as the issue of re-dress for those Asian-Ugandans expelled by Amin. |
| There is a lack of clarity as to the breadth and depth of consultation on this matter. Respondents do not give an impression that ordinary people, or those directly impacted by dual citizenship, were consulted. Is this lack of consultation reflected in the quality of the legislation | In the case of Uganda, based on the interviews conducted, consultation were organized through the law reform commission. However, they too lacked the breadth to reach the wider general public. |
| There seemed to have been more submissions especially from the Kenyan Civil Society Network. | General lack of understanding of how submissions were made to respond to the demands for dual citizenship and then to design appropriate legislation |
| A common theme is emerging here of processes which have been inadequate, or not fully addressing the needs and reasons for dual citizenship. | In the Ugandan context, this was not reflected. Partially since the Gender nationality law was already in existence. The introduction of such a reform in the Kenyan context alongside the dual citizenship reform seemed to cause further debate. |
| | |

Similar observations for both countries included:

- A general consensus that such a provisions caters for those born in Uganda/Kenya but who may have left and are living abroad.

(Similar observation)

- There was a strong feeling that this provision exists for economic reasons, enabling business and other investment opportunities. So, a mixture of both right-based and opportunistic reasons.
- The legislative response has been uniform. However there have been no comments by the Respondents as to whether the respective legislations (in Uganda and Kenya) addressed the demands and reasons for dual citizenship. Was the legislation adequate? Was it open to differences for interpretation on the ground, and therefore open to corruption?

- In both contexts, there was absence of real clarity on length of the reform process. An acceptance that the process maybe took a year. So, in that year, what did the process compromise in terms of steps or iterations? Respondents indicate a real concern at the nature, validity and efficacy, of the process. Maybe this is a reflection of not really knowing what the process was?

- There seems a general acceptance that the provisions (legislation and rules) do not cater for all of the demands/reasons for dual citizenship.

- Respondents seem to be pointing to a whole series of areas which are open to bureaucratic interpretation making it difficult for what is a right, or possibility, on paper (through legislation) and the actual ability to achieve dual citizenship by individuals.

- There is a lack of clarity, or transparency (and consultation) amongst key Government players and stakeholders to promote awareness of provisions and process.
- The lack of consultation seems to indicate that there were issues around the lack of trust and/or understanding between the countries/neighbours? What, then, is the role of the EAC in navigating this?

# CHAPTER EIGHT

Dual citizenship has expanded the discussion regarding the development around the emergence of the locations of citizenship, outside the confines of the nation state (Sassen, 2002). In agreement with Sassen, I argue that there is a need to critically analyse how nation states cope with such a change, the dynamics, the actors both from within the state and outside the confines of the state. The Dual Citizenship debate and progress in both countries, with a more recent progress of 2009 and 2010 respectively, brings to attention, from the field interviews I conducted, four central issues. These are: the Nation State, Free Market Economy, the Post-Colonial discourse and transnationalism.

By making a comparative study, I drew to attention the wider spectrum of Dual Citizenship, in the African context. By doing so, I argued that while Dual Citizenship is

a positive development and an idea that has been brought forth by the societal changes, the realities and contexts of specific countries remain different. This development hence influenced my analysis from a sociological and historical perspective. In doing so, I am in agreement with Jürgen Mackert and Bryan S. Turner, who highlight the "transformation of citizenship" in the sociological and economic perspective with a specific analysis of the European context. I, argue that, while there has been and will continue to be a transformation of citizenship, and now more recently with Dual Citizenship in Kenya and Uganda, that should not only be for economic benefits, but place into consideration the vital aspects of a specific society. The problem is, or will continue to be, as indicated in my previous chapters, that failure to address issues such as ethnic-political tensions or weak government systems in regards to the citizenship debate, leaves behind a challenge to deter several would be citizens, first out of the possibility to naturalize, but secondly to keep dual citizenship as an exclusive right. A human rights-based approach is vital and an inclusive one. For that to happen, I draw the following conclusions below in a contextual way:

## 8.1 Conclusions around Historical Context

The legal model adopted by both Kenya and Uganda at independence has continued to influence and impact their citizenship laws and developments. In the sub section below therefore, I provide a chronology of events that shaped way to the Dual Citizenship debate and legislation in both countries.

### 8.1.1 Uganda Dual Citizenship Law Reform

According to the Hansard parliamentary records on Uganda, the debates on dual citizenship commenced on Friday, 24th June 2005 and there was a general consensus in the debates to support the concept of dual citizenship. One of the legislators on the Parliamentary Citizenship and Immigration Committee stated: "For long we have been contemplating this and given the advantages it has for Ugandans living outside this country we have been missing a lot of economic, social and political advantages in this country because of lack of this law on dual citizenship. We, therefore, fully support the amendment of this bill today because it is long overdue." (Hansard, Parliament of Uganda, 2005, p. 32). Despite the debates and eventual reform of 2009, there remain several complexities around the Dual Citizenship laws. It is not permitted to hold three

nationalities, and the other country must permit dual nationality. This is in line with the Constitution 1995 (amended by Act No. 11 of 2005 and Act No. 21 of 2005), Uganda Citizenship and Immigration Control Act 1999 (Chapter 66) (amended by Act No. 5 of 2009). Constitution of Uganda of 1995 (2005) Articles14–15 as well as legal articles 1999 (2009) Arts17–20.

