



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 15TH MARCH 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3279]

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Wednesday, 15th March, 1995

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

P R A Y E R S

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

(The Assembly was called to order)

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

CHAPTER 7, THE EXECUTIVE:

ARTICLE 106, ELECTION OF PRESIDENT.

THE CHAIRMAN: Hon. delegates, when we adjourned last night, we had disposed of Clause (2) of Article 106, now we go to Clause 3. I give the Floor to the Chairman of Committee 2, I understand the Chairman is not around, but his Deputy is going to handle the matter. Hon. Ringwegi.

MR. RINGWEGI (Padyere County): Mr. Chairman and hon. delegates, Committee Two recommends in their report to this Plenary that Clause (3) of Article 106, should read as follows. *"The election of the President shall be held not less than six days before the expiration of the term of Presidency on the first Monday of February, except in the case of:*
a) *The first elections under this Constitution and,*
b) *An election held under Clause (2) of Article 112."*

You will notice Hon. delegates, that this Clause has been amended. The Amendment here is intended to provide for a fixed date for a Presidential election. The rationale for providing a fixed date for Presidential elections has been given in the report. I would like to repeat here that Committee Two considered so many arguments from different delegates on whether it should be necessary to provide for a fixed date for the Presidential elections. The committee was persuaded to come to this recommendation and to fix this date of the first Monday of February in the election year for various reasons. The most convincing reasons, Hon. delegates, were that the population should know when they expect to elect their President and that it should not be left to the whims of the incumbent

President to decide on when to hold an election. This, Hon. delegates, would ensure that the incumbent President does not take advantage of the population. It was argued that if the date was not fixed, an incumbent President would take advantage and find that if he is riding high in popularity, he would then call for snap elections in order to stay in office and when he knows that his popularity is so low, he may decide to withhold the holding of general elections and therefore, the population would be taken for a ride. It was therefore deemed necessary that a fixed date be provided. Moreover, it was also argued that if the period was known, even if the incumbent President was not doing very well, the population will say, after all, he has only a few months to go before we decide to remove him and this would therefore, augur well for the political stability.

So, Hon. delegates, the Committee therefore wishes to recommend for adoption by the Plenary that the Assembly provides in the Constitution, the first Monday of February in the election year as a date for the Presidential election. I beg to move.

MR. SEBAANA KIZITO: Point of clarification! Mr. Chairman, I want to agree with the suggestion, however there is a problem regarding the date. It is provided elsewhere that the term should be five years and it is anticipated that the first election of this Constitution will take place in December this year, that is the anticipation. If that is the anticipation, then this formulation cannot work because if the first election is in December, then the five years would end in December five years from then. Therefore, it would not be possible to have the election in February, therefore, it is necessary to provide for the first election and the second election.

MR. NJUBA: Mr. Chairman, I am a member of this Committee and I am in full agreement with my Chairman. However, two points should be clarified. It appears that the committee overlooked the 60 days which became redundant after fixing the date. So, we may have to move an Amendment to resume the 60 days, they are no longer necessary if we accepted to fix a day. Secondly, Sir, regarding what the Hon. Ssebaana Kizito is saying, we are not making a Constitution for today or tomorrow, we are making it for many years to come and we have made an exception which is in (a), which should take care of this provision. Should we finish this

Constitution in time, then we can go by this arrangement, should we not, then, the exception is provided. Thank you.

DR. HIGIRO SEMAJEJE (Lwemiyaga County): Thank you, Mr. Chairman. Mr. Chairman, I stand to support the committee recommendation. I support it whole heartedly because of all the positions that we have in this country, the most critical is the position of the President of this Republic. Now that we have provided that a President shall be elected directly by all Ugandans, it is also rational that Ugandans know when they will be making this very, very, important decisions in their lives so that it is not hidden to them, it should not be played by a few people who may be very keenly interested in keeping their chairs warm. It should be a decision of all the Ugandans. Mr. Chairman, we all know that the past elections were postponed, re-opened, and we were shown into dangerous situations where we are. We also know it is not only that time, but we also know that in current times, we have had some temptations to extend NRC and whatever it is. So, the disease is not just for the old, it can even continue. Mr. Chairman, we feel that therefore, we should make the Constitution known the public to save the country from that kind of possible problem.

Mr. Chairman, I want to say that the day which will be fixed - early February, it was because of a number of reasons: One was that climatically, Uganda at that time is generally dry and since our polling stations are not in-doors, they are outside, then we need a time when people will not be interfered with by rain. It is also a time where pupils or the Colleges and schools will be on holiday, so that those young men and women who have gone to vote, should not be interfered with and those who will not be electing, who are younger, will be assisting in the elections. Thirdly, Mr. Chairman, it is also important to budget, you know Mr. Chairman, elections are very expensive and it is not good for anybody to look round for his own interest and start on the day for elections and when he goes around there is no money provided. What happens next? Then it would mean that some monies will be removed from the accepted budget and some of the departments will have to be interfered with, whereas once the date is known well in advance, the Ministry of Finance will have no reason whatsoever not to provide for sufficient money for this occasion and that is very important because in many cases, we

even borrow money for this and also politicisation for these elections should be in advance. Another point, Mr. Chairman, is that when people want to become Presidents, you know this is a very tempting position - remember the other day when we were deciding on the date, young men want to try. Mr. Chairman, these young people and old also, once the date is known, even two years before, even somebody can begin going round to make the people know him and the public also needs to know such people in advance, they should be able to weigh well in advance. We are also providing, in fact, we did yesterday, that anybody to be a candidate, you must have signatures from all districts, there must be a time when somebody who is prospectively interested in being a President can go round without being interfered with by the incumbent who may not want him to go round, but this man will be known and he will gather, the people know him and they will know him too. So, Mr. Chairman, those are the only points contributed towards the fact that it will be the most rational decision we make and I hope all of us here will support this Amendment because it will save us a lot of trouble.

There has been a problem, some people fear that without having a running mate, this system may not go on indefinitely, it is wrong but there is a provision. The first President who will be elected might have - when the debate of elections falls, he might have a little more days than the normal, but also in case of somebody being left - who leaves office either way because of impeachment or because of death or because of resignation for other reasons, when that election takes place - by the way, that is the most unlikely event - in the most unlikely event, should that happen, then again the President who will be elected might have a few days more or few days less. The system will continue afterwards without interference. Mr. Chairman, I am not a member of that committee but I have been very well convinced by the committee's sense and I think that we should all support this idea and fix it so that Ugandans know when they always make a decision and I support this whole heartedly, I thank you Mr. Chairman, for allowing me to say this.

MR. NDEGE: Thank you Mr, Chairman. I also join others in agreeing or supporting the idea of a fixed date. But I would like the Chairman to clarify about the 60 days because the 60 days appear to be redundant as later on the President is supposed to

assume office within 24 hours in No. 7. And if this man has 60 days, I do not know how the two can reconcile. Then there is also that, again, Parliament will prescribe procedures for the election of the President. I think we should not leave all these things open, we should have a fixed day of election and if possible, a fixed day when the next President can assume office, either 24 hours or 60 days or a number of days. So, I think the Chairman should clarify on the importance of the 60 days or if it is redundant, then we should prescribe a way of how the new President should take over from the incumbent. Thank you.

THE CHAIRMAN: But do you not think that the 60 days is a superfluous exercise? May be the Chairman can clear this so that we do not spend time on it.

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, the question of the 60 days was first raised by Hon. Sam Njuba and he said that the 60 days would appear to become redundant in light of the fixed period that we are trying to provide. But Mr. Chairman, the 60 days is not redundant, the 60 days that we are setting in here would appear to be unworkable in the first election under this Constitution but we have already provided elsewhere Mr. Chairman, that the President elected under this Constitution will have to serve either more of the five year term by a few months or less. That has already been provided for. Mr. Chairman, the 60 days that we are putting in here, is to provide for Constitutional practice, in the likely event that an election is held mid-term, we shall have a position whereby the President elected in mid-term election may serve less a period of five years. But then, again, the 60 days period, is trying to cater for a specific period within which the incumbent, the term of five years and the period when an election is supposed to be held and with time, this period may be abridged so that we come to the election period or the election date of Monday of February. So, I do not think the 60 days, Mr. Chairman, is redundant as it appears to some Hon. delegates.

THE CHAIRMAN: So you are saying, the formula is more complicated than meets the eye.

MR. RINGWEGI: In fact, on the face of it, it would look as if when we provide for a Monday of February, we are only trying to be so rigid, but we are not. We are only saying that in the likely event that elections may be held other than on a Monday

of February, then the President elected in that election may serve more than the five year term or less, as it is provided for in Article 108 which we will come to and Mr. Chairman, I think Hon. delegates should read the notes on Article 108 which will give them the insight into the provision of this Article and also, Article 112 of the report, then you will comprehend why the 60 days is still necessary.

MR. AWORI (Samia Bugwe North): Point of clarification! I am seeking clarification and also probably guidance from the Chair on a matter of force majeure whether in the Constitutional process we do not need such a provision.

THE CHAIRMAN: I thought that applies in contracts.

MR. AWORI: But Mr. Chairman, this is a contract between the people of Uganda and the institution of ruling.

THE CHAIRMAN: The only force majeure in this contract between the President and the people would be his death, an untimely death.

MR. AWORI: What about in the event of a natural disaster in the country which is basically a force majeure, or in the event the incumbent President declaring a state of emergence or a state of war?

THE CHAIRMAN: Are you saying that he should vacate his office because of an election? You mean if there is an earthquake - God forbid - that it should to an election of a President?

MR. AWORI: I am proposing, Mr. Chairman, that we have to make a provision. Where is force majeure, what section?

THE CHAIRMAN: I think Hon. Awori you are creating confusion for nothing. The situation is that the people of Uganda elect their President and they give him five years according to this proposal. Okay, the presumption is that he will serve the five years but anything could happen and his office becomes vacant. But force majeure, like the example you gave of earthquakes, and state of emergency, I do not see how that would lead to elections.

MR. AWORI: I was referring to the February date. When we say the following could be exceptions to February, first Monday in February.

THE CHAIRMAN: You are saying that in the event that Monday is not available?

MR. AWORI: Exactly! In case of a Constitutional crisis, you have to have an exit point in case of a Constitutional impulse.

THE CHAIRMAN: I think all that the Hon. Member is saying is that supposing we fix a day like Monday, the first Monday of February and there are disasters on that day. I do not think you can make people cross rivers, to go and vote, which are flooded.

MR. AWORI: The incumbent should have the capacity to say, I have a problem, we cannot have elections.

MR. SEBI DATA HAROUN (Koboko County): Mr. Chairman, I would like to oppose this motion precisely because of the uncertainty of the nature of African politics or politics as a whole. It is not as sure as day follows night or that the sun will rise tomorrow. We have problems in Africa, there could be problems of logistics, there could be financial problems, what happens if on that day, on that Monday, you do not have these things in place?

THE CHAIRMAN: Order, order, could you hold your fire, we shall -

MR. SEBI DATA HAROUN: Why should the day Monday be sacrosanct? I fear that we are making a very rigid Constitution. In Africa, we have (*Interruption*)

MR. ELYAU: Point of information! Mr. Chairman, let me inform the member holding the Floor that we are trying to safeguard the election exercise that nobody sits in the Chair for a longer time with lame excuses. In the past, some people took years to do the election, so this one will be put as a frame work for guiding a particular President in the office. Thank you.

MR. SEBI DATA HAROUN: Mr. Chairman, my quarrel is not with the month, you can have your February, my quarrel is with the Monday and I am saying, what happens if on that Monday, for example, you have an *Imbalu* day and the people in Mbale are busy on the streets doing their thing?

THE CHAIRMAN: They will be told to wait.

MR. SEBI DATA: Then Mr. Chairman, we have also some cultural or religious groups. What happens if on that particular day, you have *Idd Day*?

MR. ATAMVAKU ZUBAIRI: Point of information! Thank you, Mr. Chairman. Mr. Chairman, I wish to inform the Hon. Member, who incidentally is also brother that, even if that day would be *Idd Day*, whether *Idd el Fitr* or *Idd Adhwa*, it will not stop people from going to elections. In fact, if it will be *Idd Adhwa*, it will even be more spiritually blessing for them to go and elect a leader. (*Laughter*) Thank you.

THE CHAIRMAN: I think Hon. Sebi is now fully informed.

MR. SEBI DATA: Mr. Chairman, I would like to thank my Colleague for that piece of information but I think everybody is aware that on the election day, there is a time frame, that elections can stop at say for example at 5.00 p.m. and you will have three hours praying. By the time you come out of that, some people will have been cut off, they will have been denied that chance of voting because they were busy praying or they were in *Imbalu*. So, Mr. Chairman, I am saying that I do not agree with setting a specific day in the week, say Monday. I would go with the committee proposal of the month. You can have it in a specific month of February, but I would not agree with a specific Monday, the first Monday, specifically of February. Thank you very much.

MR. OCHYENGH: Thank you, Mr. Chairman. I entirely agree with the proposals of the committee, except on one thing on which I am not quite clear which proposes that the election of the President be held not less than 60 days before the expiration of the term of the President as if the President is in the office on the first of day of February, except in the case of the first election under this Constitution.

Mr. Chairman, this is where my confusion comes. I would have said that the committee would have also given us a guideline as to when elections should be held after the promulgation of this Constitution because this one, apparently does not indicate within 60 days if the President is there.

MR. OKALEBO (Bukedea County): Point of information! Thank you, Mr. Chairman. I would

like to inform my immediate neighbour here that it was not possible for the committee to set a definite date for elections immediately after the promulgation of this Constitution because we did not know when the Constitution would be promulgated, we cannot be certain. In the first place and even if it is so promulgated, what time allowance should be given for the logistics to be put in place to come into election. So, the committee feared committing itself on a matter it thought would not be practicable.

MR. OCHYENGH: Mr. Chairman, for educational purposes so that we are all informed, it would not be bad if I could hear from Hon. Kweronda, although yesterday he was rejecting. Mr. Chairman, I would like to be educated on this issue.

