



THE REPUBLIC OF UGANDA

**PROCEEDINGS**  
**OF**  
**THE CONSTITUENT ASSEMBLY**

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**OFFICIAL REPORT**

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**Monday, 13th March, 1995**

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

**NATIONAL ANTHEM**

**PRAYERS**

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

*(The Assembly was called to Order).*

**COMMUNICATION FROM THE CHAIR.**

**THE CHAIRMAN:** Hon. delegates, our Rules require that we constitute a quorum before we transact business and we are only - we are less than 90, our Rules require 142. In accordance with the Rules, I suspend for 15 minutes, and then we shall come back to continue if there is a quorum. So, the House is suspended for 15 minutes.

*(The Assembly adjourned for 15 minutes)*

**THE CHAIRMAN:** Hon. delegates, I am advised by the Clerk that we have a quorum. So, we can proceed with our business. In the past, the Chair has not been observing strictly the requirements of the Statute and the Rules with regard to commencing business. For the benefit of members, if you look at Section 15 of the Statute, it states that: "*The quorum of the assembly for the purpose of transacting any business, other than adjournment, shall comprise the Chairman and not less than one half of the total number of delegates,*" i.e. 142.

In other words, you have to have the Chairman in the Chair and 142 members at least to transact any business. But what we had decided previously was, that we could start and build up, but it has - that has turned not to be working in favour of the business of the Assembly. And so, as you notice from last week, the Chair will be arriving here on time, the appointed time and we shall start by ascertaining the presence of the quorum before we start transacting any business. If there is no quorum, then we shall apply the Rules namely, suspend for 15 minutes and if on coming back, there is no quorum, then we will have to adjourn as required by the Statute and the Rules.

I am glad that today we came back and we found a quorum. Hopefully tomorrow we should be able to start with a quorum. The Business Committee also discussed the question of our response on question of time and the presence of members at the start of the business and maintenance of numbers. We have decided that the book will be withdrawn one and a half hours after the start of the business in the morning. Likewise when we resume in the afternoon after 112 hours the book will also be removed and then we shall see how we go from there. Given that we have lost a bit of time, particularly last week for lack of quorum on many occasions, it is the view of the Chairman and the Business Committee that we need to compensate. Therefore, it was agreed that after we have come back from Easter Recess, where we shall have carried intensive consultations, the Assembly will meet on Saturdays as well. The Assembly will be meeting on Saturdays between the hours of 9.00 a.m. and 1.00 p.m. We start at 9.00 a.m. and adjourn at 1.00 p.m. allowing members a lot of time during the rest of the day. We take the view that during the Easter Recess, members will have carried intensive consultations. So when they come back, there will be less need for Saturdays to go back to consult. So, we shall use those Saturdays for the Business of the Assembly, but between now and the Easter break, we are allowing the Saturdays to be available to committees which are putting final touches on their report. So that we would encourage them and the Clerk will make arrangements for space to be available for committees which would like to transact business to do so on Saturdays. Those were the few things that I thought I should communicate to you. I would like to add that let us maintain the dignity of this House, because it has become very difficult to convince the public that we are serious, given the situation that happened particularly last week. The measures I have announced, when we implement them, and insure that all of us are present to do our work, I am sure the public will be happy with us as we go towards the conclusion of the business, for which we were brought here. As I said, that is all I wanted to communicate to you, I do not think debate arises from the communication from the Chair, I think let us go to the next item. Let us proceed to the next item.

CONSIDERATION STAGE OF THE DRAFT  
CONSTITUTION OF THE REPUBLIC OF  
UGANDA

CHAPTER 7. THE EXECUTIVE.

Article 101 - PRESIDENT OF UGANDA.

**THE CHAIRMAN:** I am told that the Select Committee report on the Executive, Chapter 7 was laid on the Table by the Chairman of the Committee. We shall I think adopt the procedure we were using the other time. Instead of having the Chairman introduce the entire report, we shall call on the Chairman to call Article by Article and Clauses as we go along indicating changes if any and the rationale, and then, we shall react accordingly. That being so, I give the Floor to the Chairman of Select Committee 2, Hon. Mulenga.

**MR. MULENGA JOSEPH (Democratic Party):** Thank you, Mr. Chairman. Mr. Chairman, I think I would benefit from a short introduction to this report. Mr. Chairman, first of all, I wish to apologise for not having produced in writing an introduction to the report. It was as a result of time constraint. But nevertheless, I hope introduction will assist the Hon. delegates to follow the report.

I do appreciate that we were able to distribute the report late last week and therefore, I imagine that all at least most of the delegates will have gone through it. So, I will belabour too much on the outline. However, Mr. Chairman, I wish to highlight a couple of matters. One is that this report that was laid on the Table last Thursday, is on one of three long Chapters that were assigned to the Select Committee 2. The three Chapters, namely, 7, 8, and 10 are concerned with the three arms of Government. The three principle arms of Government, that is, executive, legislature, and judiciary. It would have been ideal if the Plenary was able to read the recommendations of Select Committee 2 together, because the three are interrelated. But due to time constraint, although we have finished to consider all three Chapters, it has not been possible for the final report to come out at the same time. Mr. Chairman, let me also mention that the doctrine or principle of separation of powers which Hon. delegates have heard a lot about, especially recently in the Seminar organised by the Ministry of Constitutional Affairs, is principally concerned with these three Chapters. And therefore, Select Committee 2 has during the deliberations on

the three Chapters kept that principle foremost. However, the committee did recognise a fundamental qualification that is, while the doctrine was evolved to eradicate tyranny and promote democratic Government, if it is applied in absolute terms, in other words to separate the powers absolutely, then it would be self-defeating. Therefore, it must be applied with a set of Rules that ensure checks and balances, so that none of the arms of Government is absolutely isolated from the other, in which case, it may end up with absolute power which is to be avoided in democratic governance. Mr. Chairman and Hon. delegates, in considering the Chapters that were involved committee 2 took the stand that, every Clause had to be evaluated. Consequently, no proposed Amendment that came to the notice of the committee was left unconsidered even when the mover did not turn up to advocate for it. But given where no Amendments were proposed, the committee thought it right to check every Clause by Clause to be satisfied that we ought to stand part of the Constitution.

Mr. Chairman, and Hon. delegates, one other point I wish to highlight, is the common feature in the three Chapters and that is, that nearly or every provision made, or every provision in the Draft in each Clause, there was or were several options. In other words, a proposition in the Draft was capable of being marched with Amendments for an alternative way of providing for something or incentive, and in my view, that is what led to the lengthy deliberation. Because if the - like for example, if the Draft proposes that a President shall be elected with a running mate, there was - sure to be an alternative or saying, let him run without a running mate. Then he would have another alternative of saying, let the President not be directly elected. But like the model of West Minister, what they call Parliamentary democracy. But there were a lot of alternatives, some equally attractive and viable and for that reason Hon. delegates should not be surprised to discover that there are going to be several minority reports. This is not as a result of any group within the committee having felt that they were over shadowed; it is more rather than opponents of a particular idea an alternative to, what is recommended by the majority feels that they may well have a chance of their alternative being supported by more in the Plenary. I am stressing this because I think we are going to have quite a number of minority reports have indications that some may be dropped, but I also have indications that some might be evolved subsequent to the report being submitted. That, I will

leave to the able hands of the Chairman how to handle them, but I thought I should indicate that there is this feature in these Chapters. Mr. Chairman, it is such that, you may find that even in one Clause, we have a majority report or recommendation and as against that, there are two minority reports. One set of minority delegates proposing an opposite extreme to another one, as you will come to see in Article 116, regarding Ministers and Membership to Parliament.

Lastly, Mr. Chairman, let me indicate the layout of the report. The report is structured - what I might call three parts to each Article. First, we mentioned the Article and below it attempt to indicate what we have done, either that we have commended the entire Article be adopted or we indicate where we have made Amendments in a summary way. Next, we reproduce the text of the Article as we recommend it should read and lastly, we have notes or footnotes if you prefer on each Clause. Mr. Chairman, in so doing, we thought it would be clearer to a reader, delegates reading the report to see what we have recommended and then find explanation in the footnotes.

Mr. Chairman, in order to again to assist delegates reading the report, we thought to highlight the Amendments by underlining them. So, in the text that we recommend stand part of the Constitution, you will find where there is underlining, that is intended to show what Amendment we have introduced. If I may illustrate you will notice that on Article 101, which is the first one we shall deal with, there are five Clauses and there is no underlining. That is because we have recommended that the text of the draft be adopted, without Amendment. In Article 102 however, at page 4, you will notice some underlining in Clause 2, Clause 4 and Clause 6. Those are partial underlining to illustrate what is the Amendment. But then, you will find where an entire Clause or for that matter an entire Article is underlined, that is where we have introduced new substance altogether. Either through Amendment introducing new ideas altogether or recasting, re-arranging the wording of the Clause or Article without substantive change of the meaning. Mr. Chairman, I also should mention that in the body of the report, you will find that where there is indication from members of Select Committee 2, that they wish to move a minority we have tried to put it at its relevant position. I think I can illustrate that in Article 106, starting with page 10, we have towards the bottom of that page, Clause 2, paragraph (a). Paragraph (a)

underlined is the recommendation by the majority of the committee, then followed by a minority recommendation which is also marked (A). The minority are recommending the bottom one, while the majority are recommending the top one.

Similarly, and the text of the recommendation by minority is reproduced. On Page 11, under (b), again it says that there is recommendation of majority which in fact is to retain the wording in the Draft. Then there is a minority recommendation which is to this effect, that the paragraph as in the Draft Constitution do stand part of the Constitution without Amendment. This paragraph (b) actually should have been underlined. I should have mentioned that although we tried to do our best to facilitate reading, there might be some omissions somewhere, particularly when it comes to under lining.

Mr. Chairman, before I make the formal introduction of the first Clause, let me take this opportunity to thank everybody concerned with the production of this first part of the report of Select Committee 2. I will not be able to mention everyone, but I want to say the Deputy Chairman, the members of Select Committee 2 and the non-member delegates who constantly participated. Some of whom in fact, participated as fully - nearly as fully as members of the committee had a lot of input in all this. And of course, the Technical Committee to whom we had to make references to advise frequently and who responded always promptly. And of course, the Secretariat, our Clerk, and staff of the Secretariat who have had a lot to do with the drafting of the report in typing it and reproducing it. Our Research team who were also very helpful if there is anything we have not had knowledge about, which we ought to have had, it is not because they were not active and willing, but rather because we failed to call upon their resourcefulness.

Mr. Chairman, last but not least, I wish to make special mention of our Monitoring Committee comprising of two Hon. delegates whom I will mention by names as an exception and that is Hon. Masika and Hon. Besigye who came at the time that the committee was getting bogged down by the problem of punctuality and attendance. They kept us on our feet until we were able to reserve the trend. Otherwise, we might never have met the extended deadline. Mr. Chairman, I now wish to formally revert to the substance of the report, starting with Article 101 and Mr. Chairman, Select Committee 2, recommends

that Clause 1 of Article 101, be adopted to stand part of the Constitution. Mr. Chairman, without Amendment, Mr. Chairman, I beg to move.

**THE CHAIRMAN:** The recommendation from the committee and it is without minority report, is that Article 1, as it appears in the Draft Constitution do stand, be retained and do stand part of the Draft Constitution.

**MR. KARUHANGA ELLY (Nyabushozi County):** Mr. Chairman, I wish to make an Amendment to Article III by deleting the words, *instead of Government*. I beg to move.

**THE CHAIRMAN:** No, let us first of all, get clear the procedure. Was this matter which is being raised, was it ever considered by the committee?

**MR. MULENGA:** No, Mr. Chairman. I do not recall anyone moving that Amendment. The only one was in respect of Commander-in-Chief.

**THE CHAIRMAN:** There was a number of Amendments which were proposed, but negated.

**MR. MULENGA:** Yes, Mr. Chairman, on Clause 1, the one I recall is that of- to amend by deleting, *and Commander-in-Chief of Armed Forces*, but there was no Amendment to remove *Head of Government*, because I think it was obvious that title belongs to him.

**THE CHAIRMAN:** It seems we have a problem here. We have been wanting to move fast, because of the usefulness of the Select Committee, but are we now to be introducing Amendments which were not even brought at the time when the committee was in Session?

**MR. SSEBAANA KIZITO (Makindye Division East):** Thank you Mr. Chairman. Mr. Chairman, I think that any member on the Floor of this House or this Assembly can move any Amendment any time. More particularly as you know very well that in the Select Committees, not everyone was able to attain each Select committee and even if it is true that some people did send Amendments, some Amendments may not have reached the committee. And that individual who wants to move that Amendment may not have been able to go to the committee because of his commitment elsewhere. In any case, it is also possible that even if he did not send the Amendment

at the time, he has thought about it since then. There is no limit as to which time he should try to put on thinking clear as far as - Therefore I think, Mr. Chairman, that a member of this Assembly should be allowed to move an Amendment whether he had an opportunity to move it at the time of Select Committee or not. Thank you.

**THE CHAIRMAN:** I think we did agree on a number of things, that essentially members can come out of committees with their minority report which is a way of disagreeing with the finding of the committee. But that Amendments on the Floor should not be so substantive, but sort of the type necessary to make the text look okay. Otherwise, if we said, that we re-open debate fully, on all the recommendations from the committee, particularly on the Articles, then there will be no usefulness again from having gone to the committee. But let me hear another view on it. Hon. Bageya, what do you say?