According to the Directorate of Citizenship and Immigration Control Effective 1st July, 2015, dual citizenship means the simultaneous possession of two citizenships of which one is Uganda. The possession of a third citizenship disqualifies one from holding or being a dual national of Uganda unless the third citizenship is renounced. Realization that Ugandans in the Diaspora make enormous contribution to the economic and social development of Uganda, the government observed the following.

i) Need to enable Ugandans in the Diaspora maintain linkages with their roots without any legal hindrances
ii) The need to attract potential investors
iii) Reap advantages that accrue from the granting of dual citizenship.

Until 2009, dual citizenship was prohibited in Uganda by Article 15 of the Constitution. However, the Uganda Citizenship and Immigration Control (Amendments) Act of 2009 was enacted to provide for dual citizenship. The conditions as shown below were set out, however from the field interviews I conducted there is still a lack of clarity and legal loopholes in the law reform.

i) Any person holding Ugandan citizenship and seeks citizenship of another country that allows dual citizenship and fulfils the requirements for dual nationality
ii) Any person who holds a citizenship of a country that permits dual nationality and also seeks Uganda citizenship and satisfies the requirements for grant of dual citizenship.

With those two specific conditions mentioned above, I agree with Brubaker (1992) in the debate on the post territorial aspect of the nation state. The individual (citizen) and the nation state(s). My comparative study has highlighted and continues to indicate on one end the advantages of dual citizenship, but on the other end, how such conditions could be to the disadvantage of those, who in instances of weak institutional frameworks in certain nation states, may be deliberately kept to the margins of the

"hierarchy of citizenship." In the aspect of the research I conducted, issues such as ethnicity, politicization of citizenship debate, the role of the "other actors" who are non-state actors, could be impactful.

With reforms in Uganda, its neighbour country, Kenya amended its constitution to the same effect in 2010, and Tanzania has initiated a debate about the possibility of doing so. The Dual Citizenship Act also mandated that parliament prescribe the offices of state that those with dual citizenship are disqualified from holding (Uganda Constitution (Amendment) Act, 2005). I argue that the disqualification of dual citizens from participating in politics deters the checks and balances on their respective governments or countries of origin for that matter. While they accept them to participate in the economic development, they (the nations of Kenya and Uganda) limit them in other aspects. As Bauböck (2010) further engages on the debate of diaspora politics and what he further calls cross-border nationalism, it is crucial that the Ugandan and Kenyan diaspora not only participate in the discussions on the political developments in their countries but can actively participate in aspects such as contesting for electoral offices in certain positions. Important to emphasize in the findings on the field interviews, is that although both countries reformed their dual citizenship laws, the diaspora from both Kenya and Uganda, are not only limited from contesting for certain public offices, neither can they participate in the electoral process of their respective countries. To date both countries have neither set up a framework enabling their diaspora rights or opportunities to vote from the countries where they reside, or even through the respective embassies, nor has there been any indication of consideration of such a reform.

In practice, implementation of the amendments has been problematic, with backlogs in processing (Osike and Karugaba, 2008). In field work findings, an observable divergence was that there was lack of adequate training for the implementers of the new reform on dual citizenship. Further limited awareness was availed to both Kenyan and Ugandan diaspora on the application processes and requirements. Seemingly true, to my findings, is there was more access to dual citizenship for foreign investors based in Kenya and Uganda, a clear indicator to the economic incentives attached to the law reform on citizenship.

### 8.1.2 The Kenya Dual Citizenship Law Reform

According to the Kenya Hansard parliamentary debates held on 24th June, 2006, a breakthrough submission from one of the legislators which paved way for further debate on dual citizenship stated: "We are particularly happy with the dual citizenship because women are more global than men and get married across the seas…many Kenyan girls who are married to foreigners had greatly suffered because of the issue of citizenship…. it was painful for people returning home only to reach at the airport and be told that they can access Kenya but their children would have to wait and look for visas….no timeframe was captured in clause 10 on where the committee might not give an investor an investment permit on how long the appeal should take. Here,… we talking about making it easy for investors to come to this country… since the judiciary is anticipated to be a very efficient Judiciary, it should be given maybe 14 days or 30 days because the committee was given 45 days" [16]

"….Dual citizenship is not bad, but we must be prepared because it comes with a cost. There will be positions of leadership that one cannot occupy if one has dual citizenship. One of them is to represent the State or the Head of State. Even as parliamentarians and this is very interesting, I am aware that there is a Member of this House facing a court case because of dual citizenship…. This has happened because of lack of disclosure. If one does not disclose information, it is a criminal offence. When one is nominated for appointment and… with dual citizenship do we have in this country? I think we need to apply the law equally. We need to stop being biased. If the law is to be followed, let us do so to the letter and not selectively. We respect the Speaker's ruling.." (Hansard, Parliament of Kenya, 2019, p. 13–17)

The above submission by a legislator, is crucial and indicates among others the vital and transformative nature of citizenship. Aspects such as access to nationality for children otherwise born to a non-Kenyan partner, further gender nationality law reform, which was made possible by the dual citizenship debate whereby children born to Kenyan women can now gain citizenship from their mothers, dual citizenship seems to have been influenced by investment links. The submission was central not only for Kenya and Uganda but for other parts of Africa, where there has been debates surrounding gender nationality laws. There continues to be instances, where women are not able to confer nationality to their spouses or children. This is not only in Africa