MR. KWERONDA RUHEMBA: Thank you very much, Mr. Chairman and the Speaker on the Floor for yielding the microphone. When we passed this Clause, Mr. Chairman, we were not very sure as to whether we were not going to be caught by time because February was creeping in and we were not sure about the first elections because we passed it around October or September and we were not sure that the promulgation of the Constitution would be before February 1995. But now that we are going to pass the Constitution or to promulgate it in June or July, it is also possible that the first elections of President could be possible now. So, if we are sure that we are promulgating it in July and anybody wants to move an Amendment to the effect that we elect the President in February, first Monday, it is possible, Mr. Chairman.

MR. SAM NJUBA: Point of information! Mr. Chairman, I agree with the information given by Hon. Kweronda Ruhemba and my other Colleague, but I would like to inform the House that there is Chapter 20 which deals with transitional provisions and that was supposed to handle this task. It was not our task in Committee Two. Thank you.

THE CHAIRMAN: I think that is more relevant. When the Constitution now being made comes into force, the period between the coming into force of that Constitution and the first election of the President under that Constitution will be a transitional period and therefore, it is better handled as a transitional provision so that you indicate for instance, who will be the President during the period when it has come into force until the election or a new

President comes into place and what will happen as to the legislature between coming into force and that time and then you can see of course, that provided that election shall be held not later than or that there will be an elected President in place not later than, so that you indicate when the transitional period stops. So, instead of putting it in the main body of the Constitution, it should go into the transitional provisions, which after they have operated, they cease to have effect except for historical reasons only.

THE CHAIRMAN: Hon. Ochyengh could you wind up?

MR. OCHYENGH: Thank you, Mr. Chairman. I think I am quite satisfied with the information and explanations which they have given. The other issue is the one raised by Hon. Higirow, when he expressed worries about somebody barring aspiring candidate on the pretext that the campaign for the presidency have not yet been sanctioned. Now, these 60 days, to me, because elections could be held say two months before Monday, that is within 60 days before the Monday, but it could also be taken as time when the President can say, campaigns can be carried within those two months. In other words, somebody who is sitting can actually bar others from campaigning until those 60 days which is not sufficient. So, that was why I was saying, the six months provided in the Draft was possibly a better guarantee so that those last six months are actually months of campaign for anybody who wants to campaign for presidency. But the 60 days, to me, look to be too short and the President who is in the office can hold it within the beginning of the 60 days and not necessarily wait for the Monday of February. So, maybe, the committee could explain whether this is taken care of because we know the nature of our African politics. In some neighbouring countries, you are not even supposed to say the President is sick.

THE CHAIRMAN: I think now, I have heard about for all the Speakers, except one, who also half way agrees with the month but does not agree with the dates. Every body who has spoken has spoken in favour of the proposal. Could we have any view which is contrary? Let us start with Hon. Sebalu.

MR. SEBALU KENNEDY (Youth, Central Region): Thank you very much, Mr. Chairman. Mr. Chairman, I do rise to oppose the idea of fixing

the day. Although the principle of limiting is acceptable to me, but the idea of fixing a real date is a bit hypothetical to me. It does not put into consideration the realities that may be pertaining on the ground. So, Mr. Chairman, although I agree with the idea of fixing a period and even narrowing it to the extent that the incumbent will not take advantage of this, but it must have some degree of flexibility and my proposition is that, we could go in for the first week of February, for instance; because if we talk of a Monday, we may be befallen by a catastrophe, we lose a very high ranking Government official, say a Prime Minister or - yes, these are realities. But if we put a week, still what we are fighting, - *(Interruption)*- These realities are there, do not shy away from them.

MR. ATWOKI AMBROSE (Youth - Northern Region): Point of information! Thank you very much, Mr. Chairman. Mr. Chairman, I want to inform my Friend Kennedy that we are here trying to provide for an election date in the Constitution because of the historical problems we have experienced. Some Presidents have been trying to use the election date as a secret weapon. Secondly, I also want to inform him that his fears about emergencies and disasters can be handled by other legislation which will come out of the electoral law in Parliament. We cannot include all the details here. Exceptions to the date which has been provided in the Constitution will be put in the electoral law which will come out of Parliament. Thank you. It is not hypothetical.

MR. SEBALU: Thank you, but I do not find that information very useful because when you talk of reducing, for instance, minimising and historical reasons, I agree that this is a very sound argument but if you are putting it to a week, which weapon are you using if you say the first week of February? What is the weapon in that? Someone will know it will have to be one of those seven days of the first week. So, that one cannot serve as a weapon and I do not take it as a serious-weapon because it will have to fall within. I agree with the fact that if leave it open, then someone can abuse it, but if you make it the first week of February, I think that is restrictive enough and it cannot be used by the incumbent to take advantage of the others. So, Mr. Chairman, much as I agree with being very strict and reducing the chances of abuse, we must leave some room for flexibility. Seven days is convenient enough and everybody will know that within those days, we are

going to have the elections and it will give room for flexibility. So, Mr. Chairman, although I agree with a fixed period, we must allow some room for flexibility.

THE CHAIRMAN: Hon. Kiiza Besigye, you were one of those willing to speak against the proposal?

LT. COL. KIIZA BESIGYE: Mr. Chairman, I am not speaking against the proposal, I am seeking clarification from my Committee Chairman and possibly from you too, on this point which was raised by Hon. Aggrey Awori and which seems to be permeating through the contributions of those who have reservations about the possible need for a President serving beyond his term, because we have provided for wars and emergencies and I do not suppose that during those periods of wars and emergencies we would be able to hold elections.

Now, supposing the term of office of the President was to expire around or during that time, it would not be feasible to hold an election and I do not think that there is a provision here, unless I am clarified that what was being proposed by Hon. Atwoki, that subsequent legislation can do that without contravening the Constitution, then I think there may be need to specifically put it as an exception also as an additional (c), because if you look at the wars and emergencies in 129, unless the provisions of Clause (7) can be interpreted to give such an allowance, then, Parliament may find its hands tied in providing that the President may live beyond his term. So, I am just seeking for clarification, Mr. Chairman.

THE CHAIRMAN: Can I ask the Hon. Deputy Chairman of Committee Two to comment on that before I come in, if I may?

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, I would like to take this opportunity to first of all inform the Hon. House that the first point raised by Hon. Njuba on the 60 days is a point which the committee through the Chair can clarify like this. The 60 days period came about because you are lifting from the Draft Report and therefore, we did not see that it would become redundant since we are already providing for the period. It is therefore the submission from the Chairman that the 60 days period can be ignored and the Technical

committee will therefore be called upon to refine the provision minus the 60 days so that we are only left with the date of the Monday of February in the election year.

As for the question of the force majeure, Mr. Chairman, and Hon. delegates, when the committee sat to consider the provisions of fixing the date of the presidential elections, it tried in its wisdom to provide for the exception and the most foreseeable exceptions were those which would be occasioned in case the President resigned or the President was impeached or the President dies and that is why the exception appears in paragraph (b) which is later subsequently provided for in Article 112 of the report as recommended by the committee. It is true Hon. delegates that the exceptions that Hon. Kiiza Besigye has explicitly brought out did not come to the attention of the committee and it would, in my humble submission, be necessary that this Assembly provides for such an exception, a situation whereby a disaster occurs and affects the whole country and renders it impossible for an election to take place on the date fixed in the Constitution. Mr. Chairman, I think this situation is not covered by the residual power which was given to Parliament to make rules or laws regulating the procedure of the election because this enabling provision, Hon. delegates, is only specifically for making laws on procedure of the election of the President, but it does not provide for a substantive law on whether the election date should be altered or not in case of emergencies as envisaged by Hon. Dr. Kiiza Besigye.

So, Hon. Chairman, I think the House in its wisdom should try to provide for what the committee did not consider and I think this was a complete oversight and I think that the committee thought that having provided for the two exceptions, they were no other exception and that is human and possible. So, Mr. Chairman, I would like to go further to clarify on what Hon. Sebalu raised and what he called a hypothetical notion to try and fix the date. I would like to remind the Hon. delegate that the 25th of December in every Calendar year is celebrated by the Christian community as an anniversary of the birth of Jesus Christ. We did not participate in fixing that date and I think most Christians have found it useful in that they know in advance when the 25th would fall and the 25th in this case has been varying with the days of the week, but it has been able to give a foresight in planning to the Christian community on what to expect to do on such a date.

I would like to go further to say, Hon. delegates, that death has even occurred of very important personalities in the Christian community on the 25th, but it has never at any one time negated the celebration by the rest of the Christian community of the birth of what they consider their Jesus Christ. So, I think when we attempt here, Hon. delegates, to fix a date for other elections or for a President for a country, we are only trying to provide for certainty, we are trying to say that the population should know that on such and such a date, we are preparing to elect the number one of the country. Therefore, we should be able to put aside all other activities and get ready to make a choice, a choice which is very important, because that choice will affect the welfare of the person making that choice. I think we should look at this provision very realistically and we should not try to think that the fixing of the date is in anyway, an attempt to undermine the position of anybody or in anyway trying to disadvantage any other person, but we are only trying to ready our minds for an election so that whenever we are called upon to elect a President, we make the right choice having been made aware in advance that on such and such date, we are going to choose the President of our country. I thank you, Mr. Chairman.

THE CHAIRMAN: I think we should consider analyzing this one, but we did raise the question of the third exception to take into account what Hon. Aggrey Awori calls force majeure. Will that be by way of empowering Parliament to extend the period - for a given period not exceeding something like three months in the event of that sort of thing being the situation or in case of war, until the war is over? I mean how do you handle that?

MR. RINGWEGI: Mr. Chairman, my humble submission on that point would be that, this Assembly sitting here, cannot oversee that kind of situation and therefore, it would not be very wise for us to try and provide for that exception. I would therefore agree with you, Mr. Chairman, that we should try to empower Parliament so that when such a situation arises at all, then the Parliament of the day, being an elected representative of the people, can provide adequately for such a situation by either extending the period, meaning therefore that elections will be suspended when it falls due and then a period provided within which an election can take place and therefore, all the other provisions of the Constitution would come into place after such an election is held. I thank you, Mr. Chairman.

DR. KABAYO (Kassanda South): Thank you, Mr. Chairman. Mr. Chairman, there has been a lot of support for this formulation, many people have advanced the reasons in favour of the Motion saying that it will create certainty and it will prevent snap elections and so on. But in my view, Mr. Chairman, this formulation actually invites snap elections. If you read the way it is put, that "*not less than 60 days before the expiration of the term of the President...*" that could be even - (Interruption)-

THE CHAIRMAN: The 60 days will be removed - the reference to 60 days will be removed so that it will read, the election of the President shall be held on the first Monday of February, except in case of - am I correct?

DR. KABAYO: Mr. Chairman, that was one problem which has been sorted out but there are several other problems I wanted to point out in that formulation some of which have been pointed out in form of emergency situations which emergency situations could even cause extension of terms and so on. But Mr. Chairman, we can be certain without being necessarily exact and specific, the future is very unknown to many of us. There is a formulation which I have sent you, Mr. Chairman, which would be certain also but not necessarily that exact because exactness can also have its own problems. If you have a Constitution which we cannot comply with strictly, then, it will cause problems also. There are problems that could arise. For example, the country could be faced with a number of Budgetary constraints which would require certain adjustments to be made in some days and so on.

Mr. Chairman, I think that we could, with your permission - I could point a formulation which in my view would be - would create certainty for the election but not in the exact terms, such exact terms that would cause problems. If you say that the election of the President shall be held within 60 days of the expiration of the term of President or Acting President as the case may be, and that the date of the election we referred to in that Clause shall be declared not less than 60 days in advance, Mr. Chairman this will not require us not to specify exceptions and even in the case of transitional provisions, we need not to take it in the main body of the Constitution. Many people feel that this is better drafting because then we do not have in the main part of the Constitution transitional provisions. Then secondly, Mr. Chairman, this formulation

would be universal in the sense that it will apply in all situations whether the term of the President has been extended because of emergency or whatever situation we are in. It will be much more universal and will create very few grounds for discrepancy with the Constitution. Mr. Chairman, I beg that we consider that formulation and if you allow me, I can move it formally, Mr. Chairman.

THE CHAIRMAN: But in other words, you are saying, you do not agree with fixing a date that is the summary of it really. You do not agree with the idea of first of February?

DR. KABAYO: Mr. Chairman, I do not agree with the necessity for specifying a date in the Constitution because of the unknown future that we will be faced with.

THE CHAIRMAN: How does yours cater for the unknown?

DR. KABAYO: Mr. Chairman, it does because it is much more versatile in the sense that it relates only to the end of the term and requires a notification which will be within reach, the 60 days. Two months is a reasonable period which would not be contradicted. But if we announce a date years in advance, it may be difficult to follow, but a date which is announced within two months would be easier to comply with.

THE CHAIRMAN: Hon. delegates, the Hon. Member is suggesting that we should consider a provision to say "*the election of the President shall be held within 60 days of the expiration of the term of the President, or acting President.*" I do not know how it brings in the acting President one and then "*the date of the election referred to in Clause (3) of this Article, shall be declared not less than 60 days in advance.*" This is just a proposition - I just wanted to see how the Floor reacts.

AN HON. DELEGATE: Point of clarification! I wanted the proposer to clarify to me in any election, whether a date is not proposed, and should anything happen, what happens, what do we do? So, you cannot rule out the possibility of a problem even if you do not fix the date. So, I believe fixing a date has no problem except that we have to provide for an alternative, but a date should be fixed. Thank you Mr. Chairman.

MR. ELYAU (KALAKI COUNTY): Mr. Chairman, I do not see why people fear to fix the date. First of all, Mr. Chairman, we have our day of the parents, it has been happening and nothing really affects that day. Even Christmas Day has been there, people know it, whether people die or not, there is Christmas Day. We want this day to be fixed so that people in Uganda will know the actual day of getting a new President, should that day come. That is all.

THE CHAIRMAN: Now, let us, I think, now go to the final stage of this question. It would appear the proposition from Hon. Kabayo is not getting much support from the Floor. I was testing the ground. I think let us go on to subject to two things, by the Technical Committee, the rectification of the reference to 60 days and the subject to - but there should have been some - because if we pass this, we have another problem, this question of the contingencies. How do you make provision for it Hon. Ringwegi?

MR. RINGWEGI: Mr. Chairman, I had already alluded to - when I was clarifying that the contingencies could be catered for in the enabling provision which gives the residual power to Parliament. I submitted that it would be wrong for the Assembly to try and provide for that exception now.