**MR. BAGEYA PATRICK (Kigulu North County):** Thank you very much, Mr. Chairman. Mr. Chairman, first of all, I would like to commend the job which Select Committee 2 has done. They gave us their report on Thursday last week, I have gone through it. On page 2, they have been very fair in dealing with the entire situation, they have even told us where they disagreed in the committees. On scrutinising their report, there was no disagreement regarding the word, *federal of Government*. The only disagreement that I noticed here, is, *and commander in chief of the Armed Forces*, which was defeated in the committee. As I was seated here, I received a fresh Amendment today. Having failed to meet on Thursday and on Friday, I am only surprised to see an Amendment which is dated today and yet, this Amendment could have been dealt with, on either on Thursday or Friday. Although anybody is allowed to move an Amendment here, I am surprised that this particular Amendment has been moved. I therefore feel that the report which was made, was one of the fairest as far as the committee work is concerned. I would therefore propose that much as the movers would have liked to move on this particular Motion. I think I propose that we go with the recommendation by the committee I beg to move.

**MR. MALINGA IGNATIUS (Usuk County):** Mr. Chairman, I agree that a member should be able to move an Amendment here. But that Amendment should have some merit and the Amendment currently being proposed has no merit at all, because the

President must of necessity be Head of Government. It appears some members may not know what exactly it means to be Head of Government. To be Head of Government, is when you see in Article 102, Clause 1, we said, the executive authority of Uganda rests in the President. So, Mr. Chairman, I would like to join Hon. Bageya in saying that committee 2 has done a fine job and I think they have demonstrated to other committees how work at Committee level should have been done. I think we should all join in thanking Hon. Mulenga and his members for a job well done. Speaking for Article 101, as proposed in the Draft and as returned by the Committee, I think we should adopt it without debate. Thank you.

**THE CHAIRMAN:** There is - Hon. Karuhanga you were clapping, for abandoning the Motion or?

**MR. KARUHANGA:** Mr. Chairman, I was being sarcastic and wondering at how a delegate can think that we can adopt the work of committee 2, without debating it and pass it. So, what are we doing here, why do we not go home?

**MR. OCHYENGHDAN (Kapelebyong County):** Thank you, Mr. Chairman. Mr. Chairman, I want to seek clarification from the Chair as to how binding the reports of the Select Committees are. Whether this House is bound to accept whatever they have agreed upon, or whether we can discuss, whether we can adopt it without debate, or, we have a right to discuss it? Do they form a basis for discussion or are they binding on the House?

**THE CHAIRMAN:** The reports are not binding. They are reports of select committees with Plenary, but the value of going to the committees was to reduce the amount of debate around here. And the main vehicle we have been trying to use in relation to discussing the reports is if members disagree, we thought we could go mainly by way of minority reports, which we discussed first. If that is carried, it may get the recommendation. Of course, the House is entitled to debate, but we must also limit our debate given the time factor. In this case, the committee has been very exhaustive in their report, they even put down the various Amendments which were proposed and were negative. My intention was to know from the Chair of the committee whether this matter was brought before them. Because we also did agree that if matters were brought before a committee and were negatived, it would have been appropriate to re-open them here, unless they have come by way of

minority report. But also we said that in limited confines, we can re-open debate on some of these matters. Now, instead of wasting time, let us take this Amendment and discuss it.

**MR. KARUHANGA:** Thank you very much, Mr. Chairman. Mr. Chairman, my Amendment is not to say that Committee 2 did not do a good job. In fact, I am very, very, pleased with the report of the committee and I have read it carefully, given an opportunity, I will have some other Amendments in areas which I felt they left a gap in some areas where the minority reports propose deletion as opposed to what was passed. I have other Amendments which I would like to compromise Amendment and I hope that my Amendments will be taken in the genuineness which they are made. I am not being difficult at all, I know that people get excited when they hear that somebody is moving an Amendment to say that the President will not be the Head of Government. But that is not the - what they read is probably not what I mean and I would like to make myself very clear. I would like the President of Uganda to be the Head of State and Commander-in-Chief of the Uganda Armed Forces. He should also be the Head of the executive arm of the administration, but to call him the Head of Government in my understanding of it, might be difficult in interpretation. I tried to look at what Government is, and how it is defined. It is defined as the Government of Uganda by Article 286 which includes the legislature, the executive and the judiciary. I am quite pleased with the committee in saying that the President should be the Commander-in-Chief, because it is great to see that we have a civilian control the military as a precondition to democracy. And I think it is also good to go ahead and declare him to be the Head of State and make him a number one citizen as he is enshrined in Article III (ii), where he takes precedence over all Ugandans in Uganda. But for him, to be head of Government, implies that he is going to be head of the three branches of Government namely, the legislature, the executive and the judiciary, and Mr. Chair man, if members could just hear me out without moving - *(Interjections)*- I am not taking information at the moment. I will take information after I have explained what I mean.

**THE CHAIRMAN:** But could you please present your Motion briefly so that

**MR. KARUHANGA:** I am about to conclude. I just call upon the impatient to be patient. But for him

to head the three branches, as is the case, at the moment, our President is the Head of the legislature, he is the Chairman of NRC. To say that he will also to the - and we want to change that, and to say that he is also going to be the head of the judiciary. In my view, will over shadow and subordinate the supposedly aggressive, independent judiciary which is contained in Article 158 (i) and (ii), which I would like to read to members so that they realise what the purpose of my amendment was all about. Article 158, reads: "(1) In the exercise of the judicial power the courts shall be independent and not be subject to control or direction of any person or authority. (2) No person or authority shall interfere with the courts or judicial officers in the exercise of their judicial functions." It is in light of trying to maintain this separation of powers, that my Amendment comes in. It is not to say that the executive arm will have no head, no. The President will be the head of the Administration. He will be the head of the executive arm of the Government. But to come out now, enthusiastically - this wording was introduced in our country by our 1967 Constitution, Article 24, it adopted that wording of, *there shall be a President of Uganda, who shall be head of State, head of Government, Commander in Chief of the Armed Forces of Uganda.* This has been picked from there. But I would like to make a little distinction and I know there could be another wording. But if we leave it as it is now, we - I know in Parliament, the Prime Minister is the leader of Government business. By that, it means, the administration's business. I also know that the President, in fact, has the power over the legislature in the sense that he may exercise a veto. Although when I was looking for the veto in this, I was not lucky to find it, it might be there in the report of committee 2. But the Parliament still has the over-riding power over the veto if it gets two thirds in other countries. I also know that in the judiciary the President may have prerogative of mercy in some cases where somebody is to hang. But that, he exercises really as Head of State and we are preserving that importance - I am looking at this Amendment purely with legal eyes and I call upon you to be surgeons. If this is a Constitution of emotion, you can go ahead and shout me down, but I am being factual and surgical. Thank you.

**THE CHAIRMAN:** The Motion is that in Clause 1, the words, *Head of Government* be deleted.

**MR. MASALU MUSENE (Manjja County):** Thank you very much Mr. Chairman. Mr. Chairman, it is very clear to every body that the President

enjoys symbolic authority over everybody in the country. He enjoys authority over all departments and over all other authority. In fact, even in places of worship, Churches, Mosques, and so forth, the religious leaders, always pray for the President and so forth. In fact, he is seen as the ultimate symbol of peace in the country. That is why in places like Kenya, for example, he is addressed as *mutukufu raisi*, meaning, his holiness the President. Therefore, Mr. Chairman, the President, he should not only be the Head of State, but he should be the Head of Government. Here, there is a big difference, because unlike in Britain, where for example, you have the Queen, who is the symbolic Head of State, with Prime Minister being head of Government, in Uganda and in the Constitution we are making, we are saying, the President is head of both, Head of both the State and head of Government. Now, when it comes to legal interpretation as to whether this would mean that he is being above the judiciary, I disagree with Hon. Karuhanga. In that as far as the judiciary is concerned, the President only appoints the Chief Justice, and then other Judges and Magistrates with the advice of the Judicial Service Commission. But when it comes to the performance of their function, the President does not in any way or at all interfere, there is no where, where it is stated that any person who is aggrieved with the decision, either of High Court or supreme court or what, may appeal to the President. So, I do not see any interpretation to mean that he is above the judiciary.

Secondly, the President, the legislature is independent as far as the making of laws in the country is concerned, but it does not mean that the legislature should be above the President. The President is above, that is why he is has to address the Parliament at the beginning of a Session and end of Session. That is why he has to address Parliament on matters of national importance and he has to address legislature on matters of economic performance in the country. Therefore, in all fairness, I think there is no way of making the President interfere with these other two organs, just by accepting him as a symbolic head of authority in the country in the interest of peace and development. With those few words, therefore, I oppose this Motion. I thank you, Mr. Chairman.

**MAJ.GEN. TINYEFUZA (NRA Delegate):** Thank you, Mr. Chairman. I have been looking at the proposed Amendment of Hon. Karuhanga and of course, I want to disagree with Hon. Malinga who said that, it is of no consequence. I think this Amendment, Mr. Chairman, introduces a new con-

cept, if looked at very seriously and it would imply, actually, creating something similar to an executive Prime Minister, if carried forward. Because the President as Head of Government, performs a coordinating role. You did not actually mention who is the superior, but the question is, if he is you do not now make the President under this provision, head of Government, who then heads the Government? This is the fundamental question. You cannot leave it hanging. There must be somebody as a coordinator, even to coordinate the executive, to coordinate the legislature and to coordinate the judiciary and that is one purpose, one role. Now, therefore, if Hon. Karuhanga wants to insist and say, the President shall not be a head of Government, as it is in Britain, actually. In Britain, the Prime Minister is an executive Prime Minister and Head of Government and the Queen is the Head of State, and their roles are set apart and clear. But I would find it rather absurd to say that, the President shall not be head of State and then leave it there. What happens? There remains a very serious lacuna of coordination. Therefore, we either provide for an executive Prime Minister, if the mover so wishes and he comes out openly, or we maintain the President as the Head of Government. I see no other alternative. Thank you, Mr. Chairman.

**MR. OWOR CHARLES (Aswa County):** Mr. Chairman, I would like to oppose the Amendment by Hon. Karuhanga. Of course, I would like to express surprise at how the Hon. Karuhanga could so misdirect himself on a very, very, clear principle of law. He confused the house by saying, Government includes, legislature, judiciary and executive. This is wrong, these three are the arms or the organs of State, not organs of Government. That is the very point on which the Hon. Karuhanga went off completely and has so confused the House. Mr. Chairman, I would like to say that, unless Hon. Karuhanga is arguing for a mere titular presidency, as opposed to an executive Presidency, this debate should not even continue. I would like therefore Mr. Chairman to state that, it seems he is not advocating for a titular presidency and because he is not doing that, he has fallen into the very problem that Hon. Tinyefuza has just said. He has left the Government without a leader. If the President is not the Head of Government, then, who is?

In that case, I would therefore like to say, we have all as I happen to be a member of committee 2. The understanding of this committee is that they want an executive presidency and I do not know whether

anybody here is interested in a mere titular presidency. I have not yet seen any Amendments, any proposal for may be an executive Prime Minister. In that case, I would like therefore to argue that we should vehemently oppose the Amendment or the proposal by Hon. Karuhanga. And I would say that, to say first time is the Motion is the question is put immediately.

**THE CHAIRMAN:** Hon. delegates, I have received three contributions from the Floor and all of them are against the Motion. I would like someone to speak for the Motion. I can see even the seconder has kept his hands down. I think now let us now decide - Hon. Karuhanga, you -

**MR. KARUHANGA:** Mr. Chairman, I am grateful for the opportunity. In light of the contribution by Hon. Charles Owor and in light of also the contribution by Hon. Tinyefuza. It is clear that what the CA now intends, the definition of Head of Government to mean, is head of the administration, executive arm, not the head of the judiciary and it is on record in the Constitutional debate. Nobody will ever say, that the words, *head of Government* as enshrined, refer to the Head of judiciary and legislature. Having achieved that on record, I now withdraw my Amendment. *(Laughter)*

**THE CHAIRMAN:** The Motion before us has been withdrawn and Hon. Karuhanga says he has achieved his purpose of knowing that Government does not extend to the judiciary. Now, order, that he wanted to move it for educational purposes. Now, let us agree on the recommendation. The recommendation of the committee is that, Article 10 as it stands in the Constitution, do stand part of the Draft Constitution.

*(Question put and agreed to).*

**THE CHAIRMAN:** The recommendation is accepted, and Article 101 as it stands, stands part of the Draft Constitution.

**MR. MULENGA:** Thank you, Mr. Chairman. Mr. Chairman, I now turn to Article 102 and the committee recommends that Article 102 be retained to stand part of the Constitution without Amendment. Mr. Chairman, I beg to move.

**THE CHAIRMAN:** Is that agreed? Okay Clause 2.

**MR. MULENGA:** Mr. Chairman, the recommendation was that the committee is that Clause 2 be amended or be recast to read: "*The President shall execute and maintain this Constitution and all laws made under or continued in force by this Constitution.*" Mr. Chairman, I beg to move.

**THE CHAIRMAN:** The Amendment is as shown and read out at page 4. that: "*The President shall execute and maintain this Constitution and all laws made under or continued in force by this Constitution.*"

*(Question put and agreed to).*

**THE CHAIRMAN:** Hon. Mulenga is one holding the - he is now leading us and therefore he is entitled to lead the chorus. *(Laughter)* Hon. Mulenga, now, on Clause 3.

**MR. MULENGA:** Mr. Chairman, the recommendation of the committee is that Clause 3, of Article 102, be amended slightly by introducing the word *protect* in the last but one line so that it reads: "*It shall be the duty of the President to abide by, uphold and safeguard this Constitution and the laws of Uganda and to promote the welfare of the citizens and protect the territorial integrity of Uganda.*" Mr. Chairman, I beg to move.

**THE CHAIRMAN:** The Motion is that Clause 3, be amended as suggested by inserting the word *'protect'* where it appears in the text on page 5 and to read as read out by the Chairman.