[16] http://www.parliament.go.ke/the-national-assembly/house-business/hansard Thursday 24th June 2006

but still existent in over 27 countries of the world. The United Nations has through several conventions provided guidance on nationality, more so in an effort to advance a fair citizenship regime. For example: Article 9 of the Convention on the Elimination of All Forms of Discrimination against Women (hereinafter "CEDAW") reaffirms that laws and practices which treat women differently than men in terms of nationality constitute discrimination against women ipso facto. Reiterating provisions of the 1957 Convention on the Nationality of Married Women concerning the equal rights of women with regard to their own nationality[17], CEDAW article 9 particularly aims to prevent women from losing their nationality through marriage to a foreign spouse. It states: States parties shall grant women equal rights with men to acquire, change or retain their nationality. They shall ensure in particular that neither marriage to an alien nor change of nationality by the husband during marriage shall automatically change the nationality of the wife, render her stateless or force upon her the nationality of the husband[18]. CEDAW further recognizes women's equal right to bestow their nationality onto children, by indicating: States parties shall grant women equal rights with men with respect to the nationality of their children[19].

Referring to the CEDAW, I argue that as nation states advance or reform laws to allow dual citizenship, the contexts mentioned above ought to be considered. The Kenya and Uganda case were more explicit on positions which dual citizens shall not hold but fell short of addressing specific clauses related to marriage, children, divorce and their interplay in the dual citizenship debate.

According to the legal provisions in the Constitution of 2010, Article 17 and L2011 Articles 19(4) & 21, the Kenyan Constitution and Citizenship Act both prohibited dual citizenship for adults until 2010, though the issue was on the table throughout the long drawn-out negotiations for a new constitution that dominated the previous decade (Constitution of Kenya, 2010). The new constitution adopted by referendum in 2010 finally changed these rules to provide that a citizen by birth did not lose citizenship on acquiring another citizenship, while also requiring parliament to establish conditions on which citizenship could be granted to individuals who are citizens of other countries. New legislation was due to be passed within one year of the constitution coming into force.

[17] Article 1.

[18] Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), art. 9 (1).

[19] CEDAW, art. 9 (2).

Kenya successfully promulgated a new constitution in August 2010 to replace the one which was negotiated between the British major political parties of the time at the Second Lancaster House Conference in 1962 and promulgated in 1963. One of the key features of the Constitution of Kenya, 2010 is the provision for dual citizenship. Various implementation aspects of this provision have been discussed and a number of relevant bills presented in parliament. While dual citizenship in the 2010 Constitution is a reality, effective implementation to maximize national and individual benefits remains to be seen. In order to conceptualize a workable dual citizenship policy, Kenya needs to consider not only their nationals in the Diaspora, but also the offspring of these nationals, as well as other nationals who have migrated into the Kenya (Cagayare, 2013).

In the comparative study of the dual citizenship reforms between Kenya and Uganda, a specific aspect which is pertinent to Kenya, is the blurred legal reform which is not explicit on the access to dual citizenship for Jus Sanguinis (citizens by descent) of Kenyan origin. While there is a clear pathway for Jus Soli (citizens by birth), other categories are not clearly catered for. I argue that an unclear legal framework, can create contexts of statelessness, especially for children born to parents, one of whom is not Kenyan and has not sought dual citizenship.

The provision of dual citizenship in the Constitution of Kenya, 2010 seems among other factors, to have been motivated by potential economic benefits given the larger number of Kenyan emigrants in North America, Europe, Australia, and other African countries. In as much as the Constitution of Kenya, 2010 is clear, some dual citizens who lost citizenship before the Constitution was effected have been denied citizenship upon re-application under section 10 of the KCIA due to bureaucracy at the Immigration offices (EWA & 2 others V Director of Immigration and Registration of Persons and Another [2018]). "There is still need for critical interpretation of the scope and content of dual citizenship under the Constitution. The landmark ruling in Ali Hassan Abdirahman vs. Mahamud Muhummed Sirat and 2 others (2010) eKLR established that under the old constitution acquisition of foreign citizenship did not lead to an automatic loss of Kenyan citizenship in the absence of renunciation by that Kenyan citizen and in cases where the recipient country permitted dual citizenship" (Bagaka J., Otiso W. & Epiche M., 2020, p. 4)

In general, therefore, the Constitution of Kenya, 2010 contains sufficient provisions for Kenyan-born nationals who reside in various countries to acquire dual citizenship.

There is no doubt, however, that the spirit of the constitution neither provides for the offspring of these Kenyan nationals nor nationals of other countries who have immigrated and reside in Kenya. Such a context can lead to consequences of persons who are undocumented, or who reside in Kenya and could use this citizenship loophole for subversive activities. I argue given the volatile great lakes region, continued civil conflict in the neighbouring countries to both Kenya and Uganda, it remains crucial that foreign residents are documented and granted access to proper naturalization procedures. With situations such as piracy on the Indian Ocean, trade in small arms, the nation states hold a responsibility to document those who reside within their boundaries, alongside advancing dual citizenship.