THE CHAIRMAN: So, are you suggesting that you can make provision by - can you consider an Amendment on proposed Clause 8, so that it carries more than it is carrying now?

MR. RINGWEGI: Mr. Chairman, Clause (8) which we have not yet come to is a general provision which enables Parliament to make law on procedure and I thought that any amendment could be brought on that so that instead of dealing with procedure only, then we could also empower Parliament to make substantive law to provide for an exception in case of a force majeure or in case of these unforeseen circumstances preventing an election being held on the fixed date in the Constitution.

THE CHAIRMAN: Hon. Njuba, what do you say? Did you have a formulation in mind?

MR. SAM NJUBA: Mr. Chairman, I can see we have provided for almost all situations, except what Hon. Kiiza Besigye was saying. When you have

a chance to look at the Parliament, we have given him certain periods when they can extend it if they cannot elect a certain number of days or months, you can extend up to and we can use the same formulation handled by the Technical Committee to provide for a similar situation. If we cannot hold the presidential elections by the first of February because of a war or a state of emergency, then we could provide for a specific extension within this period or the Parliament to review the situation every so many months. We have to provide that one when we come to Parliament, but we omitted it. Thank you.

MR. BIDANDI SSALI: Mr. Chairman, since we seem to all agree with this exception, I would suggest that we leave it to the Technical Committee to provide a clause under (3) of this report because there is - except in the case of (a), (b) and then they provide a clause which is formulated to take care of these exceptional circumstances and which also should include the involvement of the Parliament.

THE CHAIRMAN: Okay. So, now let me put the question as formulated on Clause 3.

(Question put and agreed to)

THE CHAIRMAN: Hon. Ringwegi - Clause 4

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman and Hon. Delegates, Committee Two recommends to this Plenary that Clause (4) of Article 106 be amended slightly by deleting the word "person" and then substituting therefore, the word "candidate" so that the new Clause (4) should read "A candidate shall not be declared elected as president unless the number of votes cast in favour of that president at the presidential elections is more than 50 per cent of valid votes cast at the election." The Amendment, Hon. Delegates, is a slight one. It is a substitution of the word "person" by candidate. The rationale appears in the report that it is only a candidate who can be declared elected, not just any person. I beg to move Mr. Chairman.

(Question put and agreed to)

THE CHAIRMAN: Next.

MR. RINGWEGI: Mr. Chairman and Hon. Delegates, Committee Two would like to

recommend to the plenary that Clause (5) should read as follows: "Where at a presidential elections no candidate obtains the percentage of votes specified in Clause (4) of this Article, a second election shall be held within 14 days after the declaration of the results in which the two candidates who obtain the highest number of votes shall be the only candidates and the candidate who obtains the highest number of votes cast in the second elections shall be declared elected president." Hon. Delegates, the Committee inserted a time frame within which a repeat election should be held. The idea is that we should not leave it open-ended. In case there is need to repeat a presidential election, we should insert a period within which such repeat elections should be held and in the wisdom of the Committee, it is recommended that the period of 14 days after the first inconclusive election should be adopted as the period in which the repeat election should be held. I beg to move Mr. Chairman.

THE CHAIRMAN: Hon. Karuhanga.

MR. KARUHANGA (Nybushozi County): I wanted the Chairman to clarify to me two things. One, if there is a tie between two candidates who are occupying the second position, what happens? Is it allowed for them to have all the three or what do we do in that case? The second clarification I wanted is whether 14 days is realistic in light of the fact that counting of votes of the whole nation may in fact take two weeks.

THE CHAIRMAN: But I think it is two weeks after declaration. Even if it took two months to count the votes.

MR. KARURANGA: But what about the logistics that are to be put in place again and the Commission, the people sending back the ballot papers, the new photographs to be taken, maybe printing, all these? Really, two weeks to me looks as if we think the country is extremely efficient. Did this occur in the Committee that this period was too unrealistic?

THE CHAIRMAN: Hon. Lukumu Fred, you had your hand up. Have you been satisfied and you have withdrawn your intention to intervene?

MR. LUKUMU: Mr. Chairman, I had wanted to clarify to Hon. Karuhanga what my chairman has already expressed about the - or rather what the Hon. Chairman of the House has clarified about the 14 days referring to the period after the declaration of the results.

THE CHAIRMAN: But even the first query by Hon. Karuhanga - when you say in which there will be a re-election in which the two candidates who obtain the highest number of votes..., does it matter whether they tied or not? I think we take them as to have obtained the highest number of votes - the two of them as against the rest. *(Interjection)*

THE CHAIRMAN: Yes, but they are two!

MR. KARUHANGA: But it will be three!

THE CHAIRMAN: Oh, you mean in relation to the first?

MR. KARUHANGA: Mr. Chairman, I was saying that if there is a winner who does not get 50 per cent and then the second group tie, the one would be number 2 and so does not get 50 per cent and ties. So we will be having three candidates now.

THE CHAIRMAN: Hon. Ringwegi, what do you say to that? Let the Chairman tell us.

MR. RINGWEGI: Thank you, Mr. Chairman. The point raised by Hon. Karuhanga appears to be so hypothetical but it is possible that it can happen. I would like to say also that if two tied at the second position, it is also possible that even four or five could tie at that position maybe and therefore, instead of having one or two candidates in the repeat election, we may have to have now 5 or 6. So, that position, Mr. Chairman, is possible, but very very unlikely.

THE CHAIRMAN: Hon. Mbura-Muhindo, did you find an answer for us?

MR. MBURA-MUHINDO (Busongora South): I would also like to oppose the issue of the two weeks. It is not possible because we have gone through elections and we know what it is. When you have held the first elections, all the materials have been used and therefore, there will be need to get fresh materials to hold a second elections and most of these materials at times are not done here and then you think within two weeks you will have gone all around after all this excitement and when even the officials could have gone through an excitement. It is not possible. Let us do things that are practicable so that we do not tie our hands and mislead the future. Personally, I would suggest at least not more than three months.

THE CHAIRMAN: Let us resolve one thing at a time. There is reference to the question of the two candidates who have taken second position. Okay, you can be lucky and get number one and number two but as it has been pointed out, you can also have three or even four. How do you handle that? Prof. Kabwegyere.

PROF. KABWEGYERE (Igara West): Thank you, Mr. Chairman. I think if we were to think of the actual figure, it may be very unlikely - very very unlikely that we do not have a clear winner and then the next two combining their score such that we have an *overall winner*. I wish you were able to look at the actual voters to the last CA elections and see how many voters we have to divide to these three candidates. But even if that were the case, Mr. Chairman, I do not think it would be breaking the Constitution if you had now an election and the three candidates continue because we have had - you have a first position and a second position, only that in the second position there are two making it three. It will not be contrary to the Constitution that you now have those three or four people repeating the elections because Mr. Chairman, it is just like the normal expectation at birth. Usually one child is expected but mothers do not resist or if they try, obviously nature insists that the other children - if they are twins or more - are also born like in the recent case of 17 children by one mother in four hours. The only thing will be that there would be more time taken in counting the votes. Let us leave it, it is a normal occurrence although it is very very rare. Therefore, I move that we go ahead and pass the Clause.

THE CHAIRMAN: Let me hear from Hon. Sakwa. He may have some computer solution to the issue.

MR. SAKWA D. (Bungokho South): Thank you, Mr. Chairman. I think it is important to provide for this so that we do not get a stalemate when we get a tying position. I was thinking that, Mr. Chairman, we would modify the Clause by saying a repeat election will be held within the agreed days in which the candidates occupying the first and second position participate, then we do an elimination exercise until we get the clear majority. Thank you, Mr. Chairman.

THE CHAIRMAN: Is that formulation understood? Could you please repeat it so that the Members are clear.

MR. SAKWA: I was saying that we formulate it that "*where, at a presidential election, no two candidates obtain the percentage of votes specified in Clause (4) of this Article, a second election shall be held within 14 days after the declaration of the results in which the candidates occupying the first and second positions...*"

THE CHAIRMAN: Okay, "*occupying the first and second position*" so that if it is one and one, that is fine. If it is one and three others, that is fine. What problem do you see with that?

LT. COL. KIZZA BESIGYE (NRA Delegate): Mr. Chairman, the problem I feel with that is the end of that provision where we ultimately provide for the elected person because it says; "*...and the candidate who obtains the highest number of votes in the second election...*" I think this will have to be maybe changed to second or subsequent elections but considering the difficulty of making a precise provision for all possible occurrence, I think we would be better served by drawing our attention to the provisions of Article 151 which I think was wisely put in the constitution. The provisions of Article 151 says that: "*Subject to the provisions of this constitution, Parliament may provide for any matter which arises and for which no provision is made under this Constitution either expressly or by necessary implications.*" I do not see how we can provide for all the most unlikely circumstances that may arise. I think it was for that purpose that this provision was put.

THE CHAIRMAN: I think I would still say that we could take the Sakwa formulation and in the unlikely event of a situation arising, then the provision the Hon. Member is referring to can be used by Parliament - should we adopt it - "*Where at a presidential election no candidate obtains the percentage of votes specified in Clause (4) of this Article...*" - do we say a second election?

AN HON. DELEGATE: Repeat election.

THE CHAIRMAN: - a repeat election shall be held within 14 days of each other or what? Because you see it also creates problem. You cannot say repeat elections will be held within 14 days.

AN HON. DELEGATE: No, we can change!

THE CHAIRMAN: Hon. Bagen, do you have an answer in terms of formulation?

MR. BAGENA (Bufumbira East:) I think we would not like to leave that situation pending too long nor do we like to be impracticable. I would propose within 30 days - I think that is enough time to get logistics back in place.

THE CHAIRMAN: Anyway, I think let us agree on just two things. We have agreed that it will be the persons occupying the first and second positions who will take part in the elections. Now, the question left is, is it 14 days or 30 days? Hon. Kabugo.

MR. KABUGO (Nakaseke County): Thank you very much Mr. Chairman. Mr. Chairman, I belong to Committee Two. We had considered a number of issues that have already been provided in this Constitution that the President or presidential elections should be taken or conducted within sixty days and we want this exercise whether it is a repeat or not, it has to go to be accomplished within those 60 days. If we wait for another 30 days, we might end by over stretching the incumbent president who will be extending his duty in office illegally. We want this person to go through elections within the next 14 days assuming that the Commissioner, Electoral Commission will always be producing enough logistics to cover eventualities.

THE CHAIRMAN: Hon. Kajara.

MR. KAJARA (Mwenge South:) Thank you, Mr. Chairman. The period of 14 days, I suppose, is too short considering that you have gone through rigorous elections and considering that you do not have spare ballot papers to say that so and so has come out - the first three have come out so we shall just list them there and then considering that you have to do some publicity, the registers and the ballot boxes will have been returned maybe to the returning Officers and to have to return them to the polling stations within 14 days would be too short a time. I would rather agree that we give it 30 days so that the Commissioner is able to adjust and print ballot papers, move ballot boxes and create other logistical facilities to enable a free and fair election after a flop of the first election.

THE CHAIRMAN: Hon. Delegates, the controlling word there is "within." Even if you put 30 days, they could do it in 14 days, if they so feel like, if they have the capacity - they can do it but the highest number of days allowed would be thirty

days, if we adopt thirty. We are not saying it must be thirty days. The word there is "within". I think let us really proceed. We have agreed on two things: One, that the position that one and two candidates occupying those two shall take part in the re-election. Two, It seems the consensus is that a 30 days maximum be allowed. In which case, the rest is drafting and we leave it to the Technical Committee. Agreed?

(Question put and agreed to)

THE CHAIRMAN: No, we are re-opening the matter. Hon. Njuba what is this little clarification?

MR. NJUBA: Mr. Chairman, you said that those who take the first and the second position in the repeat - now, I am imagining a situation where the first two have tied, there is no need for them for calling on the second people to join in the race!

THE CHAIRMAN: Well, in this case, we are saying that in case there are two tying on the number one position, and two tying number two position, the four should take part in the election.

MR. NJUBA: No, the two - in the first one!

THE CHAIRMAN: No, once you say the first and second position, we must be prepared to accept that we could have four even. But that is most unlikely.

MR. NJUBA: Then, the second point was, Mr. Chairman, on 14 days. There was a point they had not raised. Committee members considered the situation that the results would be announced at the polling stations and then the total will be announced, now, if you make the period too long, then you start the movement, all those presiding officers will have to come to their various stations and go back rather than keeping them there and the only expense will be printing and transporting of voting papers.

THE CHAIRMAN: But Hon. Njuba, we have said within such and such a period. We are not saying that they must use the thirty days.

MR. NJUBA: I am not insisting Mr. Chairman.

THE CHAIRMAN: If they are in a position to do it within the next week, they should be in a position to do it. I think we leave it to the Technical Committee to polish up the details but we accept

those principles. (*Interjections*) No, I think if we continue clarifying, we will not finish. I think it will come under re-consideration. Hon. Ringwégi, since we have left the matter to the Technical Committee, you could feed those technical matters in the committee and they take it into account when formulating. Hon. Ringwégi, could we go on to the next Clause please. We are very slow today.

MR. RINGWEGI: Thank you, Mr. Chairman. Committee Two recommends to the Plenary that Clause (6) be amended so that the new Clause would in effect amend Clause (6) and (7) of the Draft. The rationale for this all encompassing amendment appears on Page 15 of the report. The idea of the Committee, Mr. Chairman, is that there should be collective responsibility on behalf of all members of the electoral commission so that it is not left only to the chairman of the electoral commission to declare the results and then we get a situation whereby members of the electoral commission declare the results and then we get a situation whereby members of the electoral commission disown the results as declared by the chairman of the electoral Commission. I would like to remind Hon. Delegates of what happened not long ago in this country where we had some complaint in the Electoral Commission between the Secretary of the Electoral Commission then and the Chairman of the Military Commission about the 1980 elections results. So, the Committee deemed it necessary that there should be collective responsibility and therefore, they came up with a formulation which now appears as Clause (6) of their report. The new Clause 6 therefore, would read as follows: "*The Electoral Commission shall, in writing and under its seal publish and declare the results of the presidential elections within 24 hours after ascertaining the results.*" I beg to move Mr. Chairman.