*(Question put and agreed to).*

**MR. MULENGA:** Mr. Chairman, Clause 4, the committee recommends to insert a new Clause 4, but this is where we meet the first minority recommendation and my recollection is that, where there is a minority recommendation, the Plenary wants to be - first or do I move and then the minority will *(Interruption)*

**THE CHAIRMAN:** Can we get this clear. You are introducing a new Clause 4: just before the present 4.

**MR. MULENGA:** That is right.

**THE CHAIRMAN:** So that the present 4 through the numbering - *(interruption)* -

**MR. MULENGA:** Will become 5.

**THE CHAIRMAN:** So, this is a new Clause?

**MR. MULENGA:** This is a new Clause, Mr. Chairman.

**THE CHAIRMAN:** Maybe you have to read it our first so that we know what the minority ....

**MR. MULENGA:** Thank you, Mr. Chairman. Mr. Chairman, the committee recommends that a new Clause 4 be inserted to read: "*In the exercise of his duties, the President shall be responsible to Parliament.*"

Mr. Chairman, this, as I said, was a new idea introduced and the - you will notice from the notes at page 6, it was observed that although strictly a directly elected President is responsible to the electorate. He should during term of office, that is to say, before he can go back to the electorate, account the body representing the electorate. In this text, really what this means, is that, the President should be accountable to Parliament during the term of office. If the provision is consistent with Article 7, Clause 2 and Article 104, which requires the President to address Parliament regularly. First on the opening of Session, to give to Parliament an account of the state of the nation, then at other times, where it is deemed necessary that he should account to the nation as to what he is doing on the mandate he was given when elected. Mr. Chairman, earlier there had been an attempt to make the President be bound by the decision or decisions of Parliament. The committee said that would be wrong and rejected that Amendment, because that would have bound him even to follow resolutions passed by Parliament which may go counter to what he promised the country when he was being elected. But in this one, it is not that he will be bound by Parliament, it is that he is to account to Parliament and in fact, during the deliberations, it was suggested that we could use the word, *shall be accountable to Parliament*. Responsible if that would satisfy Hon. Delegates better but the essence is to make him not proceed without informing the people's representatives who were elected to represent them during that term of office. Mr. Chairman, I beg to move.

**THE CHAIRMAN:** The proposition before us is that we accept a new Clause IV to read that, "*In the exercise of his duties, the president shall be respon-*

*sible to parliament*' but there is a view among the Members who have filed in accordance with rules - a minority report which has come together with majority to be considered. Now, before we can vote on what has been proposed, we first consider the minority position because if the minority position carries the day, then majority recommendation falls by the way. Hon. Magezi.

**DR. MAGEZI DAUDI (Jinja Municipality East):** Thank you very much Mr. Chairman. It would appear that if we do not pass the proposed new Clause 4, we have the minority report. Because the minority report - for me, seeks to delete the new proposed Clause 4 hence if the Proposed recommendation is defeated on the Floor, then there will be no cause for the minority report.

**THE CHAIRMAN:** But of course, even the other way round it applies if we carry the majority report we do not have a chance to consider the minority view. Could we know who were the Movers of the minority report?

**HON. DELEGATE:** Hon. Kiyonga is one of the consortium.

**THE CHAIRMAN:** Okay. I will give the Floor to Hon. Kiyonga.

**DR. KIYONGA CRISPUS (Bukonzo West County):** Thank you very much Mr. Chairman. The minority report coming to plenary is actually supported by a big section of our Committee - of more than 20 people in membership of about 50. Our understanding, Mr Chairman, and which this plenary has already pronounced itself on, is that power ultimately lies with the people and those that are going to exercise power under this Constitution will only do so, on behalf of the people. Under this Constitution our understanding is that we are going to define three power centres. Each one of them deriving its power from the people - The Executive, who is the presidency will be elected. The Legislature and the Judiciary and following the principle of separation of powers, Mr. Chairman, we understand that each one of these three power centres will have its authority clearly defined so that it can operate and be able to deliver on a programme that will be defined. However, in the interests of checks and balances we do recognise that these three power centres will relate one to the other and we find this new introduction which came through our commit-

tee. A blanket provision which would tend to give the impression that although there are these three power centres - the head of all these power centres is Parliament. Because we are saying that in his exercise of his duties, the President will be responsible to Parliament so that whenever he does, he has to go and seek authority from Parliament. Those of us who come with this minority reports, Mr. Chairman, prefer that where we want the checks and balances we should clearly define them rather than leave them in a blanket provision like this one. Indeed in our report, delegates will find where these provisions have been made. For example, we have stated that regularly the president will have to come to Parliament and address Parliament on the state of the country. We have, Mr. Chairman, provided for Parliament to impinge the President if in their consideration, they find that he is making grave errors. We have for example, limited his powers under the powers of emergency. So, those of us coming with this minority report, do accept the principle of checks and balances but we think, in the interest of good governance. This should be clearly defined rather than be carried in a blanket provision as being introduced under the proposed Clause 4. Accordingly, we would like to appeal to delegates whom we believe support good governance to reject this blanket provision under Clause 4. So, Mr. Chairman, we request delegates to support our minority report to delete this Clause. Thank you very much.

**THE CHAIRMAN:** Hon. Atwoki.

**MR. ATWOKI AMBROSE (Youth Delegate - Northern):** Thank you very much Mr. Chairman. I also rise to support the minority report on the grounds that we should get to know what we mean by the Executive in relation to the presidency. Mr. Chairman, I get the impression that this Amendment, the majority report from Committee II seeks to ensure that the presidency has no free hand in trying to exercise the powers in the Executive but I believe that this is not the best way to try and control the exercise of the president's powers. I believe that the president does not act in isolation. The president acts in team work with the Executive Members who are also the cabinet ministers and whenever government policy is being discussed, it has to be sanctioned through Parliament. For example, if the budget is being discussed, it has to pass through Parliament and the budget is initiated by the Minister of Finance who is a member of the Executive. I believe these are some of the avenues which Parliament can cross-

check in the exercise of the Executive. I also believe that this is where the principle of separation of powers comes in that whenever government is being discussed, initiated by a Ministry, it has to be cross-checked by Parliament. Mr. Chairman, I believe that it would be very unfortunate to give such a blanket provision that in the exercise of his duties, the president shall be responsible to Parliament. Mr. Chairman, this provision is so ambiguous that we do not specify the relationship between the Executive and the Legislature. I believe that the best way we can deal with this is to try and explore other procedures through which the Legislature can check the exercise of the Executive and it should be specified in this Constitution. Thank you Mr. Chairman.

**MR. ERESU ELYANU (Kaberamaido County):** Thank you very much Mr. Chairman. I am a member of Committee 11 and I am part of the minority report. The Clause itself confuses the very concept of separation of powers in sense that it places the Parliament to be in a stronger position as an arm of government vis-a-vis the Executive. If you look very carefully, Mr. Chairman, Committee 11 tried as much as possible to make a distinct picture of separation of powers. The powers of the president to appoint, the power of the president to dismiss, the powers of the Parliament in relation to the president, the powers of the judiciary in relation to the other organs of state - have all been clearly stated. But now if we smuggle in this Clause, it confuses the whole thing and it will be subject to misinterpretation by the future governments. In other words, to what extent is the president going to be responsible to Parliament in decision making and in what respect is that decision making going to clearly spell out the very concept of separation of powers? So, with those few words, Mr. Chairman, I beg we delete this Clause. Thank you.

**THE CHAIRMAN:** Thank you. Now, we have heard those for the Motion, that the minority report be accepted and that we delete the proposed recommendation. Can I hear to the contrary? Hon. Nekyon.

**MR. NEKYON ADOKO (Maruzi County):** Mr Chairman, I am rising to oppose the Motion that the minority report be adopted. The very spirit of this constitution lies in creating new institutions of governance. We are talking about the separation of powers. Yes, you can separate the powers, but ultimately the powers must be linked. They cannot

run separately without linking whatsoever and once you link it, there must be a supreme body and usually parliament is the supreme body of the state. When you say the president will be responsible to parliament in his functions, you will see that these are already provided for in various articles. For instance, the president and his cabinet will prepare the annual budget and present to whom for approval? To Parliament. If you prepare, your proposals are submitted to me, then you are responsible to me. Then, we have provided elsewhere that when the president makes appointments, he will submit the list to Parliament for approval. If you cannot have freedom to appoint people at the highest level and bring the names to me for approval, then you are responsible to me. In case of state of emergency as declaration of war, there are provisions, the Parliament will have to handle them. The president will have to report this to Parliament. *(Interjections)* Those are clear cases *-(Interruption)-*

**THE CHAIRMAN:** I think let the member develop his argument before he is interrupted. Please go ahead.

**MR. NEKYON:** Those are cases of supremacy. Then, when you come to the removal of a president, we say that the president can be removed by Parliament and procedures are provided for. Somebody who can remove you has got higher power than you. Then, we come to the question of Legislation. The highest body to legislate in the land is the Parliament. So, I do not know why some people are saying the President should not be responsible to Parliament. True, the president may have votes from the people of Uganda but the collective vote of all the Members of Parliament will always be higher than the vote of the president. There are statistics to show this all over the world. *(Interjections)*

**THE CHAIRMAN:** The Hon. Member is not taking information unless -

**MR. NEKYON:** It is not just a question of yes and no. You take an election in America, add the total number of votes cast for the Members of the Senate and of the House of the Representatives. They will be higher than the votes cast for the President because the collective Members can raise more votes from the villages, than a single person. So, we always say because of that and because these people come to stand for small areas, they must say power over the president. And you understand that if you say the

president must act independently. why that Parliament we have to put questions to the Minister from time to time? They have to account to us on everything that happens. Even if there is a motor accident, the Minister has to account to Parliament and they do so on behalf of the President. So, this is a long established practice which I think we should not try to divert simply because we are adapting the Executive presidency. Even America where the Executive Presidency had been long established, just last week - this week, somebody was nominated by the President for the post of C.I.A head but he had to withdraw because he could not face Parliament! I beg to oppose.

**THE CHAIRMAN:** Hon. Elyau.

**MR. ELYAU MIKE (Kalaki County):** Thank you Mr. Chairman. I also rise to oppose because I do not see the reason why we want to bring confusion for nothing. There is no way the Parliament can be separated from President and President from Parliament. First of all, the Parliament will have to get the law from government which is headed by President through Ministers and it should be discussed in Parliament. So, it is not that we are going to rule the president but the president must explain to the Parliament which is the people's representative of the whole country. Parliament is the people, yet the people also elected the president. So, I do not see any reason why we should bring conflict there. A good government should work with Parliament so that we have checks and balances. Otherwise, where shall we check the President. If we allow president to go along with his cabinet to make laws, and from where shall the Parliament get the laws to be made. Statues and so on. So, I thought these people work together for harmony of good governance. So, I do not see why we should separate them. I oppose the Motion.

**THE CHAIRMAN:** I am looking at those who are opposing the Motion. Hon. Ben Wacha

**MR. WACHA BEN (Oyam North County):** Thank you very much Mr. Chairman. The reasons which have been advanced so far for the deletion of Clause 4 seem to me, to have arisen from a complete misunderstanding and a complete misinterpretation of this Clause. Mr. Chairman, the Clause gives a general statement of the functioning of the president as the head of the executive. The Clause Sir, is a precursor of the detailed provisions related to such executive functions of the president. This is a draft-

ing technique. In a number of instances, Committee II has recommended various mechanisms for checking presidential powers. The basis of these mechanisms is that the president in the exercise of these functions should not act dictatorial. The Chairman of the Committee has given us an example - The proposed requirement under Article 72 and also Article 104 that the president should from time to time give to the nation, through Parliament, an account of the state of the nation. There are a number of other proposals connected to this. There are proposals that the President in carrying out appointment functions should make reference to Parliament. With the existence of this Clause, these various mechanisms to check which have been placed in various provisions of the Constitution can exist without this House fearing that those other mechanisms for check can be removed afterwards. If, therefore, we agree, Sir, that there must be these checks in presidential power, we need a general provision at the beginning of this presidential powers indicating that further on, we are going to lay out in detail such mechanisms checking the presidential powers. The checks, Sir, can only be as provided for later on in the Constitution. The checks cannot be as not provided for. I must emphasise this. In other words, Sir, this Clause cannot be read in isolation of the other provisions which we are coming to later on. There has been general statements to the effect that we are eroding the powers of the president, that we are creating a weak presidency. Mr. Chairman, nothing could be further from the truth. As I indicated, this provision only operates side by side and can only be read side by side with the other provisions which we are coming to later on. Secondly, Mr. Chairman, this provision is a direct descendant of the fears of the people arising from the excesses of presidential powers as provided for under the 1967 Constitution. There, Mr. Chairman, all Executive powers were concentrated in the President who had unlimited powers, for example, to hire and fire. To make treaties, to declare war and subsequently with the removal of federal status from the various regions and from the various states, all these powers became concentrated in the hands of one man. Mr. Chairman, it was because of this fear that the people in their recommendation to the Odoki Commission, recommended that there must be some form of check on the powers of the presidency. Now, what this Clause is saying in brief, is (1) That it is dangerous to have a presidency in form of an unguided missile. Secondly, Sir, that the president can only carry out duties as indicated later on and in

the form which are detailed on later on in the constitution. Lastly, let me further allay the fears of other members who are stated here and previously in the Sheraton Conference Room that we are creating a weak president. We are not doing that. This Clause is only indicating that later on, in the provisions of the constitution, there are areas where the president can only function in relation to the Parliament. Thank you Mr. Chairman.

**THE CHAIRMAN:** We have three for and three against. I think we should move. The Motion before us is on the minority report which seeks to overturn a proposed recommendation from the committee 11 that we should have a provision which says: 'in the exercise of his duties, the president shall be responsible to Parliament.' That is a recommendation from the Committee. There is a minority report which says we should not have that provision at all. In other words, they are saying it should be deleted or it should not be accepted as a recommendation. Now, we vote on that one. First on the minority depending on how it goes, then we can either go to the text of the recommendation or we stop there. Let me put the question on the minority report. Those in favour of the report that the recommendation should be deleted say aye, to the contrary, no.

*(Question put and agreed to)*

**THE CHAIRMAN:** That being so. Hon. Delegates, the recommendation then ends there and we now go on to Clause 4 as it appears in the text. Hon. Mulenga.