## 8.2 Conclusions around learning from State and Comparative Experiences.

### 8.2.1 Uganda

In regard to relevant legal provision (most recent amendments) namely: Constitution of 1995, Articles 10–11, Articles 12–14, C1995 (2005) Article 15 L1999 (2009) Articles 15–19, 19A–G and schedule 5; under Article 15(6) of the Constitution and section 19 of the Act, a citizen of Uganda of 18 years and above, who voluntarily acquires the citizenship of a country other than Uganda, may retain the citizenship of Uganda. Further, a person who is not a citizen of Uganda may, on acquiring the citizenship of Uganda, subject to the Constitution and any law enacted by parliament, retain the citizenship of another country.

Under section 19D of the Act, prohibitions for persons with dual citizenship to hold certain offices of state is prescribed. These include among others, the presidency and vice presidency, prime minister, cabinet and other ministers, inspector general and the deputy inspector general of government, security-related offices and membership of the National Citizenship and Immigration Board.

Under section 19C, a person applying for dual citizenship shall, before being registered, satisfy the Board that they: are not engaged in espionage against Uganda; have not served in the voluntary service of the armed forces or security forces of a country

hostile to or at war with Uganda; and have not attempted to acquire Ugandan citizenship by fraud, deceit or bribery or by intentional or otherwise deliberate false statements in an application for citizenship. They are further required to show that they have: no criminal record; dual citizenship is permitted by their country of origin; are over 18 years of age at application, and of sound mind; do not hold more than one citizenship; and that they are not undischarged bankrupt or insolvent.

Under Section 19A, a citizen of Uganda who desires to acquire the citizenship of another country while retaining their citizenship of Uganda is required to give notice in writing to the Board of their application for the citizenship of another country. The notice is in the prescribed form accompanied by a statutory declaration stating that they are a citizen of Uganda only. Where the person is a citizen of Uganda and another country they make a declaration of renunciation of the citizenship of the third country; provide evidence that the applicant is or over 18 years of age and a copy of the application for citizenship of that other country and any other relevant information.

Under Section 19B, a non-citizen of Uganda desiring to acquire citizenship while retaining the citizenship of another country is required to satisfy the Board that: the laws of their country of origin permit them to hold dual citizenship; are not a subject of a deportation order from Uganda territory or any other country; and not under a sentence of death or imprisonment exceeding nine months imposed by a competent court and without the option of a fine. The applicant is also required to satisfy a number of other conditions to the board namely: residence in Uganda for not less than ten years; having adequate knowledge of any prescribed vernacular language in Uganda or of English or Swahili; have not been a refugee or a diplomat; possesses rare skills and capacity for technology transfer; willing to take the oath of allegiance and they must be a person of sound mind.

Registration is through application as a dual citizen under section 19D of the Act and Form AA in the Third Schedule, and regulation 10 of the Act as amended in 2009. The application covers character and the type of citizenship they hold as a Ugandan, their date and place of birth, name and date of birth for parents and particulars of their Ugandan passport. The applicant further provides information on acquired additional citizenship, the nature of the same, previous residence, employment, profession and business contact overseas and in Uganda. Particulars of all criminal proceedings against the applicant at any time and in any country, where the applicant has previously renounced or been deprived of Ugandan citizenship and the circumstance

for the same and reasons for present application. In addition, they make a declaration, and the certificate of dual citizenship is issued by the Board.

### 8.2.2 Kenya

Basing on the legal provision most (recent amendments) namely: Constitution of 2010 Article 14 (4) L2011 Article 9 L1992 (2010) Art10 and Constitution of Kenya 2010; Article 16 of the Constitution of Kenya, 2010 that permits dual citizenship in Kenya states that: "A citizen by birth does not lose citizenship by acquiring citizenship of another country." Further it states that procedure and substantive law that regulate and facilitate the issue of dual citizenship will be provided by Legislation (Article 18). Pursuant to Article 18, the Kenya Citizenship and Immigration Act of 2011 (KCIA) has been enacted to implement further the provisions of the Constitution regarding the issue of citizenship (Constitution of Kenya, 2010).

Section 8 of the KCIA provides that a dual citizen shall enjoy rights entitled to citizens, including the right to a passport and other travel documents. Section 8 (7) requires a dual citizen to owe allegiance to Kenya and shall be subject to Kenyan laws. Section 10 of the KCIA provides the process through which Kenyan citizens by birth may regain Kenyan citizenship through application to the Cabinet Secretary for those who lost citizenship, through acquisition of a foreign nationality before the Constitution of Kenya, 2010 was effected (Kenya Citizenship and Immigration Regulations, 2012). This is through application to the concerned Cabinet Secretary (or Minister for the period between the enactment of the Constitution and the first General Elections).