MR. CHEBET MAIKUT (Kween County): Thank you very much, Mr. Chairman. I am seeking clarification from the Chairman Select Committee Two on what happens when the presidential elections results are not ascertained soon by the electoral commission. In other words, a situation similar to what happened to Abiola in Nigeria. In other words, Mr. Chairman, I believe we should provide for such a situation by including in an element of time, a period in which the electoral commission can ascertain the results. So, Mr. Chairman, I am seeking that clarification from the Chairman.

MR. RINGWEGI: Thank you, Mr. Chairman. The Hon. Delegate is envisaging a situation whereby it may not be easily possible for the Electoral Commission to ascertain the results of the elections, although he has not come out clearly why it would be difficult for the Electoral Commission to ascertain the results. Mr. Chairman, when the Committee considered this Clause, the Committee realised that whether as Hon. Njuba pointed out that the initial results at every polling station would be known at the end of the polling day and it is only the overall total which would take some time, the ascertaining of the results is a matter of procedure. The Electoral Commission would have in place mechanisms by which results at the various polling stations would be relayed to the headquarters and it is our humble view that there would be no reason why the Electoral Commission would withhold these results if they came in unless you are thinking, of a situation of fraud or bad motive but Mr. Chairman, having given the Electoral Commission the collective responsibility to declare the results, it would therefore be inconceivable that any member of the Electoral Commission would in his own wisdom, withhold the results of a particular polling area or a particular polling station because there is collective responsibility on all the members of the Electoral Commission. Furthermore, Mr. Chairman, I would like to allay the fears of any mollified intention on the part of the Electoral Commission because we are trying to establish an independent Electoral Commission. This, all Hon. Delegates are aware of. Therefore, having provided for an independent Electoral Commission which we all believe will not be subject to any manipulation by any other organs of the state, it would, therefore, in our humble submission, be inconceivable that the results of an election would not be easily ascertainable. I therefore submit that the Electoral Commission that we are trying to put in place will be independent and it will act bona fide and all the results of the Elections will be ascertained within the period to allow for declaration for such results.

THE CHAIRMAN: Hon. Kamuron.

MR. KAMURON (Kongasis County): Point of Clarification! I am just seeking a simple clarification why the Committee dropped the words, "*The Chairman of the Electoral Commission*" because they left it a bit vague. Of course, the Electoral Commission has to have a chairman who is the overall organiser of the elections. Why was the chairman dropped from the Clause?

THE CHAIRMAN: Hon. Karuhanga.

MR. KARURANGA (Nybushozi County):

Thank you, Mr. Chairman. In addition to Hon. Kamuron's clarification, I wonder whether in a country like Uganda where we are not nationally computerised and where the elections are not just going to be so computerised, whether the word "ascertain" will not mean that the Commission can take a while ascertaining while the nation waits, whether it will not be a good idea to accept the proposal by Hon. Maliro and Hon. Masiko. I do not mind if you give them three days or four days but after they have received the elections, the country should know that they are going to wait for three days or four days and then they will know the results. But to say that we ascertain, after they have ascertained and then they will know the results but to say that we ascertain after they have ascertained and then they declare in 24 hours, that gives them one week or one month. Any time is anybody's guess. I would rather say that the committee look and ascertain that we know what this ascertaining is all about. I think we should say, after they have received the results and we give them - even if it is a week, but let them take their time knowing they are working on a target and I think the Chairman should take the over-all responsibility to declare the results, not the general organisation.

MR. ABALIWANO: Mr. Chairman, I am of the view that probably 24 hours is too short a time. I am one of those who suffered this when my results were declared as wrong results. They made the person who become the second to be declared the winner and this was as a result of this kind of waiting and not the commission ascertaining - as the word here says - what exactly happened. It was after my intervention that they ascertained and this was after a couple of days. So I think we need to give a bit more time for the commission to ascertain so that it should not be less than 48 or where there is a holiday like last time, a holiday was declared at that time and apparently for a couple of days, everybody in the country or in my constituency was busy trying to see what they were going to do. It could have cost lives because some of these elections can really be very heated up. So it is important that we should give the commission adequate time to ascertain who has actually been elected and in my view, I would recommend not less than 48 hours after the results have come out.

MR. GEORGE ZZIWA: Thank you, Mr. Chairman. I just wanted to inform the Delegate who has just left the Floor that we are not saying that the ascertainment will be made within 24 hours. We are talking about the election results, that they should be given within 24 hours and not the ascertainment of the results. Thank you very much.

MR. WANENDEYA: Thank you, Mr. Chairman. Mr. Chairman, possibly to allay some of the Hon. Members' fears, we could increase the time period to 36 hours which will be more than reasonable but instead of saying "ascertainment", we just say 36 hours to declare the results. Mr. Chairman, as Hon. Karuhanga was saying, this word "ascertaining" brought lots of problems in 1980 and therefore "ascertaining" could mean cooking the results in pots which will not be the best way. So, I would propose, Mr. Chairman, with all due respect - and I want Delegates to make sure that we agree on 36 hours in which to declare the results and that will be more than fair to have got all the results from every corner of Uganda. I thank you, Mr. Chairman.

THE CHAIRMAN: Now what really is intended? Is it to say that the Electoral Commission shall ascertain and declare results within 24 hours from the close of the polling or is it intended - you see, we must tie it to the other one if really what you want is to give 24 hours.

MR. BART KATUREEBE: Thank you, Mr. Chairman. In my view and I was a member of Committee Two, Clause (6) follows from Clause (5). In Clause 5, we have given the percentages that the Electoral Commission will first ascertain before they say so and so has been validly elected. They must look at those percentages and that is where the word ascertaining becomes very important because they must be satisfied that the conditions given in Clause (5) have been satisfied. Otherwise, they are not just mere conduits for declaring results. They are supposed to declare valid results and to declare valid results, they must ascertain that the results are valid. How do you remove the word ascertain from this? Secondly, we removed the word "Chairman" because we wanted it to be a joint declaration by all members of the Commission to avoid the chairman maybe, being manipulated declaring results which other people may come and dispute. We have had this kind of situation where members of a body say we do not know what our Chairman declared. That was why we said it is not just the chairman. It is the

Electoral Commission as a whole, in writing with their signature and seal. Thank you Mr. Chairman.

MR. PONSIANO MUGENYI: Thank you Mr. Chairman. Mr. Chairman, I think what we are interested in is to give this Commission the time limit in which it should receive the results, ascertain the results and for us, we are interested in clearing the results. We are not interested in having this ascertaining which is a vague word, which as Hon. Karuhanga has said, could take as much as a week. I would suggest that we give this Commission a limited time, say within 48 hours within which the Commission would ascertain and declare the results such that the Commission will find time to ascertain the results. But for us, we want the results after a particular time after the polling is closed. So I would think that we say within 48 hours for the Commission to ascertain and declare the results.

THE CHAIRMAN: Okay, if that is what you are looking for, then the formulation would be simply this. *"The Electoral Commission shall ascertain and declare the results in writing and under its seal within 24 or 48 hours from the close of polling."*

PROF. KABWEGYERE: Thank you, Mr. Chairman. I think the last formulation you have presented is the best one. The Electoral Commission has a duty of ascertaining. We do not have to bother about that process, only that we are saying, you do what you are supposed to do and declare the results within 48 hours. I would therefore like to move that we specifically mention 48 hours after the ascertainment has been done. After all the necessary things have been put in place, the results are declared 48 hours after polling has stopped. I thank you.

MR. KAJARA: Thank you, Mr. Chairman. I would like the Chairman to clarify, if you provide for a period of 48 hours only and well knowing that due to logistical problems, the Commission may not be able to get that information verified, ascertain and announce those results within 48 hours, what would happen if the results were not actually announced within 48 hours? It would mean that those results are null and void or whatever.

MR. MALIRO: Thank you, Mr. Chairman. I did not want clarification as such but I thought the word ascertain was not possible to rely on and I have circulated an amendment whereby I wanted to remove the word ascertain and replace it with

receive. If the Chair gives me permission, I would move that one and see how it comes in.

THE CHAIRMAN: Hon. Maliro, I think the word ascertain, for those of us who draft laws, for instance when you are talking about taxes to be imposed, you can say, "the tax to be imposed shall be ascertained in accordance with the following formula" and then you set out the formula and it is that formula which is used to ascertain. In this case, we have said so in the previous paragraph, that unless you get 50 per cent of the votes cast, you cannot be declared. So they have first to ascertain that you have obtained more than 50 per cent and then declare. The problem with this one as it is formulated was that it was assuming that after you have applied the formula and found who has won, then you can declare within 24 hours. But we are changing it to say the Commission must ascertain and declare within a specified period from the close of polling. Now the only problem of Hon. Kajara is what is the effect of non-declaration within that period of time. But then you cannot say that within 48 hours provided that non-declaration does not affect the results of the election. In which case, you are saying that you do not have to keep that deadline. All that you have to do is to find what you consider within Ugandan context a reasonable time. I think that is the only thing really.

MR. KAJARA: In that case Mr. Chairman, if that is the thing, that is okay. If it is within, that is okay. What I was objecting to was this thing that after ascertaining.

THE CHAIRMAN: No, no, that one has been taken care of.

MR. KAJARA: But if it is within, that is okay and I think Mr. Chairman, 48 hours is adequate enough and within that time, he should have been able to add up and also ascertain that the results are what is expected and then they should be declared after that period. If not declared after that period, then the Commission could then perhaps be sued for non-compliance with the Constitution.

MR. MUKWAYA: Thank you, Mr. Chairman. Mr. Chairman, in my view, what I consider most important in this aspect is to provide a time-frame for ascertainment because that is where I see the problem. I think it is more difficult to ascertain than to announce results. Why do we not provide a time

frame for ascertainment which must be reasonable? Because that is why you have logistical problems and after ascertainment, then the time for announcing results can be regulated also accordingly. Mr. Chairman, my view and I propose that we should be seriously taking into consideration the time frame for ascertainment. We must provide time for ascertainment so that actually they do not receive results and keep quiet or keep the country waiting unnecessarily and anxiety arises. That we ascertain time and then after ascertaining, then we give them maybe 24 hours or 48 hours for announcing the results. That is my proposal Mr. Chairman.

THE CHAIRMAN: The formulation which is now on the Floor was that the two processes must take place within that space of time. The processes are, one to ascertain and two to publish or declare and the question is, what time frame is reasonable?

MR. MUKWAYA: Mr. Chairman, my view is that we give each activity a different time frame.

THE CHAIRMAN: No, you see we do not have to guide the Commission on how to ascertain. If they become so technically competent and hook themselves to whatever gadgets and results come in within six hours of close of polling, they should be free to ascertain and declare. But we are saying that the extreme end is what we are looking for in the event of difficulties. I think that is what we are looking for.

MR. BIDANDI SSALI: Mr. Chairman, two points about the time. I think there is need for us to be realistic although we want to minimise the possibility of playing about with the results. Let us imagine that the voting is over in Kisoro, Kotido and areas like that, then the boxes have got to be collected within those areas and then counting within those areas which counting may continue through the night or most probably even the following day. So then moving from Kotido to here and then the Commission collecting all these and counting and ascertaining, I do think, Mr. Chairman, that 24 hours is very unrealistic. I would like to propose -
(Interjections)-

THE CHAIRMAN: Just a moment, let him finish.

MR. BIDANDI SSALI: I would like to propose after Monday, to have Tuesday, Wednesday and Thursday and then on Friday we except the results. That is my proposal.

THE CHAIRMAN: Hon. Bidandi Ssali, do you remember that Hon. Peter Akure was the first one to be announced in the results of the last elections? The first winner on the radio was Hon. Peter Akure from Jie!

MR. BIDANDI SSALI: - and incidentally, I was announced the following day although I was in Nakawa. Mr. Chairman, I had a second point.

THE CHAIRMAN: Information from Hon. Kabwegyere.

PROF. KABWEGYERE: Point of Information! Thank you, Mr. Chairman. I would like to inform Hon. Bidandi Ssali that as we talk now, there is enough technology for each box to be in transmission unit to a main frame of computer. That knowledge is already available. So, let us not talk as if this has not happened. Now, the fact that it is not yet here for the next elections does not mean that the elections we have after the five years, will not have that kind of technology. The knowledge is already available.

MR. BIDANDI SSALI: Yes, Mr. Chairman, that is why there is this word "within" that period so that it takes care of our fears and also this technology. But the second point I was raising Mr. Chairman, is this one by Hon. Katureebe over the Electoral Commission. I think it is wrong right from the word go here, to suspect the Chairman of the Electoral Commission. We have already given him all the confidence every where else and here you are saying that now it is the entire commission. What we are trying to avoid will be even worse. Supposing, for argument's sake, three of them say no and the Chairman says the other round and so on, are you saying that you are taking the majority of the Electoral Commission, that is, stretching your suspicion over this? I think Mr. Chairman, it is important that once we do trust the Chairman of the Electoral Commission, the Chairman of the Electoral Commission should be the spokesman of the Electoral Commission and therefore, I do not really agree with removal of the responsibilities from the spokesman of the Commission and give it an amorphous - give the responsibility to an amorphous body which will be within open possibilities of disagreement. So, Mr. Chairman, in short I am opposing "within 72 hours."

THE CHAIRMAN: I think we have 24 hours, 48 hours and 72 hours. Hon. Masiko, you have some idea on the hours?

MRS. MASIKO (Rukungiri District) Thank you very much, Mr. Chairman. I support the 48 hours just because I had seconded a Motion which had been moved by Maliro to remove "ascertaining" and put receiving all the results. The reason why we had moved this Amendment is because we had fears of how you can measure "ascertaining". We realise that you cannot measure how much one can go on doubting and we had a situation in mind whereby the Commission can see that we have received the results but we are not sure so we shall have to go out, maybe in every district and find out if that is the truth. So that it can take even about a week and then they say after a week we start counting the 24 hours. Now, we realise that was a big mistake because it can give room to rigging and cheating. We realised that if you give this longer hours, you are bringing in a loophole whereby people can rig, can change whatever is in the ballot boxes. So, Mr. Chairman, I think we should not give it too small a time like 24 hours but at the same time, 72 hours might be abused, might be too long and can find some abuse. So, I support the 48 hours to be ideal to include ascertaining and the announcement of the results. Thank you very much, Mr. Chairman.