**MR. MULENGA:** Thank you Mr. Chairman. The Committee recommends *(Interjections)*

**THE CHAIRMAN:** Order! Order! Hon. Delegates, Order!

**MR. MULENGA:** The Committee recommends, Mr. Chairman, that Clause - Mr. Chairman, I cannot hear myself with the noise behind.

**THE CHAIRMAN:** Hon. Delegates. Hon. Ben Wacha and Hon. Tumwine at the back there could you please not hold a sub committee meeting. Okay. Hon. Mulenga go ahead.

**MR. MULENGA:** Mr. Chairman, the committee recommends that Clause 4 which it had numbered (5) be adopted to stand part of the Constitution without amendments. Mr. Chairman, I beg to move.

**THE CHAIRMAN:** Agreed?

*(Question put and agreed to)*

**THE CHAIRMAN:** Okay, the next one.

**MR. MULENGA:** Mr. Chairman, Committee recommends that Clause 5 which it had recommended to be (6) be amended as indicated in the text to read: 'A statutory instrument or other instrument issued by the president or any person authorised by the president, then may be authenticated by a signature of a minister and a validity of any instrument so authenticated shall not be called in question on the ground that it is not made, issued or executed by the president.' Mr. Chairman, the purpose of this really was to make the Clause clear. The way it stood in the Draft was so confusing and in fact it could be to authorise a forgery of a presidential instrument by someone not authorised to issue it and say it is made by the president when it was not. So, the essence of the amendment is to clarify that the instrument is issued by the president or a person authorised by him is only then it will have that privilege of not seeking strict proof by the writer. Mr. Chairman, I beg to move.

**THE CHAIRMAN:** The question is that Amendment as recommended by the Committee be accepted. Will those in favour say aye, to the contrary, no.

*(Question put and agreed to)*

**THE CHAIRMAN:** That is all there is on Article 102. Now, let me put the question that Article 102, as amended do stand part of the Draft Constitution. Will those in favour say aye, to the contrary, no.

*(Question put and agreed to)*

**THE CHAIRMAN:** Hon. Mulenga.

**MR. MULENGA:** Mr. Chairman, I now move to Article 103. The Committee recommends that Article 103 be amended by adding *Vice President and Chief Justice* so that the Article reads: 'The President shall, whenever leaving Uganda notify the vice president, the Speaker and the Chief Justice. Mr. Chairman, I beg to move.

**THE CHAIRMAN:** Do you want to give the rationale?

**MR. MULENGA:** Yes, Mr. Chairman. The rationale as summarised at the bottom of Page 7 is that when the President is out, he should not only notify the Speakers proposed by the Draft But should notify the vice president who is going to act in his absence and the head of the other arm of government, the Chief Justice so that it is clear that when the vice president is acting no one is in doubt. No one of the three arms of government should be in doubt. So, the Committee, Mr. Chairman, that all three arms of government should be informed. There was some argument about or suggesting that it was not necessary, it was cumbersome and the Committee felt overall that the president has sufficient personnel to actually carry out that job. He does not do it personally and in fact we got information from people well placed like Ministers in the President's office as of now who confirm that even today it is done although it is not in the Constitution.

**THE CHAIRMAN:** Hon. Lumala.

**MR. LUMALA DEOGRATIUS (Kalungu West):** Mr. Chairman, I am seeking Clarification whether we are making it unconstitutional for the president and vice president to travel outside at the same time?

**THE CHAIRMAN:** Okay, let us get the clarifications. Hon. Karuhanga.

**MR. KARUHANGA:** Point of Clarification. Thank you Mr. Chairman. I just wanted clarification from the Chairman whether by the word *notify* includes the president is obligated to notify not only his absence but also where he is going. Because in the past we had President Amin announce to the whole world that he was on his way to have a meeting with the queen and he was just here in - Island. He started saying that he was now going to land in Dublin and all over the place. Now, does it mean that in this notification, the president is bound to also say where he is going? I wanted to know this.

**THE CHAIRMAN:** Hon. Mbabazi did you want to be clarified or did you want to make - you have a question? Hon. Bateganya do you seek. - Okay. I think Hon. Mulenga you are taking down these points.

**MR. MULENGA:** Yes Sir.

**MR. BATEGANYA DICK (Bukooli Central County):** Point of Clarification. Thank you very much Mr. Chairman. I wish to get some clarification from whoever can give it. We are talking of notification -

**THE CHAIRMAN:** No, there is a Member who is in charge of that Motion. Hon. Mulenga. So, not anybody who can give it but you can direct the question to the Chairman.

**MR. BATEGANYA:** Okay, I will direct it to the Chairman of Committee II. We are talking of notification to the Speaker, Vice President and the other official but we are not specifying the mode of notification. If the president just gave a phone call, is that enough notification or should we say, he should notify in some form -

**THE CHAIRMAN:** Okay, Hon. Mulenga you have three question or issues.

**MR. MULENGA:** Thank you Mr. Chairman. On the first issue by Hon. Lumala - it is not suggested that it would be unconstitutional for the president and vice president to travel outside at the same time. What is being provided for in this particular article is for the President to notify those three but later on when we come to Article III, you will find that there is provision for acting positions. When the president is away and vice president is away, there will always be someone in position of those positions. So, it is not unconstitutional but the constitution is making for provision when they are away. In this case, when the president is away.

Hon. Karuhanga's question was rhetorical or he knows the answer. Does *notify* include where he is going and forwarding address and so forth? No, it is not. It does say he will notify of his absence from the country and I did not hear anyone in the Committee suggesting that we should include in the notification. I do not know what Karuhanga is suggesting. Hon. Bateganya's question, I am not surprised that he said anyone who can answer it, should. Because again here perhaps it would be prudent to say in writing so that there can never be doubt that he has actually notified. Since we think it is important for the president to notify, I think it should be in writing to be clear. Otherwise, there could be a dispute. So, Mr. Chairman, I think Hon. Bateganya's point is well taken to avoid a dispute as to whether notification was given or not. We could insert the word *in writing*.

**THE CHAIRMAN:** Hon. Tinyefuza.

**MAJ.GEN. TINYEFUZA:** Thank you Mr. Chairman. I had wanted to get some clarification from the Chairman of the sub committee whether in their discussion it did occur to them that at times the travelling of the president is of high security nature. And at times the president may be required actually to travel out of the country even without letting anybody know - in times of emergency. Hon. Delegates, let me explain this - *(Interjections)*-

**THE CHAIRMAN:** Order! Order!

**MAJ. GEN. TINYEFUZA:** - because this is very important. Once we constitutionalise this situation, then you must be ready to impeach a president tomorrow, because in times of crisis, you may not have a president having to notify all his deputies. He may be going to fly over an enemy area. He may have to undertake a serious mission. So, I do not know how you are going to tell the president to inform - because I think we should also separate the two. Stop confusing loyalty to holding office. If I am an elected president and I am a Chief Justice, I do not have to be royal to you - ideologically or politically. Therefore, you cannot force me that I must be an ally of yours politically. Now, these are matters of security and there are matters of nature whether you want it or not. Now, if a president is going to smuggle himself into the anarchy of Somalia like our president once went to Mogadishu and you want him to alert whole country and everybody that I am going to see Aideed tomorrow. Of course, if you told High Court Chief Justice it may leak through those chambers because it will be in writing. If you tell the Speaker it may leak. So, I want us to pass this fully aware that there are situations where it may need not to disclose the destination and even the time of departure of a president from a country. So, I had wanted to get clarification from the chairman whether they did consider the insecurity of it. Then the second one is - Mr. Chairman, I find that when the president is absent, the person who acts is the Vice President. I think that is the constitutional provision. I, therefore, do not see why those other arms of government or organs of state cannot coordinate with the person who remains in place, i.e. the Vice president so that we lessen the risk. So that the president is his Vice and that is that but to extend it to the Speaker, the Chief Justice, to Head of Public Service I think it is absolutely unnecessary. Thank you Mr. Chairman.

**THE CHAIRMAN:** Hon. Tinyefuza, I think you are adding your own. I do not see anything about Head of Public Service here.

**MAJ. GEN. TINYEFUZA:** I am sorry Sir. I had -

**THE CHAIRMAN:** I had promised to give the Floor to Member for Kinkizi. Is it West or East?

**MR. AMAMA MBABAZI (Kinkizi West County):** Thank you Mr. Chairman. I am generally in support of the proposed Amendment because it is understandable I think that if the Vice President is to deputise for the president when the president is out of the country. Then of course, for him or her to fulfil that function, he or she must know that the president is not there. So, I think that is an obvious requirement and for the Speaker too, I think it is very clear because as you know the president has to consent, to assent to all legislation. Therefore, if the president is going to be away and it is the vice president in an acting capacity that must consent. Then the man in charge of the Legislature ought to be informed that the vice president will be the one to perform that function. But it beats my imagination to understand why the judiciary or the Chief Justice is included. I would like to have an explanation - maybe I should have also sought a clarification because I cannot by whatever space of my imagination, which is fairly long, I cannot see how the Chief Justice comes in. Obviously, the Legislature and the Executive work very closely together because it is the Executive Arm of government that presents Bills and things of the kind which are considered by the Legislature and as I said it is the president that assents to Bills. Therefore, there is that very close working relationship but the judiciary is totally independent. It is not involved in all these. Why on earth would we want the president to notify the Chief Justice. So, I therefore, wanted to move a Motion Mr. Chairman, that we delete the words *and the Chief Justice* appearing therein, so that we keep the vice president and the Speaker. I beg to move.

**THE CHAIRMAN:** Is that seconded? Hon. Babu

**MR. BABU EDWARD (Kampala Central Division):** I thank you very much Mr. Chairman. I would like to second the Amendment by Hon. Babu Edward which makes more sense to me. Now, there is a bit of a problem. We must look at a scenario when the president is not in the country. What do we do in an extreme emergency? I think this is a

to decide who should be notified. Assuming that there was going to be war, assuming somebody is declaring war on a nation, what are the mechanisms of trying to stop that or to defend the country? I think this is where it becomes important who acts in the absence of the president. Now, we must take the extreme positions and then you will decide who should be informed and who should not be informed. Now, according to this constitution, I think that in an act of war or defence, the Parliament must be informed whoever is acting the Executive arm of government. If that has to happen, therefore, the Speaker becomes an important factor in the whole mechanism and in the whole formula. Therefore, I agree entirely, Mr. Chairman and with the Chairman of this Committee that whilst the vice president and the Speakers can be informed, I really do not see why the Chief Justice should be drawn into this line up. Because one of the things we want to create in this constitution is the utmost independence of judiciary. Therefore, we should not draw them into functions of the Executive and probably the Legislature. They should be created in such way - the linkages, that the judiciary remains independent of these two because probably they are the only ones who can come in mainly to interpret their differences. Therefore, we must leave the two in that formula to work together. Therefore, I agree entirely with Hon. Mbabazi's amendment that the Speaker and the Vice President whoever is acting should be informed even if it means put there in writing, I agree but a notification is supposed to be in writing. Thank you.

**THE CHAIRMAN:** Let us first of all be clear as to what we are discussing. The Odoki Draft says the president when leaving Uganda should notify the Speaker of Parliament. Committee 11 extended that to include the Vice President and also the Chief Justice if I may be right. Now, some views have emerged on the Floor. Hon. Tinyefuza was saying that the issue of security may dictate to the contrary in some circumstances but that one to be clarified by the Chairman. But before that could be clarified, a Motion was moved by Hon. Mbabazi to narrow down the recommendation to the Vice president and the Speaker of the Parliament and it has been seconded by Hon. Babu. That is what we are discussing now. Then, I see Hon. Tinyefuza endeavouring to give notice of another Motion. We shall have to listen to it and decide on the basis of how they depart from the text. Then we dispose with them accordingly. Hon. Tinyefuza.

**MAJ. GEN. TINYEFUZA:** Thank you Mr. Chairman. My Motion is just coming to your Table. Mr. Chairman, I beg to move an Amendment - actually I move Mr. Chairman that we delete Article 103 as it appears in the Draft as I consider movement of a president not a constitutional matter. It changes from time and it depends on the particular circumstances pertaining in the country at a given time. Therefore, I do not think that we should constitutionalise such matters especially where security cannot always be determined before hand. I beg to move Mr. Chairman.

**THE CHAIRMAN:** This Motion is seconded by Hon. Serwanga Lwanga. The written form of it is on my desk. Yes, Hon. Katenta Apuuli you are seeking Clarification. Before we can line up the Motions for discussion - Hon. Katenta Apuuli.

**MR. KATENTA APUULI (Conservative Party):** Thank you Hon. Chairman. I am seeking this clarification to help me make a decision. Will the Movers of the Motion or the chairman of Committee II help me to understand what is the Constitutional importance of having to inform? Really I am kind of uneducated on this matter as to the constitutional importance of having to inform. If this matter is being done already administratively, what is the importance of its inclusion in the Constitution?

**THE CHAIRMAN:** Of course, the concept of informing is not a matter that was started by Committee 11. It was found in the Draft. They only extended it. Hon. Mulenga.

**MR. MULENGA:** Thank you Mr. Chairman and particularly for that. Mr. Chairman, I think it is not right to say that the Movement of the president from the country to outside is not a constitutional matter. It creates a situation. If we start from position - he is away from where he is Head of State, then there is a vacuum. We are trying to say that whenever the president is out of the country, there should be some constitutional provision for what happens and we started from that provision in the draft which said, he should inform the Speaker. Already Hon. Delegates have justified that. Secondly, Mr. Chairman, Hon. Tinyefuza has stressed the point of security and wondered whether we did consider it. It was raised during the debate that there may well be a situation where a president has to go - I do not remember whether Somalia was mentioned. But something similar was mentioned and the answer was this - that

when the president is going and I thought I had answered Hon. Karuhanga fairly well. When he is going, he is not being required to leave forwarding address. We are only dealing with a situation of his absence not where he has gone. So, if the security requires that he does not disclose where he is going, it does not - this provision or requirement does not require him to do so. Mr. Chairman, the issue of Chief Justice being informed. Questions have been asked why should the Chief Justice be informed? I thought in my introduction I did say that the Committee feels that where someone is going to act as a head of state even the Judiciary should know because they are the other arm of the state. So, Mr. Chairman, the purpose is not that the Chief Justice may do anything but he may know who is the president or the acting president in the absence of the other. Thank you Mr. Chairman.