I argue, in agreement with Benhabib (2004) who emphasizes the aspect of the sub and supra-national aspects of citizenship. The potential of duality of citizenship expanding the democratic space. The dual citizens acting as checks and balances on their political processes back home. However, for them to do so, they require the "rights." By making a comparative study on both Kenya and Uganda dual citizenship processes, I came to close observable similarities in the limitedness of rights the dual citizens are granted. Further on the extended arm, of sometimes, a not so democratic state. The possibility to curtail, revoke and silence dual citizens in case they act not in conformity to the State that has granted them dual citizenship. I was able through my field findings therefore, to answer my initial questions, why dual citizenship at a time, where the primary form of citizenship has contestations? What the legal consequences were and what role the transnational actors had on this process. Further, I come to one of the conclusions that although dual

citizenship is a noticeable required and relevant reform for Kenya and Uganda, more especially for their economic benefit, this has been in conformity with other aspects of human rights. I advocate for a human rights-based approach to dual citizenship as opposed to an economic based approach. My argument is based on the social-economic status of many of the citizens in the region.

Surveys of public attitudes in Kenya and Uganda to acquisition of citizenship suggest reasonable openness to legal reform to widen access to citizenship for those of foreign origin. Reports published in June 2018 by the International Rescue Committee found that more than half of Ugandans and 32 percent of Kenyans supported access to citizenship for refugees after 5–10 years, and 62 percent of respondents in both countries after 20 years. In Kenya, 62 percent of respondents also thought that the children of refugees born in Kenya should have access to citizenship (International Rescue Committee, 2018).

### 8.3 Conclusions around Effective Synthesis.

I refer to Uganda´s historical and ongoing open refugee policy, not only within the East African region but continent-wide, to highlight the importance and relevance of the ongoing citizenship debate in the region, which not only impacts on dual citizenship, but also on other aspects. With movement of persons through migration, will be intermarriages, participation in the life of the society at different levels and a need to naturalize, and hence a continuous reference to the citizenship laws. Uganda has a long history of hosting refugees. Mass movements, whether forced or otherwise, have long been a phenomenon in the borderlands of Uganda. In the case of the border between Uganda's West Nile and southern Sudan, this movement was only officially restricted and termed "cross-border" following the establishment of the boundary in 1914 by the British Secretary of State for the Colonies (D. H. Johnson, 2010). Since then, civil conflicts both in Uganda and Sudan have continued to create forced migratory movement in addition to ongoing migration for trade and other purposes. Uganda's refugee policies cannot be seen in isolation to national and international politics. They were shaped alongside a broader national political agenda in which the Ugandan government was pursuing other policies aimed at improving its international standing and gaining access to foreign political support and aid (Mwalimu, 1996).

I argue that while Uganda has made progress by reforming its laws to allow for Dual Citizenship, there is an urgent need to reform the refugee policy, which is impactful to the

citizenship debate. The criteria for refugees to naturalize, I argue is unattainable in most instances as indicated below:

The *Uganda Citizenship and Immigration Control Act (UCICA)* is the operative statute with respect to the naturalization of refugees. Five criteria must be met under art. 16(5) of the *UCICA:*

The qualifications for naturalization are that he or she—

(a) has resided in Uganda for an aggregate period of twenty years;

(b) has resided in Uganda throughout the period of twenty-four months immediately preceding the date of application;

(c) has adequate knowledge of a prescribed vernacular language or of the English language;

(d) Is of a good character; and

(e) Intends, if naturalized, to continue to reside permanently in Uganda.

It has been argued that years spent in Uganda as a refugee would not count towards residence 'under art.16 (5) (a) and (b). As explained above, this was true under the 1960 *Control of Alien Refugees Act,* but this law has since been repealed. In addition, art. 25 of the *UCICA,* which regulates what types of status do not qualify for residence, does not mention refugees. The Constitution and any other law in force in Uganda regulating naturalization shall apply to the naturalization of a recognized refugee. A recognized refugee who voluntarily wishes to be repatriated shall express his or her wish in writing to the Commissioner who shall, in consultation with UNHCR cause arrangements to be made for the repatriation of that refugee.

Uganda adopted a ground-breaking new Refugee Act in 2006 to replace the tellingly named 1960 Control of Alien Refugees Act. Whereas the former legislation had excluded any period spent in Uganda from counting as residence for the purposes of *naturalization*, the new version simply stated that the normal law applied to the naturalization of a refugee. While the 1995 constitution excludes refugees from the easier process of registration as a citizen for those born before independence, it delegates the provision of terms for naturalization to legislation. The Uganda Citizenship and Immigration Control Act of 1999 provides no exclusion for refugees from the provisions on naturalization, though the residence period required for anyone to naturalize is very long, at 20 years, and other conditions apply (Uganda Citizenship and Immigration Control Act 1999). Nevertheless, some remaining ambiguities (including the fact that persons born in Uganda of refugee parents or

those who did not themselves "legally and voluntarily" immigrate to Uganda are excluded from the non-discretionary process of registration), have led Ugandan officials to interpret the law to mean that refugees may not naturalize. In 2015, the Constitutional Court confirmed the interpretation that refugees were not eligible for the easier process of registration, though it stated (but for technical reasons did not give a formal ruling) that they were eligible for naturalization (Uganda Citizenship and Immigration Control Act 1999). Uganda Citizenship and Immigration Control Act 1999, (section 16) provides for various categories of person to be registered as a citizen on application, including a person born in Uganda who has lived continuously in Uganda since 1962 unless neither parent nor any grandparent had diplomatic status or was a refugee; and a person who has legally and voluntarily migrated to and has been living in Uganda for at least ten years. The "legal and voluntary" caveat does not apply to naturalizations under Article 16, but in that case 20 years' residence is required.