MR. NGOBI (Presidential Nominee): Thank you, Mr. Chairman. I would like to support the time of 48 hours because I think in this matter, we all know that we are dealing with a situation where some people by mistake may think that it is a question of life and death. This is where even we lose lives and as we had the example of 1980, rigging will cause political chaos. So, what we do is to try and avoid the possibility of that rigging because we have had very clear examples whereby if you involve - you have a procedure whereby you give a chance of rigging. For instance, movement of ballot boxes or giving even chance to one man like what we had in 1980. I know specific cases where ballot boxes were counted with some candidates even accepting defeat later on were declared as elected because somebody said, it is me only to declare. So, giving the collective responsibility to the Commission is not a bad thing. If there is disagreement, that is an indication that there is a mistake and the country should know about it. Therefore, I think the present formulation of giving the Commission 48 hours - I would have gone for 24 hours because I think that when you have the election, you should count the votes at the polling station but taking into account that maybe

our conditions in Uganda are not as ideal as elsewhere, that is why I am persuaded to accept 48 hours. Definitely 72 hours or anything above 48 hours is, I think, beyond what should be tolerated and therefore, I think that we should go in for 48 hours within which to declare and publish the results not after results have been done.

Also on the question raised by Hon. Bidandi, I think we are not going to cause problems in the this present formulation which says the Commission - because after the Commission, obviously one of them who is the Chairman will be speaking on behalf of the Commission and not just to speak on his own alone - he must do that in Committee. Thank you very much.

THE CHAIRMAN: Hon. Rwabiita.

MR. RWABIITA (Ibanda South): Thank you very much, Mr. Chairman. I support the time period of 48 hours. Reasons being that today with our system we shall be using, that is electing and counting the votes on the Poling Station, there is no need to prolong the days or the hours for declaring the results because as soon as the Presiding Officer gets the results and they are signed by the agents there, he will send either by telephone or by the taxi to the District Headquarters where the D.As or the returning officer will send the information to the Commissioner. Mr. Chairman, another thing you must consider is the anxiety, especially for the election of a president, that will be hanging over the nation for four days. That is too much. With the presidential elections, we should be having a few candidates, not like the parliamentarians. If you have got 5 or even 6 candidates, it will be easier to handle them nation wide and give these results and send them down to the commissioner. So, Mr. Chairman, with insecurity in the nation, not to be left hanging in there because we have elected a president and we have to wait for three days to know the results - that can cause a lot of anxiety unnecessarily and with counting of votes in polling stations, will ease the *ascertaining* of the results throughout the nation. So, Mr. Chairman, I propose 48 hours.

THE CHAIRMAN: Hon. Mulongo.

MR. MULONGO: Thank you, Mr. Chairman. I would just like to oppose some scenario possibly to give us some stretch of time that maybe you can

require which in my thinking could be more than 48 hours. You can start the polling on Monday and this Monday because of weather or some other circumstances, people start late, the voting goes through the next day and the voting ends quite late on the second day, Tuesday and then for fear of malpractice, these ballot boxes are taken to a police station nearby. Of course, the results would have been known but to be transferred to the District the following morning - Wednesday. The distance from that station to the district is such because of maybe the nature of the road and means involved, you take quite a good number of hours to reach the district headquarters and that is late on Wednesday and the information on Wednesday goes to Kampala late. Now, we are giving the Commission some time to run through the ascertainment to be able to publish the information. So, I think you can see that at least 4 days are necessary. *(Interjections)*

THE CHAIRMAN: Yes, Hon. Mulongo, you have provoked the Floor. Hon. Abaliwano, you want to inform him?

MR. ABALIWANO (Bugabula South): Can I tell the Hon. Member that we do not wait for the boxes. The reason why they declare results at the place where the voting has taken place is exactly to carry the figures, not the ballot boxes for heaven's sake.

THE CHAIRMAN: Could Hon. Mulongo wind up please.

MR. MULONGO: Yes, I am just winding up. Mr. Chairman, I am talking of the movement of the persons involved in carrying results. We cannot talk of fax machines from the villages and so on and so forth. So, Mr. Chairman, I would like - *(Interjections)*

THE CHAIRMAN: Give him a chance, let him wind up.

MR. MULONGO: I did experience a similar situation in my area and it took two days voting and the results were taken to the district on the third day. This is very possible. Let us not put in the Constitution a time frame that will make things very difficult for the Commission to ascertain and announce results. Mr. Chairman, I would go by the 72 hours and not 48.

THE CHAIRMAN: Hon. Delegates, now we have actually 24 has been abandoned. We have been reduced to 48 and 72. There are those saying 72 and there those who are saying 48. What I will do is I will hear three people at random and see on those two. Hon. Bagena.

MR. BAGENA: Thank you, Mr. Chairman. The importance of the deciding the number of hours required is to enable an efficient Commission to receive, ascertain and do the needful. That is, declare. From past experience, certainly, 48 hours is more than ample, it is long enough to allow the Commission to get the votes from all over the country. It is short enough to minimise the dangers associated with nationwide tension and suspicion and suspension and it really does not give them a chance to start thinking of what to do with the results thereby is tempering with the outcome. So, I would like to support 48, Mr. Chairman. Thank you.

NR. WAMBEDE: Mr. Chairman, I understand suspension the people will be really undergoing but at the same time, we should be aware of the tension that the Commission will be facing. The Commission will be under tension. Do we really have results in time or are we going to publish proper results? Supposing in 48 hours, they publish the results, then all of a sudden they say, oh, there were still some other results coming in and then they announce others, you can imagine the situation we are going in. So, I would imagine the 48 is too short and not enough for the Commission. So, I would really advice the Members to support the 72 hours given the situation that our communication systems are not yet efficient enough really.

MR. LORIKA NABURI: Thank you, Mr. Chairman. Mr. Chairman, I would like to make a contribution on the time frame, being a person who comes from an area which is very remote from the rest of Uganda, and an area, which on more than one occasion has been referred to as a third world of Uganda. My Colleagues who have made contributions here about 48 hours, 24 hours, 72 hours are talking as if the ground is level as far as the facilities for communication are concerned in the whole Uganda. I would like to state here clearly that for an area like Karamoja, it takes time even for you to move from one parish to another. In the last elections, those who supervised the CA elections had to literally walk to reach to polling stations.

And the natives had to carry the ballot boxes on their heads to the nearest gombolola from a polling station. In the county I represent in this CA, it took us three days to get results from one station. In fact the box had been taken up on the mountain and the fellows remained there because it rained. Secondly, climbing was a problem. By the time they got there, they were all exhausted, they took time after elections after the voting and rested for two days, the fourth day, the box came down. The CGR, the DES were waiting. The DES was waiting for a box -
(*Interruption*)

THE CHAIRMAN: What order arises from what he is saying? Hon. Member, continue because I know there are mountains in Karamoja.

MR. LORIKA NABURI: So, Mr. Chairman, it was really a problem to get the box down. It took three days, for the ballot box to be brought down. But what I would like to appeal to my Colleagues is that, unless the Electoral Commission announces the results *separately*, then this would work but if the elections results have to be declared for the whole country at the same time, I think we need a good time frame for the Electoral Commission to get all the results. So, I am therefore - (*Interruption*) -

THE CHAIRMAN: Hon. Naburi, information from Hon. Okorimoe.

MR. LORIKA NABURI: I can take from my fellow Karimojong.

MRS. OKORIMOE: Thank you very much, Mr. Chairman. The information I would like to give Hon. Naburi is that, the box which he says took three days to come from the top of the mountain was not because the place was remote, but it was because the polling assistants rebelled because they were not paid. That is why they held a box. Thank you.

MR. LORIKA NABURI: Mr. Chairman, the press at that time was entitled to write anything they wanted. In fact, there were speculations. What Mrs. Okorimoe is referring to is what appeared in the press but for those of us who were on the ground, we know the reasons why the box delayed to be brought down to the polling centre. Therefore, I am trying to suggest, Mr. Chairman, that given our conditions in Uganda, where the technology professor Kabwegyere talked about is not available,

I think let us be realistic. Let us give the Electoral Commission 72 hours to get all the results counted and announced. I therefore would like to support the idea which has been advanced by Hon. Bidandi Ssali that 72 hours is very, very realistic for our condition. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, I think we have heard a very spirited debate on this one. We have heard three speakers at random, two supported 72 hours although the testimony of the second was eroded by evidence from another person from the same area. Then there is 48 hours supported by one - (*Interruptions*) No, that is just an attempt to make a speech all of you. Because you see, if we re-open the debate, I think in all fairness - because if you give one, you must give the other ones and then it will go on like that. Let us decide on whether we like 48 hours or not. If the Nos have it, then we have 72 hours - (*Interruptions*) No, no we can - or you want to start with 72. Let us start with 48. The proposition is that, we should take 48 hours. You see, the formulation was accepted that the Electoral Commission shall ascertain and publish, and declare results within - now, what we are left with - (*Interruptions*) - No, no. That formulation was changed. You are debating a different Motion now. What we had formulated was that the Electoral Commission shall ascertain and declare results in writing and under its seal within so many days from the close of polling. And so we have two propositions. Should we take 48 hours from the closing of polling or should we take 72 hours from the close of polling? So, for me, I was going to put the question on 48 and if the answer is no, then you have picked 72. Okay! This is not an amendment departing farthest is it. It was two propositions competing on the Floor. So, let me put the question. Those in favour of 48 hours.

(Question put and agreed to)

THE CHAIRMAN: We take 48 hours. Hon. Ringwegi, we are now going to the next clause. This has been a very important article in any case, anyway.

MR. RINGWEGI: Thank you, Mr. Chairman, and thank you, Hon. Delegates. Committee Two would like to recommend to this August Assembly for adoption Clause (7) which was formerly (8) in the Draft Constitution. The Committee considered Clause (8) in the Draft and there were no substantive

amendments to that clause because the Committee found it straight forward, and would like the Plenary to adopt Clause (8) now to be renumbered (7) as part of the constitution. I beg to move, Mr. Chairman.

MR. CHEBET MAIKUT: Thank you, Mr. Chairman. Our intention in Clause 3 in this same article, Mr. Chairman, is to provide for an element of flexibility within which the commission will organise the presidential elections, that is within the 60 days. But under this provision, we are saying that the president that has been declared elected shall assume office within 24 hours after being elected firstly, and secondly within 24 hours after the expiry of the term of office of the predecessor. So, in my view, Mr. Chairman, it appears we are trying to move away from that kind of flexibility which we intended to provide for in Clause (3) of this article. Because of a number of factors which were highlighted by Hon. Delegates like financial constraints, logical support and others, now I would therefore like to seek clarification from the Chairman as to whether it is really our intention, in this provision, to narrow down the spectrum within which to hold the elections to give the commission the 48 hours to ascertain and declare the results and the subsequent move to have the new president elected, taking over office. That is the clarification I am seeking from the Chairman. Thank you.

MR. ABBEY MUKWAYA: Thank you, Mr. Chairman. I am sorry to sound as if I am taking the House backwards but I have been raising my hand to seek clarification from the Chairman of the Committee as to whether it is not important to have put in the words "final results" because Mr. Chairman, the tendency has been, during the elections, to announce preliminary results. Is it not important, in his view, in the article we have just passed to put emphasis on the words "final results"? Thank you, Mr. Chairman.

THE CHAIRMAN: I do not think that that will be the concern of this House. If the Commission thinks they can have preliminary figures of their own, that is their working schedule really. But what we are interested in the constitution is the final position, the results.

MR. LOROT: Mr. Chairman, the Chairman of Committee Two seeks not to amend this new Clause (7) but I realise that this clause is already amended such that instead of "the" there is the word "a"; instead of "the person", it is "a person".

THE CHAIRMAN: Yah, that is if you look at (8) is it. Okay, you will take note of that, I know, you will answer all of them together I think. Let us hear from Hon. Ben Wacha.

MR. WACHA: Thank you, Mr. Chairman. Mr. Chairman, I think this clause sought to take care of a position where presidential elections are challenged in the first part of the provision. But then it negates the challenging of the Presidential elections under the second half of the provision. Mr. Chairman, let me explain. In the Committee, we expressed our views that a president who has been elected should assume office free of any disturbances which could be caused by his election being challenged. We were therefore of the opinion that, after the election of the President, a period of time should be provided to allow for the challenging of the presidential elections and for the court to be clear whether the elections have been properly held or not. I do not see that provision appearing under clause (7). I do not know whether the Chairman can explain as to whether we are going to provide elsewhere, or whether we are now agreeing that after a president has been elected, he assumes office and then the circumstances of challenging the elections can come after and without any other provision being provided.

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, I would like to begin with a point raised by Hon. Lorot where he refers to any amendment to the clause. Hon. Delegates will recall that in my opening remarks on the clause, I said that there was no substantive amendment and it was thought to be straight forward. So indeed, the word "a" was substituted for the definitive word "the" in the clause. So that, the opening word should be "a person". That one, Hon. Delegates, I think is a matter of English and the Committee, when considering this clause, thought that when we are talking about a person elected, we are not definite about which of the candidates contesting the elections would be elected. Therefore, I think it would be wrong to refer to "the person". That is why the committee is recommending for adoption the formulation in its report that the clause should open with a person elected president, during the term of president etc.

Mr. Chairman, on the issue raised by the Hon. Ben Wacha, it now brings clearly in my mind why we had a problem, Mr. Chairman, with Clause (3) of the article when we were considering whether or

not the 60 days was redundant. In fact, Mr. Chairman, during the deliberations of the committee, the committee had thought it wise that this time frame of two months should be inserted so that before assumption of office, the elected president sorts out whatever may be hanging about his election. This period of 60 days was intended, Mr. Chairman, to give time for challenging that election in court and the court pronounce itself on the petition presented before it. It was also argued Mr. Chairman, in the Committee that the 60 days period was a period which could be utilised by an elected president to look at his cabinet before finally assuming office. He would be looking at his campaign officials who should go where, in all the placing of his team. Therefore, the committee had thought it necessary that the period of 60 days would enable an elected president to do all these before finally, assuming the office. Mr. Chairman, the Committee also in its deliberations thought that the 60 days period was necessary as a cooling off period, that it would not be wise for a new president elect to assume office immediately. There should be time for people to vent off their election fever and all the election heat. So, this period of transition was envisaged as necessary. And that is why, in Clause (3) of this article, the period of 60 days had been envisaged.