**THE CHAIRMAN:** Now, first of all let us get clear what we are debating. We have three amendments. There is the text and then there a recommendation from the Committee to expand - to include as I said the Vice President and Chief Justice. an amendment by Hon. Amama Mbabazi to narrow it back by deleting Chief Justice and a Motion by Hon. Tinyefuza, seconded by Hon. Serwanga Lwanga that actually 103 be deleted completely on grounds of security and other reasons he has given. So, now if we delete, there is nothing else to amend. So, let us start with the Motion of Hon. Tinyefuza. If that one carries, then there is nothing to amend. Hon. Tumukunde.

**MAJ TUMUKUNDE HENRY (Rubabo County):** I would like to oppose another scenario Mr. Chairman. The president leaving this country and getting a problem wherever he is. And here we will have followed very good advise from a general supported by a Lt. Colonel. What happens in the circumstances, Mr. Chairman? The Vice President will start ringing somebody who he/she thinks could have been informed. Vice President will say I do not know. The Army Commander - I do not know. Speaker - I have not heard anything about this man. What happens Mr. Chairman? *(Applause)*

**THE CHAIRMAN:** Hon. Tinyefuza, I do not think I am giving you the Floor yet. I think you better accumulate so that you answer.

**MAJ. TUMUKUNDE:** If that is answered Mr. Chairman, maybe we shall know whether it is

important at least to notify somebody before a president leaves this country or not!

**THE CHAIRMAN:** Hon. Kajara.

**MR. KAJARA ASTON (Mwenge South):** Mr. Chairman, I stand to oppose Hon. Tinyefuza's Motion to delete Article 103, seeking to delete an Article whereby the President is required to notify a country as he leaves. Mr. Chairman, we have already agreed the president is the head of government, the commander-in-chief of the armed forces, the head of state and for him to leave without any notification would leave very grave vacuum. Mr. Chairman, if you look at instances in which a President may have to leave, he may escape like Idi Amin did, like Obote did under hot pursuit. He could also move out freely on official duties. So, Mr. Chairman, for a president to just leave, somebody can mistake it that he has abdicated or he has abandoned the country. Mr. Chairman, in order not to create a loophole where the people will eye the seat whenever the president is out, whenever people will struggle, will remain in a dilemma whether he is alive or not. It is very pertinent Mr. Chairman that the man in command or the woman should inform the people left behind so that it also legitimises the person left in charge - say, the vice president, and also informs the populace through the Speaker and Parliament. Mr. Chairman, for those reasons, I stand to oppose the Motion for deletion.

**THE CHAIRMAN:** Hon. Member for Buzaaya.

**MR. MUSUMBA ISAAC (Buzaaya County):** Thank you very much Mr. Chairman. I beg to oppose the Motion on the Floor. The reason is very simple Mr. Chairman. The presence or absence of a president has a serious both constitutional and legal consequences. If for example, Mr. Chairman, there is any reason for Parliament to sit and consider a matter that is constitutionally incumbent upon the president to put before it, it is important for there to be a legal position which defines whether the president is actually in the country or hiding in the country or outside the country legitimately. Mr. Chairman, we people of this country have an interest in the president just as we have an interest in his health, in his financial affairs. For instance, if he becomes bankrupt, there is something to do about it. We also have an interest in his presence. Mr. Chairman, on those grounds, I feel very strongly that his presence or absence must be made very clear and it is understood by at least the vice president and the Speaker.

**MRKASOLE BWERERE (Buwekula County):** Mr. Chairman, a president in any country is regarded as a father in the home. He has to show good manners. *(Applause)* it is immoral for a head of a family to get out of the home without notifying the mother or the wife and the children. *(Applause)* It is equally immoral for a principal, for a headmaster to go out of school without telling the teachers or the deputy. It is equally bad for a chairman of a big Assembly to go away without informing vice chairman. Mr. Chairman, we may come to a point whereby the President may disagree or may not be in good terms with his vice. Unless we constitutionalise this one, the president will only disappear any time. I, therefore, oppose on moral grounds the Motion on the Floor. Thank you Mr. Chairman.

**MAJ. ONDOGA AMAZA (NRA Delegate):** Thank you Mr. Chairman. Mr. Chairman, I support the Motion on the Floor. Mr. Chairman, the situation that this amendment is trying to rectify is that of looking at the presidency in terms of individuals. And that Mr. Chairman, is a symptom of lack of institutionalism which I thought this constitution making process is trying to rectify. When we talk of a presidency we should think of an office which is comprised of the President, his Vice and other officers who work in that office. Therefore when the President out of the country it is a matter of the simplest common sense that the Vice President necessary is informed and assumes his responsibility in his absence. Therefore, the person to inform when the President is going out, is the Vice President because he is part of the office of the presidency and follows immediately after the President. Therefore, Mr. Chairman, I support this Motion because it is trying to rectify the situation whereby we look at the presidency in terms of any individual which is a situation which does not augur well for our institution building. We should build the presidency as an institution that will last whether the number one is there or not. Thank you, Mr. Chairman.

**MR. NDEGE JOHN (Luuka County):** Mr. Chairman, we have lost so many Presidents especially in Africa and other countries through what we call 'Security Laps'. Of recent a man drove an aeroplane in the compound of the White House without permission. Now, what Hon. Tindefuza is trying to say is that we narrow down any possibility of a security risk. In Article 111, we say that when the President is out of the country the Vice President will act as President of this Nation. So, if we do constitutionalise

this, we are making an administrative not constitutional, that the President if he is going out the only person he has to say when he is going out, and how he says. I think we should leave it to the President giving the conditions under which he is travelling so that we eliminate any sort of constitutionalising any sort of risk to the position of the presidency. I am sure as one colleague said that obviously if he is going he will tell the Vice President that he is going out and he will act. But we do not have to constitutionalise this. If a President goes out or run away like Obote did in 1986, whether he constitutionalises this or not, he has run away. Someone else has taken over. So, I think that we should not go too far into telling the dos and don'ts. Therefore, I think we should leave this as a decision in the constitution that when the President is away, the Vice President will act. Now are we going to put in the Constitution if the Vice President goes out, how many people are going to be notified and so on and so forth? I think we should just leave this one as an administrative position. Thank you.

**LT. COL. SSERWANGA LWANGA (NRA Delegate):** Mr. Chairman, I beg to support the Motion on the ground that as it has been ably stated that the movement of the President is a security matter not a constitutional issue. That is why Mr. Chairman, you see that all most Presidents are provided with security personnel. If we are going to constitutionalise the movement of the President, we are going to make mistakes, and if mistakes are made, then this House will be answerable in future. If it is to notify the movement of the President, the security agencies should be the ones to know. Because if there is a problem they will be the ones to be asked. Mr. Chairman, *-(interruption)-*

**HON. DELEGATE:** Point of order. Mr. Chairman, is it in order for a whole Commissioner who participated in recommending in the Odoki Report that the President should notify to come here and confuse the whole House.

**THE CHAIRMAN:** Hon. Sserwanga Lwanga was a Member of a Constitutional Commission, now he is a Member of Constituent Assembly and he is free to state his mind in the Constituent Assembly even if it were contrary to what he said in Constitution Commission. So, he is in order. Go ahead.

**MR. AMANYA MUSHEGA (Igara East County):** Mr. Chairman, in light of your ruling I would to be clarified by you or Hon. Sserwanga

Lwanga. Once in a while when we were bogged down by the recommendation of the Odoki Commission, quite often Hon. Sserwanga Lwanga has come in to give a background as to why the Commission made the recommendation the way it did and it has influenced the Assembly. May I know from him, when he is a Delegate of NRA and when he also puts on the hat of the Commissioner. It would really help us a lot because I know Hon. Sserwanga Lwanga is not a chameleon that changes colour as the environment changes. I know he is not.

**LT.COL.SSERWANGALWANGA:** Mr. Chairman, I am Sserwanga Lwanga and I am here, and you can hear what I am saying. You can take it or you can refuse it. Do not tie me so much in these chains. Mr. Chairman, the absence of the President, as I said that if the absence of the President is to be known or the movement of the President is to be known, the people who should know whom we should be putting here are the security agencies. Because if anything happens to the President, they will be the ones to be answerable. We are not going to tell the Vice President that why did you not do this and that. Mr. Chairman, Hon. Mulenga's argument, in actual fact, that the President must be known where ever he is, the situation may be that President may be hiding and we do not want people to know where he is. So, it is very clear and does not even need to inform the Vice President because the Vice President is part of the presidency and when he is out or when he is away he will definitely have delegated this issue to his or her Vice. Now we do not need to tell the President that you must always be in collaboration with *-(interruption)-*

**MR. OBUA OTOA (Erute North County):** Point of Order. Mr. Chairman, is the Hon. Speaker on the Floor in order to mislead this Assembly by suggesting that the question of the Movement of the President is just simply a matter of security when we know very well that the movement of the President is also a matter of public interest and concern. Is he in order to mislead us?

**THE CHAIRMAN:** I will take it that you have informed him.

**LT.COL.SSERWANGALWANGA:** Mr. Chairman, to me, while the public would know, the security would come first and foremost to ensure that where the President is going is safe. Hon. Tumukunde was talking of the issue that suppose the President

abdicates. Fine, if he has abdicated the Constitution should have a provision that when the President abdicates, then he should address that issue. Mr. Chairman, there are even more grave cases other than abdication. While the Member was talking of abdication, suppose the President crushes with the Prime Minister and his Vice President and whatever, God forbid, such a situation can happen. So, the Constitution should have provisions that in such a case, where the office of the President has fallen vacant, or the office of the Vice President has fallen vacant at the same time, something should be done which is provided for. This notifying, suppose he does not notify then we come and impinge him? I do not think those are correct grounds to impinge the President.

**MAJ.GEN.TINYEFUZA:** Mr. Chairman, I will clarify on two points. The first one is to inform the Hon. Delegates that some of us who subscribed this Motion do not support the idea of saying that the President should inform nobody when he is leaving the country. That is not the point. We are saying it is an administrative matter not a constitutional issue. So, those are two different aspects. We are not saying he should not inform anybody. No. He should inform somebody but depending on the situation. That is what makes it administrative other than constitutional. That is the first clarification. Mr. Chairman.

Secondly, Hon. Delegate from Rubabo was raising a scenario where a President goes without informing somebody and something bad happens to him. I was wondering where a President has gone for a short call somewhere and he does not inform anybody in those circumstances and he gets heart attack, what happens? Because he may get heart attack there or he should also inform everybody that, I am going to bathe. Therefore, I think every situation is different. If a man gets a problem outside, there are mechanisms of redressing the situation, like would happen if it happened even when he is here.

**THE CHAIRMAN:** No. I think Members are hiding behind points of order to make contributions. Could you please wind up your -

**MAJ. GEN. TINYEFUZA:** Mr. Chairman, I wanted also to - Hon. Amanywa Mushega although this one was directed to Hon. Serwanga. I think, Mr. Chairman, you can - even when I was reading that book, there was actually uncertainty as to who

should be informed. And that is why we see the person here who has been included in the draft. He is merely a speaker who even does not act when the President is out of the country. So, this shows the confusion within the Commission at that time. How of all people do you inform a Speaker when you know it is the Vice who is going to be acting? So, all these fellows were out of depth on this question - on this very one. You can read there is a page, and they did not come out authoritatively, and that is why I think that, we should leave this matter, Mr. Chairman. My last point, maybe, let me not take a lot of time. Mr. Chairman, I think movement of a president, notification should be a discretion. I have two points why I want to clarify on this. Why I thought it should not be constitutionalised. Mr. Chairman, we are looking the usual contention is that we think our society is going to be democratic, therefore, the president shall always be living in peaceful circumstance. That is alright! But we may be at war with a neighbouring country. That is a serious situation where actually keeping - you need even the president may want to go out, but you want even the population to know and actually be convinced that the President is here, when he is away. Because of the problems pertaining in the country, in which case if we are fighting with a country, and it links that the president has flown out, it may bring a problem here. We may need even to conceal it from the population for the security and stability of this country, and even put him on television with pictures of last week, and to pretend that, they were of tonight, just to pass that problem. So, Mr. Chairman, where scenarios are fluid, I would not like this constitution really to take on too much what it may not solve in future. Because security is a bit - I do not mind, Mr. Chairman, I have clarified my - I do not know whom the president informed now when he was going, and what catastrophe it has caused this country. I do not know. So, Mr. Chairman, I thank you very much.

**THE CHAIRMAN:** Hon. Delegates, I can see under the guise of clarification and information, members want to make statements. What we should do now is decide the fate of the amendment. The amendment by Hon. Tinyefuza and seconded by Hon. Sserwanga Lwanga is that Article 103 be deleted in its entirety. So that the matter information is left to be administrative. Let us put the question on that one, and then we see how we proceed from there. I now put the question.

*(Question put and negatived)*

**THE CHAIRMAN:** That being so, we now move to the motion of Hon. Amama Mbabazi, which seeks to amend the recommendation from the committee by deleting the words *'and the Chief Justice'* appearing in that sentence.

**MR. NYAI DICK (Ayivu County):** Thank you, very much Mr. Chairman. I was going to plead through you, Mr. Chairman, to the Mover of the amendment to drop the Chief Justice on a very simple point. Notification means causing other people to be aware, and I believe in our Constitution it is going to be the Chief Justice who will swear in the President. If that is the case Mr. Chairman, the President goes out notifies the Vice President and the speaker and does not notify the Chief Justice, something happens and the Chief Justice says, 'how do I know he has actually gone away?' I believe in our normal protocol Hon. Amama Mbabazi will bear with me in this, that the Chief Justice is a very superior person. If you are going to inform the Speaker I am quite sure it will be just normal courtesy that the Chief Justice is also to be informed. On that ground alone I will beg him to withdraw his motion.