In 1995 Uganda adopted a new constitution and in 1999 a new Citizenship and Immigration Control Act. These laws require 20 years' residence in the country before a person can naturalize, an extremely long period for a refugee unable to claim the protection of any other country. Moreover, although children born in Uganda to noncitizens can apply for registration as citizens, the children of refugees, perhaps the most likely category to need this right, are explicitly excluded. Uganda's constitution also allows for the naturalization of anyone married to a national for at least three years, as well as the children of such unions. The 2006 new Refugees Act, incorporates the definitions of the UN and African Union treaties, and also establishes in law the domestic policies, practices, and procedures already used to determine refugee status and provide assistance, including an individual decision and appeal process, which are largely in conformity with international law (Manby, 2009).

Therefore, by Uganda incorporating international standards to the citizenship reform process, is impactful not only to the dual citizenship debate, but to other contexts too, which have long required reform. Much as there has been influences from the UN and the AU to some extent in the citizenship debates and reform in the region, I argue that there needs to be a more regionally coordinated effort through the East African Community (EAC) which address the contextual issues as compared to the continental or global context.

In relation to naturalization, however, the act states that "the Constitution and any other laws in force in Uganda shall apply to the naturalization of a recognized refugee," leaving the country's position in this regard unchanged. In addition, administration of the immigration directorate has been poor, and the Citizenship and Immigration Board to be established under the Citizenship and Immigration Control Act, which ought to have been deciding on issues of citizenship, was only finally established in 2007, leading to vast backlogs of citizenship applications for refugees and others (UNHCR Uganda, 2017).

I further argue, that for a proper citizenship framework to function, consistency and a functional nation state framework are vital. Although there were reforms to allow for dual citizenship, field findings I conducted indicated that the functionality of the reform was curtailed. There was absence of training to the relevant authorities, conflict of interest, and varied interpretation of the law reform. In certain instances an improper interpretation, left certain applicants with an unclear citizenship status risking their identity.

In Kenya, a Refugee Act adopted in 2006 brought Kenyan law largely into line with international standards of refugee protection: although the act did not explicitly give refugees the right to work, they are able to apply for work permits in practice. The act did not contain any explicit provision in relation to naturalization of refugees (Refugees Act, 2006). The 2010 Constitution and 2011 Citizenship and Immigration Act placed no barriers in principle on access to citizenship for refugees. In practice, however, the formal naturalization processes are not accessible (Citizenship and Immigration Control Act, 2011).

Prior to the passing of the Constitution of Kenya, 2010, dual citizenship was prohibited under Kenyan laws. Section 97 of the Constitution of Kenya, 1963, stated that a person applying for Kenyan citizenship had to renounce citizenship of another country, take an oath of allegiance and make a declaration of continuing residence if one obtained citizenship by virtue of Section 87(2) of Kenya Law Reports. However, in Ali Hassan Abdirahman Vs. Mahamud Muhummed Sirat and 2 others (2010) eKLR, "the court held that a Kenyan citizen by birth does not lose citizenship by merely acquiring the citizenship of another country. He can only lose upon renouncing his Kenyan citizenship. The burden of proof lies with persons purporting that the respondent had dual citizenship. It also has to be proved that the foreign country in which the

subsequent citizenship has been acquired does not allow dual citizenship" (Bagaka J., Otiso W. & Epiche M., 2020, p. 4).

Until recently there was no refugee law in Kenya, and refugees were subject to the same requirements as any other foreigners under the Immigration Act and the Aliens Restriction Act in obtaining entry to the country, work permits and registration of place of abode. A Refugee Act adopted in 2006 was hence important to highlight the inconsistencies in the naturalization and citizenship debates. On one end while the Parliament was debating allowing for dual citizenship, the refugees' situation was unclear and uncatered for. This further points to my argument, that while citizenship is being transformed, this should be an inclusive process taking into consideration the contexts of the time. On one end as the world experiences a continued movement of persons due to trade, education and intermarriage, there is also forced movement due to war and civil strife, climate refugees, natural disasters. It is paramount that dual citizenship is analysed and laws designed to inclusive of these aspects too.

In practice, Kenya excludes refugees from the naturalization provisions of its general laws; though a public opinion survey conducted in 2008, in response to discussions about reform to the law, showed that almost half Kenyans felt that children of refugees born in the country should be granted citizenship. Committee of Experts found the Kenyan state in violation of its obligations under Article 6 of the Charter, despite the reforms of the new 2010 constitution, which still failed to provide sufficient guarantees against statelessness since it does not provide that children born in Kenya of stateless parents or who would otherwise be stateless acquire Kenyan nationality at birth. The Committee noted the "strong and direct link between birth registration and nationality" and stated that it "cannot overemphasize the overall negative impact of statelessness on children.

Therefore, Isin (2002) influences my concluding remarks. He enriches the scholarly world of citizenship by analysis the idea of "alterity" with mention of the historical aspects of citizenship and how these have developed from within (on the inside) and later on the outside. I argue, that by having the different categories of citizen(s) included in the legal framework of the citizenship debate, there is room for inclusivity other than exclusivity. This also raise the question on the framework of what we call citizenship and the historical aspects surrounding it. In the case of Kenya and Uganda, this asserts my argument that while Dual Citizenship was a worthwhile reform in the right direction, due and timely consideration be given to those that are unable to

naturalize several years later after these nations gained independence. Further, consideration be given to those categories in the case of Uganda that are not listed among the indigenous groups in the constitution of Uganda. For the case of Kenya, the Somalis, the Nubians among others, be given the required attention to naturalize.