So, the question that, Hon. Ben Wacha raises now is pertinent because if we were to go ahead and remove of this period, then the question of assumption of office, becomes difficult under the new clause (7) which was originally (8) in the Draft. And, Mr. Chairman, we cannot provide for it now in this clause because the intention of this clause is quite separate. It is quite different and distinct. The intention of this clause, Mr. Chairman, is that - he has provided for a situation whereby a president is elected while there is an incumbent in office. And what happens in such a case? We are saying that where there is an incumbent president, then the new president would assume office within the period given in the clause of 24 hours after the expiration of the term of the incumbent. But where there is no president - no incumbency, then this would - the assumption of office would occur within 24 hours after the declaration of the election results after a person has been declared elected president. So, Mr. Chairman, I think the query raised by Hon. Ben Wacha can only be cured if we go back to Clause (3) and retain the time frame of the 60 days. Mr. Chairman, on the question of the declaration of results by the Electoral Commission, I think, Mr.

Chairman, you adequately covered that because what the Electoral Commission is being called upon to do by the Constitution is to publish what is now the results of the election. Whether or not there will be provision for interim results, that should be the work of the Electoral Commission and it should not concern the population. But what we want to set out - what we want to provide for in the Constitution is the declaration and the publication in writing, under the seal of the Commission of the final and binding results. Mr. Chairman, I thank you.

THE CHAIRMAN: So, are we suggesting that we maintain this particular formulation? Okay, Hon. Kweronda, you have a problem on this one?

MR. KWERONDA: Mr. Chairman, I am sorry. I come in at the beginning about 10 minutes late and when I found the Chairman trying to explain the import of 60 days, actually he missed a point at that time because Clause (3), Mr. Chairman, the term of the incumbent president was supposed to stretch to two months or 60 days or slightly less than 60 days beyond the election date. That if he was elected in February, first Monday, that he would hang in that office until about 60 days later and within those 60 days, problems of handing over would be sorted out; problems of bye-election in case there was a mess in the elections, would be sorted out because we did not want a new president to assume office, then tomorrow, he is in court trying to sort out the problem of bye-elections. And really, taking the president to court is even negating an article which we have already passed in this constitution. That the President shall not be taken to court unless he has finished the term of office and he is no longer president. So, this Clause (3) of Article 106 was supposed to give those 60 days, to sort out all those queries that may result from elections. But that article as you remember, Mr. Chairman, was amended this morning to remove that stretch of time and the president is supposed now to take over after 48 hours after the results have been declared. So, Mr. Chairman, I think there is need to revisit Clause 3 and I think, when Hon. Kabayo was trying to raise an amendment to that effect, he was also mindful of these problems that may ensue.

THE CHAIRMAN: But there was a problem with challenging an election of a president in court while he is working.

MR. KWERONDA: I beg your pardon, Mr. Chairman.

THE CHAIRMAN: If a president has been elected and he takes office, but a Member of the public feels aggrieved, what is wrong with challenging that election in court?

MR. KWERONDA: He may challenge the elections, Mr. Chairman, but do not forget that he will be challenging a president, substantive now, in office. And who has got machinery to defeat that man whom the judges will be looking at as a superman? It is impossible, Mr. Chairman.

MR. NDEGE: Point of information. Thank you, Mr. Chairman. I think Hon. Kweronda is forgetting that that president could be the incumbent who has been re-elected. So, in that case really, what does he do? What does he think? We are assuming as if the president will be defeated every time, but he can be re-elected. And he could have used his office at that time to get in office. So, I think the argument really does not -

MR. KWERONDA: Now, in subsequent amendments, Mr. Chairman, we have taken care of that scenario and if we amend Clause (3) as it has been proposed to be amended, Mr. Chairman, we are creating problems in the subsequent clauses. So, Mr. Chairman, I would like us to leave that stretch of 60 days, or slightly before 60 days, so that these messes can be taken care of. Short of that, we are creating many problems which we are bound to sort out now, in these subsequent clauses. So, (7) as it stands, Mr. Chairman, has got that problem and you cannot sort out, you cannot pass (7) as it is unless you re-visit Clause (3).

THE CHAIRMAN: Is it so? Hon. Ringwegi, what do you say to that?

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, when I was trying to clarify the point raised by Hon. Ben Wacha, I said it was a pertinent question because it brought to my mind what the Committee has decided on Clause 3 and why the 60 days period was envisaged as necessary in clause 3 of our recommendation. So, the point which Hon. Kweronda is now raising are pertinent and valid points that, if Clause (7) is passed the way it is, it would actually be meaningless because it derives its validity from the provision of Clause (3). It

would only be workable if the 60 days, frame work in Clause (3) is retained, and not removed. Because as I said, it has also been echoed by Hon. Kweronda, the 60 days was thought to be enough time within which all the messes connected with the presidential election would have been sorted out. It would have been enough period, when the challenging of the presidential election in court would have been finalised as will be definitely noted, when we come to Article 107 which deals with the challenging of the presidential election. And not to be preemptive, the challenging of presidential elections was even removed from the High Court and taken to the Supreme Court specifically for the purposes of sorting out the election petition within a minimum period to allow the new president to take office without any petition hanging over his head and to avoid all the embarrassments and all the intricacies that would arise if the President was supposed to be called upon to go and testify in court.

So, Mr. Chairman, it is true that, Clause (3) of Article 106 should be retained as recommended by the committee without the deletion of the 60 days period. Then Clause (7) of this article, would make sense.

THE CHAIRMAN: In some other jurisdictions, what they do is, after the election of the president, the presidential results are provisional until the highest court of the land declares the elections to be valid in accordance with all the procedures and rules. Did you consider that for instance?

MR. RINGWEGI: Thank you, Mr. chairman. The Committee did consider all those possibilities of declaring provisional results but the fear of the committee was that this would erode the confidence of the president. He would not, for instance, feel comfortable selecting his team to work with because in the event that the Supreme Court or the body dealing with the petition decides otherwise, that he was not elected, the president would be very shaky. That is why the committee decided to opt for a time frame within which all these messes could be sorted out, and then assumption of office by the new president is done without any pending petitions in court.

MR. ERESU: Mr. Chairman, the Committee besides considering the formulation the Chair has just attempted to give also considered that for political stability, it is imperative that the 60 days is

held because it is a cooling off period. Given that presidential elections is a hot race, and immediately after the elections have taken place, it is very important that the citizens of the country get a cooling off period between the two or more candidates who have been opposing each other with their supporters to calm down so that, by the time the Government is thrown in, that is when the president is sworn in, there is some element of cooling off so that there would be no more you know, challenges and chaos and so on, that would probably take place. So, in anticipation of such events, which may be unlikely anyway but possible, the 60 days was considered the most appropriate alternative.

MR. NDEGE: Thank you very much, Mr. Chairman. The way it had been drafted under (3) did not give that meaning. And in the United states, there is a day when there are elections and there is a day when the president elect assumes office. Now, if that is what the feeling of the committee is, this number 7 could be amended, that this new president will assume office 60 days after being elected. If that is what they want to assume, instead of 24 hours after the expiration of the term of the predecessor, we can say 60 days after being elected as president. So, that one could make more sense. Because as it was put under (3), it did not convey the same meaning. So, if we say 60 days, then we are being very specific when the president elect can assume office.

THE CHAIRMAN: So, you are saying that we should specifically provide that a person elected president shall assume office within 60 days from the date of declaration of the results?

MR. NDEGE: Yes, please.

MR. BIDANDI SSALI: Mr. Chairman, from the explanation by the Chairman of the committee, and the support from various Members, I would like to support the consensus that we retain the 60 days under (3) and we amend (7) to the effect that, a person elected president during the term of presidency shall assume office at the expiration of the term of the predecessor and the rest remain as it is in (7). I think this seems to be the general consensus. I think we agree that these 60 days are important before the incumbent leaves office for the purposes of handing over; for the purposes of any possible legal proceedings against his election

and so on. So, since we left aspects of (3) for the technical committee, I think let us say that we retain the 60 days as in (3), and then relate (7) to the expiry of the term of office of the incumbent. I think it will be satisfactory to everybody here.

MR. ABALIWANO: Mr. Chairman, alternately, we could also leave these two paragraphs as they are and allow in paragraph 8 that, subject to the provisions of this constitution, Parliament shall by law, prescribe the procedure. In which case, when Parliament comes to prescribe, they would actually take into consideration our deliberations, that they would be able to say, the incumbent would leave office 60 days after the new president has been elected. In which case, we leave it to Parliament to prescribe that rather than we ourselves doing it here. It could be an alternative.

THE CHAIRMAN: Okay, now I think we can say this that there is a general consensus that there is need for sometime before a new elected president assumes office, and that we could achieve that by retaining 3 as it appears in the recommendation and then 7, would it also remain as it is?

MR. RINGWEGI: I thank you, once again, Mr. Chairman. Mr. Chairman, if 3 is retained with the 60 days, then Clause (7) has got to remain the way it is presented. Then it would make more sense. There would be no need to amend Clause (7) because the intention of Clause (7) is only to provide for that time frame of 24 hours, but not to alter the question of assumption of office. And the other fear which was being expressed is already covered for by an amendment which is coming in Clause (8). Because in the original Clause (8), there was only empowerment to parliament to provide on procedure, but we have gone further to say that it should not only be procedure for the election, but also procedure for the assumption of office. So, Mr. Chairman, I do recommend that the House should consider retaining Clause (3) without removing the 60 days, and also adopting Clause (7) the way it is presented in the Draft with that small amendment of the word "a" only. I beg to move.

THE CHAIRMAN: Let us now see how it works. *"The election of a president shall be held not less than 60 days before the expiry of the term of president on the first Monday of February except in the case..."* - then you have the exceptions. So, 60 days before the term expires, you must have

elections. And therefore, you work backwards from Monday or February backwards. So, you hold it before 60 days and then the person who is declared elected, if there is a substantive president, assumes office within 24 hours after the expiry of the term of the President. In other words, after the 60 days are finished, he takes 24 hours to take office. But then when you say, "*and in any other case, within 24 hours after being declared elected as President*" -

MR. ATWOOKI: Mr. Chairman, when you read Clause (3) with 60 days inclusive, together with Clause (6) which says that the electoral Commission shall announce the election within 48 hours, I think it makes the last part of Clause (7) a bit redundant because Clause (7) says, "*a person elected President during the term of a President shall assume office within 24 hours after the expiration of the term of the predecessor.*" I think it would have been better if we stopped at that.

THE CHAIRMAN: There are several situations under which we elect the President. We elect the President because there has been an income and his term has expired. If that happens, you will conduct your elections 60 days latest before the expiry of that person's term. Now in that case, the other one who has been elected will take office 24 hours from the expiration of the term. But in event of an election arising from either the President having been impinged or died or resigned, in that case then, as soon as you declare the results, the person so declared takes office within 24 hours.

MR. KIWAGAMA: Thank you very much, Mr. Chairman. I have a small problem here where the term of the incumbent has expired and then we have to wait for 24 hours to replace him. Are we not creating a vacuum, who is responsible for decisions within that time? Are we extending his period by 24 hours?

THE CHAIRMAN: Mr. Kiwagama is asking, are you allowing a vacuum? No, I do not think so. The person who is President whether by way of acting or substantive, notwithstanding the end of his term, remains in office until a new one has been sworn in.

MR. RINGWEGI: Mr. Chairman, I would like to invite the Hon. Delegate to realise that the provision, the wording says, "*within 24 hours.*" Now we are not being so definite that it must come towards the

end of the 24 hours. Taking over an office is a process, there will be ceremonies of swearing in, there will be all these other things. So, there cannot be a situation whereby a vacuum is created because we know the term expires at midnight. If the term expires at midnight, then from counting one hour after the midnight up to twenty four hours, the process of taking over the office will be initiated. We are only saying that it should not exceed 24 hours which is the upper most limit. Therefore, we cannot think of a situation whereby there will be a vacuum in the handing over of the office of the Presidency. I thank you Mr. Chairman.

DR. BYARUHANGA: Mr. Chairman, I still have a problem with (7) as it is now because we have accepted to adopt the three of the Committee Report in order to create time in which this President elect would prepare to take office and in which those people who wish to petition his elections would do so. But in (7), when dealing with the elections of a President means the absence of a predecessor in the case where the former President had been impinged or had died or had been removed, we are catering for this President elect to take over within 24 hours. So, we are saying that those who wish to challenge the elections will do so when the man is already a President and yet we allowed (3) in order to avoid this scenario. Since we shall have an acting President, why can't this man, who is elected in this circumstances, also have those 60 days in which we can petition the election because I feel we are contradicting ourselves in the same paragraph.

THE CHAIRMAN: The Member is saying you have allowed 60 days in the event of an election where the President is in office, to provide for petitions and the rest but where you fill the office following either removal or impingement or death of the President, you do not allow time for petition.

DR. KABAYO: Mr. Chairman, I have two points. First I want to agree with Hon. Byaruhanga on that point and say that since we have agreed to adopt the formulation as it was originally in Clause (3) saying "*not less than 60 days before the expiration of the term of the President*", I would like to propose we cure the ambiguity that is in that sentence and say, "*within 60 days*" because if you say, "*not less than 60 days*", you will again land with a possibility of snap elections. Because if the President thinks he is popular, he may conduct election after three

years. It will not be the full term of five years which was the original intention. So, if we say within 60 days before the expiration of the term, secondly, Mr. Chairman, in support of what Hon. Byaruhanga said, we could leave out the last part of the formulation (7) and stop at the "predecessor" so that the new elected President who has not been incumbent will also be given the same terms as the reasons that were advanced in case of the in-coming President.

THE CHAIRMAN: But you cannot still use that (7) as it is to cover those two unless you will also recast the first part of it. Because the person elected President during the term of a President -

MR. KABAYO: Mr. Chairman, I was coming to that because the aspect of "*the person elected President shall assume office within 24 hours after the expiration of term of the predecessor*" -

THE CHAIRMAN: But the acting person will not have a term really. He will be only holding fort.