**LT. COL. BESIGYE:** Mr. Chairman, I consider that this Provision of 103 has been taken out of context. I think the intention of 103 is not to put the life of the President in danger by exposing his movements and whatever. The Provisions of 103 flow from 102. The Executive Authority of Uganda which states that the Executive Authority of Uganda shall lie at this point. In the absence of the person in whom you have vested the executive authority in Uganda shall lie here. The absence of that person shall be known through the following means. I think this is a natural and constitutional requirement that the President of Uganda must be known whom it is because that is in whom we have vested the Executive Authority and here it is to notify all those concerned to know where the Executive Authority at any particular time lies. Notification does not even have to be before. It does not seek authority in order to leave. If there is a problem of overflying Somalia of course he can leave but make sure that arrangements are in place to notify all those when he is wherever he wants to be. But notification must be there so that the people of Uganda, not only even these people, but even the entire population need to know that the executive authority is there and this is where it lies.

Finally, of course on this question which I think is certainly taken out of context of security, we all

ought to know that the President has a lot of occupation hazards which are attached to that office, and we cannot seek to take them away completely at the expense of creating even more tragedy for the country. So, I do not see why the Speaker the Chief Justice cannot be notified and it was in that context where by the Committee made this recommendation. I think that there is no need to drop out one arm of the State from knowing that the Executive Head of the State has left the country. I disagree with this amendment. Thank you, Mr. Chairman.

**DR. MUGYENYI POSIANO (Isingiro North):** Mr. Chairman, we have just refused Hon. Karuhanga's amendment by which we vested in the presidency headship of all the Government. We have just passed that the President is the Head of State which means, he coordinates all the three arms of Government. The Executive, the Legislature and the Judiciary. I do not see, Mr. Chairman, why the coordinator of all the three arms of Government should leave the country without informing all the organs concerned. Mr. Chairman, I do not see any danger in informing the Chief Justice if we have already informed the Speaker and the Vice President. So, Mr. Chairman, I think we should carry the Motion of the Committee and all the three people as they follow in precedence be informed namely the Vice President, the Speaker and the Chief Justice. Mr. Chairman, the spirit in which we maintained this Clause or this whole Article 103, is that the people of Uganda through the heads of the three Institutions must know where the President is at a particular time. If a catastrophe happens, the Chief Justice should not be informed from the back doors that this man had gone to Sweden and this and that happened so we need you to interpret the constitution as to who should succeed as follows. So, I think it is very necessary to include the Chief Justice because I do not see how the Chief Justice, Mr. Chairman, poses any danger to the security of the President if he is informed. So, I strongly oppose whatever is intending to remove any of the three people and I think we should strongly support what the Committee provided and the Chief Justice stays. If the Chief Justice is not to be informed then, nobody should be informed because he is heading a third arm of Government. Mr. Chairman, I beg to oppose the amendment so that we take what is in the Report of the Committee. I thank you.

**PROF. KABWEGYERE TARSIS (Igara West county):** Mr. Chairman, I think those who are

opposing the amendment have a point and I think we should recognise that. But at the same time we have said that the Judiciary should be very independent of the Executive and should as far as possible also be independent from the influence of the Legislature. Now, Mr. Chairman, I have a feeling that we are trying to exaggerate the extent of knowledge of the whereabouts of the President. When the Chief Justice is administering justice, I do not think he is immediately affected by the whereabouts of the President. We are only talking in the event of a calamity, when it happens. However, if you compare the Speaker and the Vice President, these are immediately affected by the whereabouts of the President even when he is in the country. If the President is not in Kampala, and there is a Bill to be signed certainly the Speaker is very concerned. If there is a case in Court which has to do with the commutation of a sentence, surely that is primarily given to the committee first before it is presented to the President. So, in my opinion, to inform the Vice President is mandatory, to inform the Speaker is necessary. But certainly I do not see an immediate imperative, that the Chief Justice has also to be informed. It is also true although we do not need to exaggerate it, that when you inform too many people, you may also be creating a problem for the presidency not necessary for the individual. We are talking of the presidency. How does the Chief Justice get affected when he is informed that the President is out of the country? Can anybody tell me? On the other hand the Vice President is actually going to do the job and the Speaker is immediately concerned as far as the Law is concerned. So, I feel the Motion as moved by Hon. Mbabazi is a good compromise and I support it very strongly. I thank you, Sir.

**MR. OKALEBO HENSLEY (Bukedea County):** Mr. Chairman, first of all I wish to inform the Hon. delegates that I am a Member of Committee 2 and when we discussed this particular provision of the constitution, so many things were considered including the risk of connivance. If a President notified his Vice and the Speaker who are political persons, there would be a possibility of connivance. The President would go out as many times as he wished using public funds even if it was the same destination so long as there was interest. Secondly, looking at Article 101, Clause 2, if you look at the order of presidency of persons, the President comes first, the Vice President come second, the Speaker comes the third and the Chief Justice. So, we cannot recognise the dignity of the Chief Justice just in Paper and you

do not give him a corresponding respect when it comes to certain matters. So we said here a Chief Justice is not a politician. I think it would be proper to let him know that the President is out of the country. What harm does it cause if the Chief Justice is so informed? Similarly a question could also be paused that what danger is there in informing the Chief Justice? So, Mr. Chairman, this Provision was meant to curb down a lot of suspicion, and so on. So, here the main thing, Mr. Chairman, is that let the nation know where the President is and there is nothing wrong in letting the Chief Justice know. We would not like to be told that your President is in trouble in a certain country and how do we as a Nation come to justify his having been out excluding the Chief Justice only knew. This is a third person in the line that should be notified and I think this one provides a corroborative evidence that the President is out for good reasons, Mr. Chairman.

**MR. MBABAZI:** Thank you, Mr. Chairman. I just wanted to clarify the points the confusion that developed in the cause of the Debate. Like Hon. Okalebo has just said, let the Nation know. Of course I support that. But that is not under debate now. Mr. Chairman, I just wanted to clarify that we are not debating whether the Nation should know or not. We are debating whether the Vice President, Speaker or the Chief Justice should be notified by the President when he leaves the country. Mr. Chairman, the reason why surely this is so, is because, as I said in the beginning, in the case of the Vice President, he or she deputises for the President when he is away and in the absence of the Vice President, then the Speaker, according to these provisions can also act as the President. But there is no Provision here that the Chief Justice would at any time act as the President. That is a point that Hon. Mulenga of course raised and I would be grateful. Mr. Chairman, it will be helpful if he could raise that particular point in this Draft Constitution or even in their own recommendation as a committee that the Chief Justice at any time would act as the President.

Mr. Chairman, I had said that it is clear that the Vice President because he or she deputises, the Speaker because he or she may deputise but even if that was not the choice, works very closely with the President as the Head of the Executive Arm surely it is imperative that they know. But the Chief Justice up to now nobody has said there is that kind of coloration, that kind of link that calls for notification of the Chief Justice. Imagine that a prudent and good President would inform as many people as possible.

Not only those that are listed here. There are many people that could be and should be informed. But that is not the idea. I think the idea mainly is that in the case of the President going out, supposing something happens either those who worked in his or who are likely to act in his or her place ought to be informed. This idea of swearing in, the fact the Chief Justice swears in a President of course is a good idea. But there is no question of swearing in an acting President when the President is still substantive President. So, Mr. Chairman, I thought I should make those clarifications before we pronounce ourselves. Thank you.

**THE CHAIRMAN:** I now put the Question that the proposition by Hon. Mbabazi that the recommendation by Committee 2 be amended by deleting the words *and the Chief Justice* appearing in that recommendation so that it reads: *'the President shall, whenever leaving the country, notify the Vice President and the Speaker.'*

*(Question put and negatived)*

**THE CHAIRMAN:** Let us now vote on the recommendation of the Committee as it appears at page 7.

*(Question as put agreed to)*

#### ARTICLE 103

**THE CHAIRMAN:** I now put the Question that Article 103 in terms just approved do stand part of the Draft Constitution.

*(Question as put agreed to)*

#### ARTICLE 104

**THE CHAIRMAN:** I now put the question that Article 104 as it appears do stand part of the Draft Constitution.

*(Question put and agreed to)*

**MR. MULENGA:** Mr. Chairman, the Committee recommends that Clause 2 of Article 104 be amended slightly by deleting the expression *of Parliament* after *Speaker* so that the Clause reads: *'The President may, also, in consultation with the Speaker address Parliament from time to time on any matter of national importance.'* Mr. Chairman, I beg to move.

**THE CHAIRMAN:** I now put the question that Clause 2 be accepted with proposed amendment.

*(Question put and agreed to)*

**THE CHAIRMAN:** I now put the Question that Article 104 as amended do stand part of the Draft Constitution.

*(Question put and agreed to)*

**MR. MULENGA:** Mr. Chairman, Article 105 and Committee recommends that this Article be amended by recasting paragraph (b), deleting paragraph (c) and renumbering paragraph (d) as (c) so as to read as follows: *'A person is not qualified for election as President unless he is (a) a citizen of Uganda by birth; (b) 40 years of age or above; and, (c) a person qualified to be a member of Parliament.* Mr. Chairman, I have to report that originally there was to be a minority report bill moved by Hon. Kiyonga but he has indicated that he is dropping it so that as of now we do not have minority report. Mr. Chairman, may I seek you guidance as to whether I talk to the Clause or paragraph by paragraph?

**THE CHAIRMAN:** What we can do is take (c)

**MR. MULENGA:** It was recommended that although this might look like discriminatory provision as among citizens, I beg to move that (a) and (b) adopted without amendment.

**THE CHAIRMAN:** Agreed?

**HON. DELEGATES:** Yes.

**MR. MULENGA:** Mr. Chairman, as will be noted from the footnotes, there are ways of amendments sought to change the minimum age qualification. It is recommended by the Odoki Commission that it be 40 years of age for the President. The Committee by majority adopted that position and only changed the formulation instead of reading as it does in the Draft to read 40 years of age or above.

Mr. Chairman, before I leave the Floor I wanted to draw the attention to the reasons given for adopting 40. Mr. Chairman, it was the view of the majority of the Committee that at the age of 40, one has acquired not only for the fundamental education but also experience and has been exposed to the intricacies of State matters. It is only in rare exceptions that

history has recorded a few brilliant extra-ordinary leaders who have led effectively and ably at age below that, and we thought while this provision may exclude such exceptional cases, it was a fair provision to cover the average leader of the country. So, we considered the age of 30, 35 and those who were rejected in favour of 40.

**MR. CHEPSIKOR MUHAMMAD (Youth Delegate - Eastern Region):** Mr. Chairman, at this moment I would like to oppose the recommendation given by this Committee 2. I would like to delete the following words: *'40 years of age'* and replace it with *'25 years of age or above.'*

**MR. KABUGO:** Seconded!

**MR. CHEPSIKOR:** Mr. Chairman, I would like to actually request the Hon. Members not to worry about the age. We are fighting for unity and justice in this country and more so we are fighting for democracy. In this country our percentage, Mr. Chairman, is high and therefore, we also want to participate decision making process in this country, Mr. Chairman. The recommendation, Mr. Chairman, is very unfair. It is very sectarian when it comes to age and it seeks to stop the youth from active politics of this country and of course politics which matter we are men and women of substance, Mr. Chairman. We are innovative, dynamic, Mr. Chairman.

**MRS. KALEMA RHODA (Kiboga East County):** Is the Hon. Member holding the Floor in order to confuse this House that age is a sect? Is it a sectarian matter if one is below 40? Is it a matter of a sect or is it just a group?

**THE CHAIRMAN:** I thought that the Uganda population is divided into sections of age and you follow by that logic he is in order. Please go ahead.

**MR. CHEPSIKOR:** Mr. Chairman, I would like to inform my mother Hon. Kalema that maybe after my submission she may come and we actually sort out the problem. Mr. Chairman, the recommendation is trying to limit the young men and women of this country to grassroot politics. This is very dangerous because we are limited when it comes to decision making at high levels. How are we going to be emancipated now? Mr. Chairman, we are tired of being used as tools by some old politicians. We need democracy and freedom because we are the custodi-

ans of this Constitution. Mr. Chairman, what matters is what one produces. But the age should not worry the Members. Mr. Chairman, I must assure the House that we are going to work side by side by our elders. For us we are not going to bring segregation in this society. Therefore, I feel that we should support this amendment so that we build our country. Mr. Chairman, I humbly request members to support this amendment so that we come up with a clear Constitution for this country. A Constitution supported by everyone. Thank you.

**THE CHAIRMAN:** Let us first of all be clear as to what we are debating. A Motion has been moved by Hon. Chepsikor and it was seconded by many Members. That Motion seeks to amend the recommendation in Paragraph (b) so that the reference to (h) is changed to 25 years of age or above. To delete 40 years and replace it with 25 years.

**MR. ATWOOKI:** Mr. Chairman, first of all I want to clear this impression which is coming from the Members that it is only in exceptional cases that Presidents below 40 years can perform very well. I do not believe in that kind of mystery. I believe that age does not qualify somebody into a class of being capable or incapable. I believe that our priorities should be to look at the capability of the person. I believe that it is important for us not to be seen to move a very radicle amendment. I was trying to seek the permission of the Mover to allow me amend - to move an amendment to the amendment and say that we put the age of the President at 35 years.

**MR. CHEPSIKOR:** Mr. Chairman, I support the suggestion given by Hon. Atwooki because many elders have consulted me and therefore, I fully support the recommendation. Thank you.