I further conclude by critiquing the "nation state" as being the primary determinant of citizenship or duality of citizenship. While on one end this is good and this avails for a sort of "custodianship of citizenship" on the other hand this could be a risk. It may provide oppressor nation states with excessive powers. This brings to debate the issue of the legitimacy of citizenship. From where and for whom does it come from? Weak or unstable democracies may not be safe environments for determining citizenship. However, this may be the case too in very strong democracies. For this, I argue that there needs to be an increased participation of non-state actors and non-state institutions. These continue to act a voice for the voiceless and to assert the needs of those who sometimes the nation-state may exclude. They create an environment of inclusivity in the citizenship regime debates both at a scholarly and political level. I, hence conclude by asserting that although Kenya and Uganda, allowed for Dual Citizenship in 2009 and 2010 respectively, there are delayed reforms on the citizenship laws in both countries to accommodate categories of persons that have been left out of the citizenship debates since the acquisition of independence. The debate and comparative study on the Kenya and Uganda, critiques the discursive frameworks, legitimacy and influence, of the nation-state as the sole guarantor of citizenship.

The following issues have been central to the findings and should generate further debate in Kenya and Uganda on citizenship:

1. Politicization of the dual citizenship with clauses deterring direct political participation.
2. The inability to avail for a clear roadmap/pathway to those who had sought citizenship elsewhere, before the reform allowing for dual citizenship in 2010, in regaining their Kenyan citizenship, secondly applying for dual citizenship. These citizenship limbo contexts could lead to statelessness.
3. In contexts where political activists are or could be extradited, depending on extradition agreements held by Kenya and Uganda, with other countries, dual citizenship would rather be a disservice.

4. In the Kenyan case, the context of children born to both stateless parents, of parents of a nationality other than Kenya, the law falls short of giving a clear pathway to citizenship and to dual citizenship eventually.

5. In the case of Uganda, whilst the constitution is clear with the "indigenous groups" being granted priority to citizenship and eventually dual citizenship, as well as foreigners who can access dual citizenship, the same constitution is non-committal to those persons who lived within the boundaries of Uganda, before and after independence and were not listed in the constitution. It further falls short of providing a legal justification for the 20year wait for refugees to naturalize in Uganda, despite having spent such a long time in the country.

6. No mention of voting rights for the dual citizens of both Kenya and Uganda at their embassies abroad.

7. Noticeable about the contexts of both countries is the impact of remittances from both from the Kenyan and Ugandan diaspora in contributing to the economic development of their countries. This indeed was very influential in the legal reform to allow for dual citizenship. Further, the pathway availed to foreign investors for acquisition of dual citizenship is a clear indicator of the economic incentives that influenced the reform.

The reform to allow for dual citizenship has drawn to attention through my findings, that given the colonial history of Kenya and Uganda, by Britain, the legal developments in the citizenship realm continue to face a contrast or sometimes a conflict around the English Common Law and the local customary law. With the developments both at a local, regional and global level, and with a new wave of actors (transnational) or non-state actors, there ought to be new forms of addressing these legal loopholes. I therefore agree with post-nationalists (Baubock, 1994; Soysal, 1994) that citizenship should not necessarily be interlinked with the nation state. The individual and his/her rights should be paramount and given priority. In contexts where state legitimacy is contested, this should not impede citizenship rights.

My thesis has been centred on two concepts: *the nation state* and *citizenship*. I analysed these two variables, by selecting nations of Kenya and Uganda, and by deeply looking at their understanding, reforming and development of citizenship. Their similar post-colonial history, ethnic identity and politics were issues worth investigating. Most importantly their seemingly quick adoption of dual citizenship as it surfaced in the International political arena was of great interest to my research. I

conclude that both variables are changing. The nation state is changing and redefined not only in Africa, but in the International political realm. The actors are changing too. The growing presence of non-state actors both on the nation state and on the citizenship debate, creates an opportunity to re-imagine, redefine and re-order contested spaces. Citizenship too, is being transformed and so will this generate further debates. My thesis concludes by advancing for a call to the scholarly world, to critically debate citizenship not only in Africa but globally in the realm of legislation, implementation, actors and incentives.