MR. KWERONDA: Mr. Chairman, I would like to thank Hon. Byaruhanga for pointing out a lacuna which we did not see in the Committee. In fact Mr. Chairman, we did not envisage a bye -election resulting from rigging elections in the case of this predecessor and this new President who is coming in after there is a vacuum. So, I would like to prevail on the Chairman of the Committee to agree with me that actually this was an oversight and that we should find the cure for it so that the President coming in this way, if he is challenged, there should be time for sorting out that challenge because certainly, once he is also a President and is sworn in 24 hours after the declaration of the results, and petitions come in, then we are actually taking the President to Court, which was not our intention.

DR. KIYONGA: Mr. Chairman, the provision requiring 60 days was not a creation of the Committee, it was already in the Draft. So, when Members are saying it is because of petition, they are not correct.

THE CHAIRMAN: I do not follow you.

DR. KIYONGA: Mr. Chairman, you see on the Floor Members of the Committee have informed the Plenary that the 60 days are justified by clearing the mess before take over including petitions and I

am saying that is not so. The Provision for the 60 days in case of a regular situation was already provided for in the Draft and we have tried actually to look in the Constitutional Report. We do not see the justification yet. So, it is wrong to tell the Plenary that we created the 60 days because of petition.

THE CHAIRMAN: What is in this Draft is the question of 60 days where the other circumstances other than expiration of office has taken place for elections to be held within 6 months. It was two months in normal circumstances and 6 months in extra-ordinary circumstances. If you look at the formulation of (3) in the text. But this has been changed for the reasons given by the Chairman of the Committee. Having agreed on the Principles, what is left is converting those principles into the written word and the Members of the Technical Committee are qualified in that sort of exercise and I am sure they will come back with the formulation which is acceptable to us.

MR. RINGWEGI: Mr. Chairman, I would like to disagree with what Hon. Kiyonga said. The Committee actually considered the position of the Draft provision and it was the Committee which came up with the recommendation that the time should be extended to 60 days. Then extension of the time frame, Mr. Chairman, was precisely because the Committee saw that there are so many reasons why this period was necessary before the new President assumes office. Mr. Chairman, however, I would like to concede that if we adopted Clause (3) as recommended by the Committee, it would be necessary to amend Clause (7) to include the principle of assumption of office even in mid-term election of the 60 days to enable petitions and all other matters which were envisaged necessary under Clause (3) to take place under Clause (7). I think, Mr. Chairman, that inclusion could easily be done by the Technical Committee so that Clause (7) instead of providing for a situation of taking of office when there is an incumbency, the 60 days would be necessary where there is a mid-term election for the President. The cases which you have enumerated are many, for instance, if the President has been impinged and a new election takes place, the new President should still be challenged and we still need the 60 days within which we should sort out the other messes that would have been necessary under Clause (3). So, Mr. Chairman, I think the principle that the Plenary

could adopt is that Clause (7) should be retained but amended to include the Provision for petitions or the 60 days which appears in Clause 3 of the Article.

Committee Two recommends to the Plenary that Clause (8) originally Clause (9) of the Draft Constitution be amended so as to provide for a situation whereby Parliament is not only empowered to make Laws on procedure for election of the President but also to provide for the assumption of office by the President elect. Mr. Chairman, the new Clause as recommended by committee Two would now become Clause (8) if adopted and would read as follows: "*Subject to the provisions of this constitution, Parliament shall by law prescribe the procedure for the election of and assumption of office by a President.*" I beg to move, Mr. Chairman.

MR. CHEBET MAIKUT: Mr. Chairman, I would like to seek also further guidance from the chairman of the committee as to why we cannot provide for Parliament to adjust the dates of election in case the country is facing some problems, maybe of wars or disturbances of any conflicts. In other words, to provide for emergency situations where a term of office of the President is expiring and at the same time, it is not possible to hold elections within the two months period. I was looking at the Odoki Draft. 3 (b) provides for something like six months.

MR. AMBROSE ATWOKI: Point of information! Mr. Chairman, I am referring Hon. Chebet to Clause (3) where Hon. Bidandi Ssali suggested that another Clause (c) should be inserted and referred it to the Technical Committee to look into the modalities of putting in Clause (c) which caters for other exceptions for which Parliament will prescribe laws governing the same. So it would be catered for under 3 (c) which the Technical Committee is going to handle. Thank you.

THE CHAIRMAN: That is correct.

MR. CHEBET MAIKUT: If that is agreed, I have no quarrel absolutely. Thank you very much for the information.

MR. WANENDEYA: Thank you very much, Mr. Chairman. Mr. Chairman, this language - if possible, I would like it to change if Hon. delegates would agree. Instead of saying "*by law prescribed, the*

procedures or the procedure...", why not change it and I propose that it be changed to "*in the act of the legislation prescribing procedures...*" so that it is straight forward and it makes things and matters quite clear and straight forward. Mr. Chairman, I beg to move if Hon. delegates can agree to that because it is straight forward and it is very nice and is grammatically correct. I thank you, Mr. Chairman. I beg to move.

THE CHAIRMAN: You see Hon. Waner deya, your Motion falls by the way side.

MR. KARURANGA: Thank you, Mr. Chairman. I wanted clarification from the Chairman of committee Two. What does the word "assumption" mean because to assume can be interpreted differently. Could he really throw more light at least for our Hansard so that it is very clear!

THE CHAIRMAN: Don't you read words in their context?

MR. KARUHANGA: I do but I wonder whether they could not find a better word.

MR. RINGWEGI: I thank you, Mr. Chairman. Mr. Chairman, I can see the fear of Hon. Elly Karuhanga and his fear arises out of the experience or the history of this country whereby people just go to Radio Uganda and announce that they have assumed offices. Mr. Chairman, if Hon. Karuhanga did not have that fear, the word "assumption" as it appears in the provision being recommended for adoption simply means taking over office because the person will have been elected. Now, what remains is for him to take over office then he begins to execute duties entrusted to him. So, Mr. Chairman, I think it may not really cause any fear if we left the word "assumption" because we are talking of a person validly elected taking over office for which he stood for elections. And this assumption of office should be read together, that is conjunctively with the intention of the provision which provides for election. I thank you, Mr. Chairman.

THE CHAIRMAN: Hon. delegates, that brings us to the end of a very important Clause relating to election of the President for Uganda, and subject to the modifications that are to be effected by the Technical Committee having adopted some of the areas, the principles are to follow. I would like to suggest that we declare ourselves on this particular article.

MR. KASANGAKI: Thank you, Mr. Chairman. Mr. Chairman, before we declare ourselves on this, I wanted clarification from the chair, in a case of the incumbent President who wishes to declare general election of a President after may be two years or three, Is it provided for here?

THE CHAIRMAN: But there is no provision for it here as far as I do recollect. But I can be assisted by the chairman.

MR. RINGWEGI: Mr. Chairman, we pointed out the need to have certainty in elections and one of the reasons that the committee advanced for providing for a fixed date was to avoid snap elections. I think the committee was guided by that reasoning that is why they resolved that the date for a Presidential election should be fixed. The point that Hon. Kasangaki is trying to raise is exactly what the committee feared. An incumbent President calling election mid-way when he thinks his popularity is high in the population. That is what the committee has avoided by fixing this period. Elsewhere, in a different chapter, the committee will recommend that there should be no provision either for extending the term of Parliament or abridging the same but that is not under the provisions that we are dealing with currently, Mr. Chairman. I thank you.

MR. KAJARA: Thank you, Mr. Chairman. I am looking at all the provisions providing for election of the President under Article 106. However, I have failed to find a solution whereby if only one person offers himself as President or if at any stage of the campaigns some people withdraw from the rest or if there is no candidate at all for the President, what happens?

MR. RINGWEGI: Mr. Chairman, I thank you. I would like to invite Hon. Kajara to look at the last Clause that this Assembly has considered that is Clause (8). We have said that Parliament will make laws which will provide for the procedure for the election of a President. This procedure, I would humbly submit, includes a situation whereby the Presidential Candidates will be provided for in that legislation when there is only one Presidential Candidate, what happens? All these are details which we are trying to empower through this constitution to Parliament to make in future legislation. So it should not really be our concern at this point to try and set out all the details on how nomination of a Presidential Candidate will be

carried out. I think that is a matter which can be appropriately left to Parliament as is provided for under Clause (8) of this article. I thank you, Mr. Chairman.

MR. KARUHANGA: Thank you, Mr. Chairman. I just wanted to point out through you to the Assembly that Clause (6)(3) which we are about to pronounce ourselves on has passed two conflicting points. One is in (4) where we say that a Candidate shall not be declared elected as President unless the number of votes casted in favour of that Candidate at the Presidential election is more than 50 per cent of valid votes cast at the election. So, there is need for more than 50 per cent for anybody to be a President of Uganda. Then in (5) we have said that "where at a Presidential election, no candidate obtains the percentage of votes specified in Clause (4) of this article, a second election shall be held within 30 days after the release of the results in which the two candidates who obtained the highest number of votes cast in the second election shall be declared elected President. Which means that in (5), we do not require - we have just said he does not need to have a 51 per cent. But in 4 we say he needs

THE CHAIRMAN: I thought that was deliberate.

MR. KARURANGA: Therefore, the Assembly must decide that if in the second election the person who wins does not get 51 per cent, he can be very important for us to agree that that is what we mean, I have already pointed this to the Chairman of Committee Two, he also sees that there is a problem.

THE CHAIRMAN: For me I saw it and I thought it was deliberate that on the first round you want an absolute majority of the votes cast. But on the second round, because you do not want to go through a long exercise of having to elect every time, you expect a simple majority. That is how I understood it.

MR. KARUHANGA: That is exactly what I wanted to be declared because if we leave it like this without the Members knowing that that is what we have passed, it will be dangerous. But then the Technical Committee, Mr. Chairman, needs to wipe out the requirement of the first one because it says, a candidate shall not be declared elected. So it means that we have to re-write it, we have to emphasise this feeling. At the moment, we are

leaving this in conflict. Since we are referring this to the Technical Committee, I would like them to look at it and make sure that the intention of the House is properly reflected and not leaving us in a conflict situation.

MR. KATENTA APUULI: Point of information! I would like to inform Hon. Karuhanga that where there are two contestants, only one of them will have more than 51 per cent of the vote. I thank you, Mr. Chairman.

THE CHAIRMAN: Well, that situation has been sorted out in a different manner.

MR. WANENDEYA: Thank you, Mr. Chairman. May I take this opportunity, Mr. Chairman, to clarify to Members that what we are dealing with is a Presidential type of government as opposed to Parliamentary and therefore, when it is a Presidential type of government, the President does not have the opportunity when his term is determined to be five years, he can't call for an election mid-way before the expiry of those five years. Therefore, we better be cleared in minds as opposed to the British of Parliamentary type of government where the head of government can call an election anytime he thinks that his popularity is at its highest. I thank you, Mr. Chairman.

MR. KWERONDA RUHEMBA: Point of clarification! Mr. Chairman, my clarification once again is on Clause (3) of Article 106. I know we have recommended not less than 60 days but there is a lacuna here that even one year is not less than 60 days and even three years is not less than 60 days. Unless we change that to read within or we recommend that the Drafting Committee should make it within, we may still have that problem of when the President sees that he is very popular even when there is a year to go, he may declare elections. I know he may not want to cheat himself during the first term but certainly I can see there is that problem within that Clause. So in our recommendation, I am suggesting that we suggest within 60 days.

THE CHAIRMAN: Since you say - You see if you say within 60 days, it could be two days before the -

MR. KWERONDA RUHEMBA: I agree, Mr. Chairman, but then we should try and cure those two problems.

THE CHAIRMAN: No, but I do not read it that way. The controlling phrase is the one on the first Monday of February. I thought you start from the first Monday of February and count backwards.

MR. KWERONDA RUHEMBA: But not less will still be - we did not say 60 days. Did we? Just 60 days before -

THE CHAIRMAN: We can remove the words "not less than" and just say "shall be held 60 days...", then you start counting from the Monday.

MR. KWERONDA RUHEMBA: But then 60 days precisely before may be a Sunday or a Friday. It matters, Mr. Chairman, because when I was consulting, some people told me that if the election date was on a religious date or the date when they go to church or Mosque or any other place of thanks giving, that they will not -

THE CHAIRMAN: I know that the elections in France and in Italy are held on Sundays. But there could be no candidates that are more religious in terms of -

MR. KWERONDA RUHEMBA: But my constituency, Mr. Chairman, told me precisely that if we have to fix these dates, they should not be on

THE CHAIRMAN: There is one Member for Kajara and there are other Members 283, so let us try to vote.

MR. KWERONDA RUHEMBA: So you want to deny the President some votes?

THE CHAIRMAN: No, no you are supposed to lead your people and explain to them the virtues of going to vote including voting on a Sunday and a Friday. So Hon. delegates, let us declare ourselves on this one.

MR. NGOBI: Thank you very much, Mr. Chairman. I was just suggesting that since it is the firm opinion of both the committee and ourselves here that we will not like a President to hold a snap election, why don't we ask the drafting committee to put in a clause to say that nobody will be allowed to have a snap election?

THE CHAIRMAN: Well I think we did actually say that when I summarised our acceptance of those

principles. That we accepted principles that about 60 days from the time of election to the assumption of office by the new President. That one we accepted. And having done so, we said the rest is drafting and left it with the technical committee. So those are going to be sorted out. Subject to those, I would like to hear those in favour of article 106 to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: We have 107 but I think it will be started on in the afternoon.

(The Assembly rose at 1.00. O'clock and resumed at 2.30 p.m)

THE CHAIRMAN: When we adjourned ourselves for lunch, we had just pronounced ourselves on Article 106. We now go on to 107 and I give the Floor to the Chairman of Committee Two.