**MR. ATWOOKI:** Mr. Chairman, I was saying that we should not be seen to be too radicle to advocate for age limit which might not be practical and feasible. I thank my Friend Hon. Chepsikor for accepting the amendment. I was saying that the performance of an individual cannot be judged by age only. There are other basis of capability - a human being at the age of 35 which can be exploited. I can say confidently that our current President exposed his leadership capabilities when he was even below 40. By the mere fact that he exposed his capability was because he had a forum to expose that capability. To expose his leadership qualities. Mr. Chairman, it is also important to note that we should

try to tap the participation and skills from the young generation. Mr. Chairman, we have seen some very great leaders like J.F. Kennedy who was able to lead the greatest nation in the world at the age of not more than 40. I am being told that Obote fought for Independence when he was below 40 but I cannot cross examine that. Mr. Chairman, I was a bit surprised when my neighbour Hon. Cecilia commented that she cannot standby to see his grandson becoming the President. I believe that this kind of attitude is so dangerous and anti-developmental.

Mr. Chairman, I also want to observe that with the current prevalence of this scourge of AIDS it is important that we are given chance to lead so that the people tap our leadership capabilities before we die. Mr. Chairman, with those few remarks I beg to support the Motion.

**LT. MAYOMBO NOBLE (NRA Delegates):** Mr. Chairman, I would like to dispel the impression that has been created that young people in this Assembly are ambitious. That is why they are agitating for the reduction of the age. But I would hasten to support the motion Mr. Chairman, that at the age of 35 as proposed by my friend Atwooki is a fair age - is a fair judgement bearing in mind our life expectancy in Africa and in Uganda in particular and bearing in mind the fact that the ultimate decision maker is the people having seen the different programs that candidates put up. But I would like, Mr. Chairman, to move an amendment if the Movers accept to re-read that it should be not less than 35 years of age and not more than 75. I beg to move, Mr. Chairman. *(Applause)*

**MRS. KAWOOYA:** Seconded!

**THE CHAIRMAN:** Let us first know what we are talking about. The Motion before us is that the recommendation be amended by deleting 40 and inserting 35. But Hon. Mayombo seeks to go further and amend by adding that, *'should be not less than 35 years and not more than 75 years.'* It would then read that: *'The person is not qualified for election as President unless he is not less than 35 years of age, or not more than 75.'* But the words used, *is not qualified for election*, which means actually we can have a President who is above 75. Because someone who is 74 can be elected and if he is serving 5 years he definitely will be above it. Is that what you are having in mind or you are saying a person shall not be a President of Uganda if he attains the age of 75.

**ANHON. DELEGATE:** This is what I am driving at.

**THE CHAIRMAN:** What is it that you are looking for?

**AN HON. DELEGATE:** Mr. Chairman, I am looking where we are looking for accumulated experience in public affairs. We would also not like to have the office the President which is very exacting in the hands of the people who are- this is what we are looking for.

**DR. KABERUKA WILLIAM (Ndorwa West County):** Thank you, Mr. Chairman. I am, just wondering if the President will be voted for by the people of Uganda. Why don't we leave the question of age to them. Because if they feel 17 million people, if they feel that a ten year old can lead them, let them do that really. Why don't we leave them the choice.

**THE CHAIRMAN:** Well, you have not answered my question. We have a definite proposition before us, there is a proposition of 35 years. That proposition someone is seeking to amend it to put an upper limit for purposes of election to Presidency at 75 that is how it has been worded. In event of that, happening you can still have a President who is above 75. I presume the intention is to say that they do not want someone who is 75 to have the business of putting himself before people as a candidate. Or are they saying he can put himself as a candidate and go on to serve another five years, or to four or ten whichever it is.

**PROF. KABWEGYERE TARSIS (Igara West County):** Thank you, Mr. Chairman. I think the logic of lowering the age to 35 is that the people are progressively maturing at an earlier age. That is one major reason because in some countries in fact marriage age has been reduced to 14, voting age to 16 because the children are maturing much earlier than in the past. But then at the same time, in this century alone life expectancy has been going up so much so that if at 65, at 70 and expecting another 20 years or more in some countries where the standard of living has improved very much. And, we are talking therefore, of a future where Uganda may have citizens who will be very competent still able in the eyes of the population to lead them even when they are over 75 years of age. For me I would recommend-I would advise Hon. Mayombo that let us put the lower limit other than the upper limit.

Otherwise we have already even now we have already pushed the retiring age in the civil service to 60 instead of 55. Because let us not look at the seniority at if it was a pure characteristic of chronological age. There are people who may live longer and be able to live at 80 or 85 and they are still not senile. Therefore, I would rather in terms of anticipatory recommendation, that we lower the limit of qualification and leave the upper limit open to the population who may judge who is senile or not. I thank you Sir.

**MR. KABAYO JOHN (Kassanda South):** Thank you, Mr. Chairman. I had wanted earlier to rise on a point of procedure because I thought that we should be looking at the minority position now which sought to delete -

**THE CHAIRMAN:** No, no that one was abandoned.

**DR. KABAYO:** Mr. Chairman, I wanted to propose that we set no limit for age either way up or down as a Motion. But my Motion will only be through deleting (b) so that there is no specified age limit.

**THE CHAIRMAN:** Is that seconded?

**DELEGATES:** Yes.

**THE CHAIRMAN:** Okay, if it is seconded that we delete paragraph (b) then we have to dispose of that one first. I will give the Floor to the Mover to give his reasons and then we proceed.

**DR. KABAYO:** Thank you very much, Mr. Chairman. There have been contributions from the Floor already some favouring upper limit others favouring lower limit. Mr. Chairman, as my neighbour pointed out, the people who will be making a choice will be able to tell whether a certain age is appropriate or not. We should not, therefore, select the age for them. Secondly, Mr. Chairman, in the past there have been examples of Presidents who have attained Presidency at a very early age. To mention some, Sergeant Doe and others who if we had taken a limit would obviously not have qualified. Mr. Chairman, there is no need to set the limit because the electorate themselves will be able to determine that. And there is nothing drastically wrong with somebody's age, some people mature earlier than others, and the population will be able to tell who are capable and

who are not. I therefore, Mr. Chairman, propose that we do not set an age limit and leave it to the population to decide. Thank you, Mr. Chairman.

**MR. AGGREY AWORI (Samia Bugwe North County):** Mr. Chairman, initially I was seeking guidance from the chair on the preamble to the amendment. Mr. Chairman, in your remarks you brought out two important points. One, the question of election and two eligibility to serve as President. Mr. Chairman, if it was possible we should make an amendment to the preamble on the amendment so that it should read: *"A person is not eligible for the office of the President unless he is: (a) a citizen of Uganda by birth, (b) of the age up to 75 or 70."* Mr. Chairman, I am bringing out this point because as you already mentioned, if somebody is a speaker of the House and he is 74 and he has been calamity. Mr. Chairman, that person should not be eligible. Because when he reaches 75 it means he has to give up the office President. So right from the beginning, Mr. Chairman, we should not use the word *election*, but it should be eligibility to the office of the President.

**THE CHAIRMAN:** But the Motion now on the Floor seeks to delete so that if we carry it issues you are raising now become academic as long as you are a citizen of Uganda by birth. According to this and have qualified to be a Member of parliament that would be sufficient if the amendment is carried. Now can I see those who speak for the amendment by Hon. Kabayo?

**MR. MWESIGWA RUKUTANA (Rushenyi County):** Thank you, Mr. Chairman. I support the Motion on grounds that we have agreed that there may be extra-ordinary circumstances when two young person may be so genius as to qualify for this office. On the other hand two old fellows could be so genius to qualify for the office. We have agreed that the President will be elected by the people of Uganda and we do not have any doubt in the wisdom of the people of Uganda. Mr. Chairman, my point is that we should not be deprived of these genius or extra-ordinary leaders. You will agree with me that you effect a genius to be at 85 and convince and Ugandans to elect him as a President. Once you are deprived of that genius leadership. On the other hand or likewise, he takes a genius for somebody of 18 or above to convince the populace of Uganda to elect him as a President. Mr. Chairman, why should Uganda be deprived of such genius or qualitative or

extra-ordinary leadership? On that ground I would support the amendment so that we should not take any age limit.

**MR. SSENDAULA GERALD (Bukoto South):** Mr. Chairman, I certainly support the amendment that we remove wall, so that we leave it open. First of all within our electoral laws whether we have not reached but all the same we shall at one stage or another or another allow people to register at a certain age, and we shall also allow the same people to even contest for Parliament at a certain age. Now the vote contesting and even registering as voters are much lower than the age 40 or even lower than 35. Now if these people go out and convert votes and be voted for to enter Parliament, why should there be then a restriction on them. Is that not going to be infringing on their rights not to be permitted to contest the Presidency. If someone has been found to be genius ready to take up the role of a Presidency, that is for the voters to judge. It will be the voters they will be in fact assessing all the candidates who will be offering themselves to stand. Say here I say, I want to be the President of the Republic of Uganda, and then the Ugandans will have the whole right to say you either right or you are not. So I strongly support the idea of removing (b) from our article. Thank you, Mr. Chairman.

**LT. COL. KIIZA BESIGYE (NRA Delegate):** Mr. Chairman, first of all may be I should mention that I was supporting the minority report which was withdrawn, unfortunately I did not know that it had been abandoned without my knowledge. This is because I think the principle of democracy ought to be looked at very closely. We have said that power belongs to the people. We can only act on their behalf when they are not around we can act and to that extent we can represent them and take decision. But we have already taken a decision, Mr. Chairman that the President will be directly elected by everybody. In other words the decision of who will be become a President is no longer in our hands but they are going to handle it themselves directly. And, Mr. Chairman, therefore, I think it will be unfair of us having taken that fundamental decision that this will be a direct one man to one man decision of the people of Uganda to now limit them as if they cannot take a decision themselves at that stage. Quite obviously the question of age will accompany position. Somebody will say this man is immature, he has no experience, he has no this please do not vote for him, and the population will listen to all these people and will take

a decision, and their decision should be supreme and final because they are the sovereignty of Uganda. It is to that extent, Mr. Chairman, that I think we should not - in fact all discussion was brought about qualification in Education, even qualification in education, people will tell the population this man is not educated elect him or do not elect him. If the people choose to elect him knowing that maybe he did not go to University or has no P.H.D, that is their decision and it should be final and we should respect it. We should respect the sovereignty of Uganda and I do not think we should engage in putting age limit here. I support the deletion, Mr. Chairman.

**PROF. NSIBAMBI APOLO (Presidential Nominee):** Thank you, Mr. Chairman. I am totally against removing guidelines. We have to have guidelines for a number of reasons. First, Uganda still lacks widely acceptable institutions which normally assist a leader in shaping the destiny of the country. In those countries which have acquired these institutions, you can afford the luxury of having someone who is a mediocre because essentially the institutions are strong and they shape that person. Now in our circumstances it is incumbent upon the leader to shape these institutions, and when he has shaped the institutions then he can forego power and we enter the period of institutionalisation. The period occurs when institutions have acquired autonomy, intricacy, and they can shape our lives. Secondly, we have not even given free primary education to our people, we have not. In other words, even giving people the necessary signals through the written words is difficult. And they are now giving them this very hard term to pronounce on very difficult issues. Thirdly Uganda is a periphery country lacking the basic of technology and so on and so forth. So a leader in this country is grappling with many odds including metropolitan countries which are trying to shape the destiny of this country and some are misleading this country. He has an overload of functions. Uganda lacks a strong civil society and here when you speak of a civil society. You are essentially speaking of private institutions which enjoy a degree of autonomy and they enrich the quality of life. They also tape the state, and in the absence of all this, we are gambling too much. I would suggest that we should not gamble with this country any more we have to have some guidelines. And the question of age is critical because we are dealing with issues of experience, we are also dealing with issues of acquired tolerance because of certain mistakes you might have made in the past and maturity. So I strongly oppose what is on the Floor.

**MRS. LAGADA AMONGI (Women Delegate - Apac):** Thank you, Mr. Chairman. Mr. Chairman, I want to oppose the Motion of deletion of the age limit for the Presidency. Mr. Chairman, I believe that every human being has something to gain as he grows older. I believe that what a person does at 40 or at 50 years or the way he behaves or handle issues is not the way he will handle those same issues at 20 years of age. I want to take the example of a mother for example. Most people who are firstborn will agree that the way your parents treat you when they are young parents is not the same way they treat their later children. They treat them differently in the sense that they have had experience, they become more tolerant and usually their divisions or the way they behave is more mature and better. I think the office of the President is a very taxing off. And as Hon. Nsibambi has just explained, the man or a woman you are putting in that office is going to grapple with a lot of things. He is going to work to take important decisions. He is going to have to interact with other international leaders. We are here trying to say that simply because he has stood for elections and the population has voted him maybe at the age of 18 or 20 or whatever, and he has been voted in by a population whose - who are mainly may not necessarily have understood the wider issues involved which this man is going to grapple with. We should therefore, trust him because the population has trusted him. I think we are going too far Hon. Members. You will remember that earlier we put age limit for High Judges and such people, why because we think that is an office of high responsibility. Why are we then trying to make the Presidency a smaller office or one which does not require so much responsibility. Is it fair really to put the burden of leadership on somebody who is so young who may be led by emotions which an older person who would not be survived by Mr. Chairman. I think we should put an earlier age limit - I mean an age limit, a lower one and also the upper one because I believe that between ages you are more responsible than you would be when you either young or very old. Thank you.

**THE CHAIRMAN:** Let us do it this way. If we go on we shall debate for two days. We have had a number of contributions before and against. Let us have those for the motion; I will take two and then I will take two against. For the Motion let us take Hon. Kabirisi Ruberenga Hope, and then -

**MR. MULENGA:** I thought since this is in substance, the minority report revived, unless you give

opportunity to the committee to explain why it rejected that position.

**THE CHAIRMAN:** No, this is not a minority report, this is a Motion by Hon. Kabayo.

**MR. MULENGA:** It is a substance of-

**THE CHAIRMAN:** Because I think the Chairman of the committee wants to take us to a situation where he is contending lines in the committee to come back on the plenary.