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## Appendix I: Nationality laws in force

| The list below indicates the version of the nationality law used in the compilation of this report, as amended to June 2018. | |
|---|---|
| Burundi | Constitution 2005<br>*Loi No. 1-013 du 18 juillet 2000 portant réforme du Code de la nationalité* |
| Kenya | Constitution 2010<br>Kenya Citizenship and Immigration Act No. 12 of 2011 (as amended by Act No. 12 of 2012 and Act No. 19 of 2014). |
| Rwanda | Constitution 2003 (as last amended 2015)<br>Organic Law No. 30/2008 of 25/07/2008 relating to Rwandan nationality |
| South Sudan | Transitional Constitution of the Republic of South Sudan 2011<br>Nationality Act 2011 |
| Tanzania | Tanzania Citizenship Act No. 6 of 1995 |
| Uganda | Constitution 1995 (as amended by Act No. 11 of 2005 and Act No. 21 of 2005).<br>Uganda Citizenship and Immigration Control Act 1999 (as amended by Act 5 of 2009 |

## Appendix II: Status of UN treaties

| **Treaties relating to statelessness.**<br>Dates of ratification/accession available at:<br>https://treaties.un.org/Pages/ParticipationStatus.aspx | | |
|---|---|---|
| COUNTRY | Convention relating to the Status of Stateless Persons 1954 | Convention on the Reduction of Statelessness 1961 |
| Burundi | National Assembly approved accession bill 19 September 2018 | Convention on the Reduction of Statelessness 1961 |
| Kenya | No action | No action |
| Rwanda | Acceded 4 Oct 2006 | Acceded4 Oct 2006 |
| South Sudan | No action | No action |
| Tanzania | No action | No action |
| Uganda | Acceded 15 Apr 1965 | No action |

**Treaties providing for the right to a nationality**

Dates of ratification/accession available at:
https://treaties.un.org/Pages/ParticipationStatus.aspx

| Country | CCPR | CEDAW | CERD | CRC | CMW |
|---|---|---|---|---|---|
| Burundi | 9 May 1990 | 8 Jan 1992 | 27 Oct 1977 | 19 Oct 1990 | -- |
| Kenya | 1 May 1972 | 9 Mar 1984 | 13 Sep 2001 | 20 Jul | -- |
| Rwanda | 16 Apr 1975 | 2 Mar 1981 | 16 Apr 1975 | 24 Jan 1991 | 15 Dec |
| South Sudan | -- | 30 Apr | -- | 23 Jan | -- |
| Tanzania | 17 Jun 1991 | 20 Aug | 27 Oct 1972 | 10 Jun 1991 | -- |
| Uganda | 21 Jun 1995 | 22 Jul 1985 | 21 Nov | 17 Aug 1990 | 14 Nov 1995 |

CCPR: International Covenant on Civil and Political Rights, 1966

CEDAW: Convention on the Elimination of all forms of Discrimination against Women, 1979

CERD: Convention on the Elimination of all forms of Racial Discrimination, 1965

CRC: Convention on the Rights of the Child, 1989

CMW: Convention on the Rights of All Migrant Workers and Members of their Families, 1990

## Appendix III: Status of AU treaties

**Date of ratification/accession available at: http://www.au.int/en/treaties**

| Country | ACHPR | Protocol on the Rights of | ACRWC |
|---|---|---|---|
| Burundi | 28 Jul 1989 | Signature only (2003) | 28 Jun 2004 |
| Kenya | 23 Jan 1992 | 06 Oct 2010 | 25 Jul 2000 |
| Rwanda | 15 Jul 1983 | 25 Jun 2004 | 11 May 2001 |
| South | 23 Oct 2013 | Signature only (2013) | Signature only |
| Tanzania | 18 Feb 1984 | 03 Mar 2007 | 16 Mar 2003 |
| Uganda | 10 May 1986 | 22 Jul 2010 | 17 Aug 1994 |

## Appendix IV: Questionnaire

**DUAL CITIZENSHIP-A COMPARATIVE STUDY OF UGANDA AND KENYA.**
**FIELD RESEARCH RESPONDENT SUMMARY SHEET.**

| | UGANDA | KENYA |
|---|---|---|
| **Question 1: Does dual citizenship exist in your country** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 2: If it does exist, why does it exist?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 3: Explain the historical pressures and demands for the provision of dual citizenship. From who did these demands come from and in what form?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 4: What were the challenges and responses from the state or region to these pressures and demands?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 5: What consultations were undertaken to enact dual citizenship? Which stakeholders were consulted?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 6: What was the nature of the submissions made by the different stakeholders?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 7: How long did the process of enacting dual citizenship take?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 8: What were the challenges and barriers in this process?** | | |
| Legislator | | |

| Researcher | | |
|---|---|---|
| Practitioner | | |
| Public Servant | | |
| **Question 9: How effective was this process, including in terms of levels of stakeholder participation?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 10: Do you think the citizenship changes and introduction of dual citizenship caters for all of the particular demands made for it?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 11: Is there an alignment between: what was demanded and needed and what has actually been delivered or created?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 12: If not, why not? What is/are the differences** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 13: Have all of the potential beneficiaries of dual citizenship been catered for? Is there a disconnect and, if so what and why?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 14: Have the dual citizenship provisions changed, or evolved, from the initial introduction? If so, what has evolved and how has this occurred (Process and people)?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 15: What is the alignment between what is provided by law and how this is being implemented in practice?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 16: What are the issues around this alignment and why have these occurred?** | | |
| Legislator | | |

| | | |
|---|---|---|
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 17: Are these issues being addresses or not and, if not, why not?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 18: How much did your country or region consult with its contiguous countries or regions (as the potential sources of those seeking dual citizenship) to respond to the demands/needs and changes in the provisions? Who was consulted and how did these consultations occur?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |
| **Question 19: Were there any issues in these consultations with neighbours?** | | |
| Legislator | | |
| Researcher | | |
| Practitioner | | |
| Public Servant | | |