**MR. MULENGA:** But it is the one to delete.

**THE CHAIRMAN:** For us here what we know is that, there is a Motion by Hon. Kabayo it has received support and it has also received opposition and I am picking on Members so that we declare ourselves on the matter. I will call on Hon. Kabirisi Ruberenga to make her contribution to the Motion, and then I will come around.

**MRS. KABIRISI RUBERENGA (Women Delegate - Bushenyi):** Thank you, Mr. Chairman. I support the deletion of putting an age limit to a Presidential candidate for the simple reason that one, in article (1) which was passed by this House we said that all powers belong to the people. If a person can go out and convince the majority of the population of this country that he is capable of leading them. I do not see why we should sit here and give ourselves the mandate to say they are wrong. We should leave it to the people of this country to decide who they think is most capable of leading them. We have heard arguments, an Hon. delegate gave an example of motherhood. It is true that if you are a first born you do suffer because your mother does not have experience. But I do not think anybody will ever have a chance of being a first President then you go back and test. That question can only arise at the second term option, that is when we can say that no, your first term was not good enough, out you go. Secondly, we have heard arguments and which I support that we might have geniuses. Why should we miss those geniuses just because we think they are not good enough? There is also an issue of human beings as all doctors can testify human beings mature differently no matter the age. You might meet a 50-year-old behaving like a twenty 20-year-old. Likewise you can meet a 20-year-old behaving as mature as a mature 50-year-old. So why should we put limitations? Let us leave the people of this country to

decide, if at 20 you can go out and convince 51 per cent or more of the people of this country that you are capable of leading them. So be it, and so God help this country if will have been the people of the country who will have spoken and we should not sit here and give ourselves a mandate and change what we have already said. We have already that all power belongs to the people. Now we are trying to say Oh! no, you have the power but we are going to decide for you at what limit. Thank you, Mr. Chairman.

**MR. SEBALU KENNEDY (Youth Delegate - Central Region):** Mr. Chairman, I do support the Motion as moved by Hon. Kabayo. Because we should really address the issues here and not symptoms. Because when we are looking at leaders, what do we look after when we are electing leaders? We are looking for qualities and abilities. And to my understanding qualities and abilities are not synonymous with age. Someone is either skilled in a particular field or he is not, we have seen so many elderly people who have not performed, and they are young ones who have performed. So it must be an issue of ability and quality in leadership. We have examples here we have minister who are below 40 and I do not think they were appointed because they were not performers. We have Hon. Owiny-Dollo he is below 40 and so many others, and they are doing job. And they are so many who are above 40 who are- I am not going to go into this, and I do not know the- what was the reason for that. So it is ability and we should look at ability at that. When we look at the revolution, the revolution which was started by NRM, all the people, the core of the revolutionaries who started it were below 40. And are you going to tell me that they were no people above 40 at the time? Many of them were and they just joined when things were put in the right place. But it was because those people had leadership qualities. So we should look at the leadership qualities. And besides when we are making a constitution we should look at avenues of tapping all possible talents, and we must open the door to all possible talents so that we take maximum utilization of our human resources. The Professor has taught about so many theoretical concepts but these are not understandable by our people in the villages. Otherwise you are going to say that the Presidents of Uganda are going to be Professors alone, but are Professors the only performers? They are not necessarily the only performers. So these theoretical concepts are not going to help us. Professors should come to us and we analyse issues

critically. Let us look for ability not qualification otherwise the qualification otherwise the qualification of the President would have been P.H.D, but that was not the case because we know that they are so many who can perform without those qualifications. And I do agree with the chairman of committee 2. He said that we may have extra-ordinary talents. That is very good and it is for that very reason that I do support this Motion. Let us not close the door to these extra-ordinarily talented people. He said it himself and we should give them room. I think the chairman, should support the Motion by just saying that, accepting that we have such people is enough reason to give them room to come in and have their contribution to this nation. We should leave it to the electorate because we have already pronounced ourselves and said, power belongs to the people. Let the people ultimately decide who their leaders are going to be and if we are talking of democracy how are we going to have democracy without having democrats. Because if we are not democrats and we are closing certain people and we are talking of democracy then those are double standards. So we should allow our people to choose their leaders, we are going to vote for ability and not age, and besides our life expectancy is somewhere around 48. So if you are putting it to 40 alone, - 42 I am being informed. But if you are going to put that as the minimum age someone serves for one term and we feel he could have even have done for another one. Since the life expectancy is so low let us look at all these problems we are faced with and let us leave the door open and, let us not underestimate the ability of our people. Let them judge and when I support the Motion, I do not say that the leader must be of 25 or 30 no, what I am saying is that it is not democratic even to deny the person to offer himself for election. Let someone offer himself for candidature and let the people decide that is what we are really looking at. Mr. Chairman, I beg the whole House to support this Motion, and let us be very democratic and give power to the people, let them decide who their leaders are going to be. Thank you very much, Mr. Chairman.

**MR. TUMWINE POLLY (Youth Delegate Western Region):** Thank you, Mr. Chairman. Mr. Chairman, we need to know that we have passed one provision in the human rights where we said that nobody should be discriminated against in terms of age, sex, to mention but a few. So we should not come here and contradict ourselves and say, because you are of such and such age, you should not contest

there we shall have contradicted ourselves. Secondly, we have also put a provision where everyone has a right to participate in matters of this constitution. Mr. Chairman, I also want to put it to delegates that we should not be worried of the age, be it the high limit or the low limit. We trust our population, if one wants to contest in an area where the people are seeing the qualities in that young one why should we limit it ourselves? And I also would want us to look at our past history and look at our Presidents we have had in Uganda. If we could look at the President Dr. Obote, if we would be realistic, you would realize that in his first regime when he was still young that is when he performed better. (*Applause*) If you also look - then compare the performances of Tito Okello at the age he had, and the performance of the current President we have who has not gone to that age you can see that performance, maturity, ability and capabilities do not go with the age. I also want to put it that some people - Hon. delegate, I think Hon. Lagada, put it that experience goes with age. That people gain experience as they grow old but she also would recall that people also lose certain qualities as they grow old. Even the example she gave of the firstborn, lastborns are the worst children in our families because the parents have already given up. I therefore, would request Hon. delegates, to take this amendment with good heart because in any case, it will give us the best leaders if we present them to the electorate. I thank you very much, Mr. Chairman.

**MR. MULENGA:** Thank you, Mr. Chairman. Mr. Chairman, I think we ought to be clear in our minds why there is qualifications and disqualifications. I think it is not quite right to use the argument as has been done by a number of members that because electorate know how to choose the leaders they should be left free without any guidance. Mr. Chairman, if that were to be taken to its logical conclusions, we should have no disqualification at all. We should leave it open to anyone to stand for election and the people - we should leave it open without any qualifications at all including citizenship, we should not be saying by birth. Every citizen should be free or everybody so that they go to electorate and you can as was said through campaign say that fellow is not a citizen, that fellow was a citizen only two years ago the same would be applied. Mr. Chairman, we have only one office of President that is the way we took it not everybody can be President. So when we talk about everybody should have a chance let us also take into account that we are trying to select someone for one office out of

-we are now 18 million in five years time we may be 20 or 25 million. So really to talk about, the youth are being discriminated is not correct. It is a method of shall we say sieving and the committee was of the view that through the years of youth, you have a chance to learn. You have a chance to be exposed to state machine if you have taken the line of politics of leadership. The more you are exposed to it, the more you mature towards it, and 40 years was chosen because it was a longer period than 35. You have seen also that earlier on there was a move or an amendment to say 25, it was a youth who said no, let us move it to 35, and currently that is the last the last year of youth. So really this idea of age is not as immaterial as people are making it out. If we have had a brilliant young man we are being told why should we - or young woman, why should we be deprived of - we are not saying we are deprived of youth still have many roles to play. But for Presidency the recommendation was, he can wait. Brilliant he can wait, he can lead in other fields but wait when he is 40 years he will definitely be a mature person to be President. So let us not say that the youth are being deprived because they are a growing, they are growing, they are going towards that age. So, Mr. Chairman I would say that when we recommend that there should be age qualification, it is not to discriminate the youths. It is to say what is the best age at which we can be sure that candidates of that age are likely to be mature enough to be entrusted. We know that during elections there are many factors that may sway the nation. Today it could be some matter that has nothing to do even with the leadership. Because the fellow I am told Hon. - rather the Late President Kennedy got a chunk of his vote from his appearance that he was handsome attracted a lot of women votes. This has been recorded in - there are factors that in - now if after using those factors basically you have got say, we have 3-4 candidates all of them have that basic then chance has it that there will be other factors but at least you will have got your minimum through that qualification. If your qualification is correct then through it you get candidates who qualify and other factors can apply. Mr. Chairman, Hon. Besigye has said, why do we want to limit the electorate, I think the answer of the committee is simply this, that we are not seeking to limit them we are seeking to select- to guide them as to where they have a better chance of getting the correct President. Do not forget there are many capable persons that would probably be competing for that and we are saying among the very many, those who are of that age should be a better chance to go by. So, Mr. Chairman, I argue I would argue

delegates not to drop consideration of qualification by age. I thank you.

**DR. HIGIRO SSEMAJEGE (Lwemiyaga County):** Mr. Chairman, I have few points to make. But there is one thing that we need to care about. We seem now to be saying that we do not need guidelines. But throughout all the time we have been working the whole of this constitution is nothing but guidelines. We have even limited the President, we are giving him guidelines. Mr. Chairman, we would have left the President to do whatever he wants because he was elected by all of us. But we are giving him some guidelines, we are limiting him because for the sake of Uganda. Because we here we have been elected by Ugandans to do the best. This constitution should not simply leave things emotionally. We know very well, Mr. Chairman, that even the electorates, they are people who are going to decide surely whatever we do needs to be guided, they need to be guided. So when we talk about the years it is not that we are looking down upon the people who are not certified nor are we limiting them. But we are saying with our experience we have here that at least a man to be a President, a man or woman who is going to be viewed by other countries, who is going to meet people from China, from America, from all over should not be looked through. There should be some elements of respect even from other countries. So, Mr. Chairman, I propose that while we may not talk about 40 years, but I go by the age limit bottom of 35 years onwards, no upper limit but surely there must be some qualifications. Mr. Chairman, I beg to oppose.

**THE CHAIRMAN:** Okay Hon. delegates let us pronounce ourselves on this one. The question is one of deletion that instead of talking of any age we leave it to the people, that is the underlying rationale in this Motion that we delete Paragraph (b). I now put the question.

*(Question put and agreed to)*

**THE CHAIRMAN:** Now we go back to the Motion as moved by Hon. Chepsikor and modified by Hon. Atwoki and then further modified by Hon. Mayombo. That for a person to be a President of Uganda or to be eligible for election or qualified for election should be not less than 35 years of age, or more than 75 years of age. The rest is a question of wording really by polishing. But the rationale is to say, you must be 35 and above but you are not eligible for election if you are 75 years of age. I now put the question.

*(Question put and agreed to)*

**THE CHAIRMAN:** Hon. Ssentenza Kajubi has protested - the Chairman does not allow indefinite opportunity to stand up. Could the Hon. Members resume their seats please.

**MR. MULENGA:** Thank you, Mr. Chairman. Mr. Chairman, paragraph (c) of the draft, the committee recommends that paragraph (c) of the draft be deleted for this reason. That when we considered qualification for election as Member of Parliament it was raised to a minimum formal education of Advanced Level, and therefore, this one becomes superfluous since we have the general one of a person qualified to be a Member of Parliament. That one covers the educational if we should require it, educational qualification.

**DR. BYARUHANGA FABIOUS (Kitagwenda County):** Thank you, Mr. Chairman. Since we have not handled the legislature and since we have not yet agreed that a Member of Parliament must have A'Level standard of Education, it would be proper that we accept here to pass the - what is in the draft as it is here. But then if later we pass in the chapter on the legislature that the educational level should be level, then our technical committee or the drafting committee can do the necessary. But otherwise if we just drop it and then when we come to the legislature we keep the level. That is - Mr. Chairman, if we drop (c) but when we have come the chapter on the legislature we do not accept the recommendation of the committee to move the education qualifications for Parliamentarians upwards to HSC level then we shall be in a problem. We better maintain this Clause as it is and when we come to the chapter on the legislature if it is acceptable well and good and then our drafting committee can do whatever is necessary.

**THE CHAIRMAN:** I think we shall not have contradicted ourselves if we come to the question of legislature and then we make provision. This can be revisited at reconsideration stage should it be required that in view of what we have done we revisit this one. But I would rather we complete this article so that we go knowing we have done it but we can revisit it should circumstances arise when we deal with legislature. The recommendation is accepted?

**HON. DELEGATES:** Yes.

**THE CHAIRMAN:** I think we should - it is recommended that (c) relating to other things a person qualified to be a Member of Parliament and then when we come to Parliament we shall see what qualifications are. Should they affect the question of education here. then we can come back to it and we can keep that in mind. I think that end the paragraphs on that.

**MAJ. GEN. TINYEFUZA:** Mr. Chairman, I am sorry to put you back but I beg your indulgence on that this. I had written something down to make an amendment to an amendment on (b) but we have already passed. Unfortunately I did not bother about the 35 years but I had moved that we do not fix the upper limit. I know we have passed it but -

**THE CHAIRMAN:** We can revisit it at the reconsideration stage if you keep it in your note.

**MAJ. GEN. TINYEFUZA:** Because my Motion I think is there so -

**THE CHAIRMAN:** It is a bit late now really. Let us now vote on Article 105. I now put the question.

*(Article 105 as amended and in accordance with recommendation of the Committee 2 put and agreed to.)*

**THE CHAIRMAN:** Hon. delegates we have done a number of articles today, and we should keep this speed. With this we come to the end of today's proceedings.

*(The Assembly rose at 5.30 p.m. and adjourned until Tuesday 14th March, 1995 at 9.30 a.m.)*