MR. MULENGA (Democratic Party): Thank you, Mr. Chairman. Mr. Chairman, Select Committee Two in dealing with Article 107 found it necessary to recommend that the entire Article be replaced in order to cater for one concern namely that in dealing with the challenge of a presidential election, a lot is at-stake and therefore, as pointed out in the first footnote on Page 17, it was considered that it is important that any question on the validity of the election to the highest office in the country should be decided expeditiously and conclusively. On that premise, the Committee recommended or recommends that instead of vesting jurisdiction to determine the challenges or petitions against a presidential election in the High Court as the Draft does, the jurisdiction should be vested in the highest court namely the Supreme Court so that once it decides, that is final. This recommendation was made after considerable deliberations taking into account the value of having appeals in deciding cases but this was weighed against the consideration that it is important for an office such as that of the President not to have questions hanging over the occupant for too long. Secondly, it was considered that in order to achieve this, the period for or during which any challenge to the election should be determined should be the sixty days between the elections and the assumption of office. With those two considerations in mind, Mr. Chairman, the Committee formulated a new Article comprising eight clauses and I shall now go through clause by clause.

Mr. Chairman, the Committee recommends that clause (1) of Article 107 should read: *"subject to provisions of this Article, any registered voter may petition the Supreme Court for an order that a candidate declared by the electoral commission elected as President was not validly elected."* Mr. Chairman, I beg to move.

And may I perhaps comment that in deciding as to who may petition, the committee considered whether it should continue to be any registered voter or only candidates presumably those who would have lost the elections and we came to the conclusion that it is better to continue basing the right to petition in any registered voter because election of a President is the concern of all voters and, secondly, to avoid a possible situation where candidates who may have lost could be compromised one way or another and give up the challenge even when there has been blatant rigging or irregularities. Mr. Chairman, I beg to move.

THE CHAIRMAN: Is that okay?

DELEGATES: Yes.

THE CHAIRMAN: The next one.

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (2) reads as follows: *"A petition under Clause (1) of this Article shall be lodged in the Supreme Court registry within 72 hours after the declaration of the election results."* The purpose for this, Mr. Chairman, as I have indicated is to ensure that from the beginning, the process is expedited hence the proposal that the petition should be lodged within three days. Mr. Chairman, I beg to move.

PROF. KABWEGYERE (Igara County West): Thank you, Mr. Chairman. I am sorry I have been taken unaware that we seem even to have passed the new 107(1). I was interested myself in challenging the whole Article and wondering whether we are not talking about the Electoral Law in the Constitution now because if you are going to petition, you can petition for elections in Parliament, election for R.C.5, you can have a law covering the whole question of petition but now we have identified a petition for Presidency and yet there will be a law, and we already have an existing law anyway, empowering the citizens to petition against any election. So I am wondering, Mr. Chairman,

whether we are not being too superfluous by having this clause at all - the whole Article.

THE CHAIRMAN: No, I stand to be corrected but I do not think there is a law providing for the election of a President and the petitioning against Presidential elections. We do not. What we have is in relation to Parliamentary Elections but I think if you were patient and looked at the proposed Clause (8), you can see that what you are putting here is more or else an enabling provision and the details would be supplied by Parliament because this one does not - you see, the Election of a President is a Constitutional question - how do you challenge that issue? You can chose to say that parliament will make a provision for it but I do not think that is fair particularly when we are trying to draw a line between various arms of government, between the Legislature, the Presidency and the Parliament so that there must be some basic things which the Constitution itself must say in relation to that subject, then leave the details to the Parliament as in the case of Clause (8) that Parliament shall make such laws as may be necessary for the purposes of this article including laws for grounds of annulment and rules of procedure.

PROF. KABWEGYERE: But, Mr. Chairman, if you look at (3), if you look at (4), if you look at (5), this to me looks like details.

THE CHAIRMAN: No, no. These are not details as far as I can see really.

PROF. KABWEGYERE: Okay, I accept your ruling.

MR. MASALU MUSENE (Manjia County): Thank you, Mr. Chairman. I rise to query Clause (2) of Article 107 as recommended by Committee Two. I feel that the period of 72 hours is too short for someone to file a petition seeking to nullify the Presidential Elections. In the first instance, a petition filed in the Supreme Court is a technical document which needs proper handling by technical people, that is the lawyers. One has to seek the services of the best lawyers and a thorough job must be done before such a petition is presented to the Supreme Court because it can easily be thrown out on technicalities. Secondly, given the nature of our country, there are places which are distant as Moyo, as Kabale and so forth, now by the time someone hears the results and then he ascertains properly

how to go about things, three days I feel is too short a time. I would propose that a period of seven days within which to challenge the Presidential Election would be sufficient and reasonable in the circumstances. I thank you, Mr. Chairman.

MR. MUSHEMEZA (Sheema County South): Thank you, Mr. Chairman, for giving me the Floor. I rise to support the proposed Clause (2) of 72 hours. Mr. Chairman, I disagree with Hon. Masalu Musene to say that three days are not enough. This morning, we provided for 48 hours in order to ascertain and declare the elections whether they are free and fair for the public to know. I believe if somebody, any person or any registered voter has realised that there were discrepancies in the election process, even before the elections are declared, that person should be organising and arranging what he or she feels that was not proper and having done that, I believe with qualified lawyers and their firms we have in this country, you can not fail in three days, even in two days, to organise a petition and challenge a Presidential election - (*Interjection*) - I accept that information.

MR. KWERONDA RUHEMBA: The information I would like to give, Mr. Chairman, is in respect of 72 days (*Interruption*) Sorry, 72 hours. The background to 72 hours - the background to this rush, Mr. Chairman, was in respect of 14 days which the Committee had suggested for the petition to have taken place but now that the extension has been made to 30 days, I want to concur with those who are concerned with 72 hours that it now may be possible to look into giving these people a few more days to petition.

MR. MUSHEMEZA: Mr. Chairman, that information is not very useful to me, I would have been more worried if we are giving very little time for the court to examine that petition so as to allow it maybe to get more evidence but for you to produce some sufficient evidence to lodge a complaint should not take you very many days. I still feel that 72 hours are very sufficient and I beg this House to support the proposal from Committee Two. I thank you, Mr. Chairman.

MR. RUZINDANA (Ruhama County): Thank you, Mr. Chairman. Mr. Chairman, the proposal for petitioning within three days is a bit unreasonable under our conditions. Assuming malpractice has taken place in Bundibugyo and then Karamojo and

the petitioner is in Kampala, will he really have known of these malpractice within those three days and got the necessary evidence? I believe, Mr. Chairman, that having increased the period from 14 days to 30 days, we should equally amend this. I think the Committee did not take into account the 30 days period, we should also move this one at least one week. Three days is not a reasonable period for evidence to have been gathered outside Kampala and I therefore suggest, Mr. Chairman, that the Committee should review this period from three days to seven days within which to lodge a petition. Thank you, Mr. Chairman.

MR. OWINY-DOLLO (Agago County): Thank you, Mr. Chairman. Mr. Chairman, I think the committee did not consider the difference between filing a notice of petition and filing a petition which is a complete set of facts which shows the reasons or the grievances by the petitioner about the elections. We did pronounce ourselves or we have provided for the election of the President about 60 days before he is sworn in. I do not know what the hurry is in saying you must petition within three days whereas if we gave enough time for some one who is aggrieved by the election results to file a notice of petition say in three or seven days and then give slightly more time for him to collect from every quarter or the country his reasons for challenging the results of the Presidential election, there would be more sense in that. In any case, the Supreme Court sitting to determine the matter would have all this time up to the swearing in to determine the matter. So I think the issue of three days is most unreasonable. Thank you, Mr. Chairman.

MR. MBURA-MUHINDO (Busongora South): Mr. Chairman, I happen to be fortunate that I have gone through petitions. In 1980, there was a petition and even recently there was a petition. It is a very tedious exercise. Those who think that within three days you can prepare your petition, I think are just being theoretical. You must gather enough evidence and enough momentum for you to be able to file in a petition and if you are a Presidential candidate, you must really get facts from all over Uganda and to get these facts, it is not so easy for you to get them in three days when people are even still in their excitement, when even the lawyers you are talking about are still excited. So, Mr. Chairman, I would suggest that at least a week and even within that week it may not be possible but you can file your petition within a week and may be revise it

later on. So I reject the three days and at Least I suggest a week.

MR. KARUSOKE (Ntoroko County): Mr. Chairman, thank you very much. Mr. Chairman, first of all, it is not easy for anybody to collect enough evidence from all over the country in order to lodge a petition against an election of the President because if you are to do that, you have got to go round all the polling stations in the country and that is very impossible. In fact you can get evidence from only one polling centre and create enough ground for petition. Secondly, Mr. Chairman, if you look back at Article 106 Clause (3), a person declared elected President must assume office under normal circumstances within 24 hours and after assuming office - *(Interruption)*

THE CHAIRMAN: No, that one has been changed, there is 60 days.

MR. KARUSOKE: Mr. Chairman, this man who is elected unfairly can take office and begin to commit this country on very serious issues when he was unduly elected. When the petition is lodged in court, it takes time for court also to get organised and begin to hear the case and if we give these people a lot of time to get enough ground to petition, we shall be allowing a man who was not duly elected properly into office to operate and commit this country to very serious matters. So, a situation should be created where matters are hurried, matters are expeditiously carried out so that this man is not allowed enough time to have committed the country when he is not supposed to be in the chair. *(Interruption)*- I will take it.

MR. MUGYENYI: Thank you, Mr. Chairman. I want, Mr. Chairman, the Hon. speaker on the Floor to clarify to me, imagine a situation where elections are declared on Thursday, then this voter is trying to gather evidence on Friday and Saturday and on Sunday the three days are over when the courts are not opening. Where would he, this man, register his complaints?

MR. KARUSOKE: Mr. Chairman, if it is a question of weekend where courts are not sitting, that is very very understandable because the court will not be sitting but where the court is sitting, three days should be enough. Mr. Chairman, I still maintain that in order to get ground to petition against an election, you do not have to go around the whole

country, one station in one particular area is enough to gather enough ground for you to petition because some malpractice may be done in one station and not necessarily in others. So you do not have to wait for evidence from other stations, in fact, you may never get any evidence, so as soon as you land on evidence, you rise up and make a petition. If you do not have any evidence, there is no reason why you should begin to hunt for evidence in order to raise a petition. The situation should arise to you immediately which prompts you to lodge a petition. In fact raising a petition is spontaneous, you do not have to sit down and plan that when elections are declared I must raise a petition therefore let me begin to look for evidence. A situation arises there and then which necessitates you to take action and you must have evidence at hand, so there is no reason, Mr. Chairman, why one should wait for evidence from A.B.C.D. places. I thank you.

MR. MIGADDE (Katikamu South): Thank you, Mr. Chairman, I just need clarification, Mr. Chairman, either by the Chair or by the lawyers because, Mr. Chairman, according to the way I understand Clause (2) of 107, this is basically to me the intention to petition. It is not to produce evidence as to whether there was cheating or malpractice in the elections because it says "*A petition under clause (1) of this Article shall be lodged...*" So Mr. Chairman, I think I would like to be clarified. I think here "lodging" means the intention to petition to the Supreme Court other than producing evidence and to hear a case within 72 hours. I want to be clarified, Mr. Chairman.

THE CHAIRMAN: I will give the Floor to Hon. Mulenga to answer that.

MR. MULENGA: Mr. Chairman, I heard what Hon. Migadde said or asked. It is correct the way he puts it in a lay man's language that when you lodge a petition, you are actually saying I am filing a case but you give me time to produce the evidence and all that. So in essence, on the third day or during those three days, what you do is to file a case then we provide later when that case should be heard and concluded. So the three days - people should not assume that within those three days you will have gathered all the evidence and brought all the witnesses to the Supreme Court.

THE CHAIRMAN: But I think the point some Members are trying to make is this that, at least some of us who have been mixed up with drawing

these documents, you need to have it properly written before you go to court otherwise you can mistake along the way and, of course, every time you want to amend it, it may involve costs. So the best thing is to prepare a good petition based on the material available to you because that is what gives you the ground for the allegations that he was not validly elected because of one, two, three, four and then you go back and prepare your witnesses so that on the due date, you prove each and every allegation contained in the petition. I think it can be simple like for instance if the winning Presidential candidate kidnapped the other one and locked him away at the time, it is malpractice - in Kotido and others are in Kisoro and the others were in Bundibugyo, then of course the question of time becomes very crucial but this is really for the Mover to be able to satisfy the House.

MR. MULENGA: Mr. Chairman, that point was considered whether the three days was adequate and in fact there was a proposal to make it seven and we debated having in mind two things; one, that like Hon. Mushemeza was saying, the likely petitioners in a Presidential Election be they ordinary voters or the candidates will have actually gathered all their points even by the time of the declaration. Secondly, there is another aspect. If we are to keep within the two months or 60 days, it is imperative that we shorten the period because if the Supreme Court is to decide the case within say two or three weeks after the elections and there is - it is annulled and we have to go for another election, then the time will be running before the end of the term comes. So we were trying to calculate in such a way that there would be enough time to have even a bye-election after a petition is successful. So those were the two considerations. First, that three days would really be adequate for a serious contender or a serious challenger. He is not going to Moroto to bring the evidence in three days, he will have information already that there was irregularity generally and the nature of the irregularity. A serious petitioner is not going first to travel, he will have agents, he will not travel everywhere as Hon. Muhindo was suggesting that you have to go and gather everything yourself. If you are seriously challenging the Presidential Election, you must have sufficient resources to have gathered the information that will be fed into the petition.

MR. CHEBET MAIKUT: Information! Mr. Chairman, I am surprised the Hon. Member on the Floor is giving a statement as if the Supreme Courts

are spread all over the country. Now, may I know from the Hon. Member whether if a voter somewhere in Kotido or Moyo or for that matter in Kapchorwa, the remote areas, has evidence that election malpractice was committed in the election of the President, whether you will have sufficient time to travel to Kampala to the Supreme Court and file his petition. Thank you.

THE CHAIRMAN: And Hon. Atamvaku, did you want to raise a question also so that he answers them at the same time. Hon. Odur is it a question?

MR. DICK ODUR (Dokolo county): Thank you, Mr. Chairman. My question really regards the method of arriving at the period during which this petition should be lodged because in the Odoki Report, in the Draft Constitution, the period was given as thirty days and in fact the petition was to the High Court and there was a provision for an appeal but I do not find the rationale easy to understand in this case where there is no room for petition and it is the Supreme Court and yet the Committee was able to arrive at three days as a time for lodging this petition. I would like to be clarified what sort of criteria were they using to make such a very big difference between what the Odokis calculated and what they themselves arrived at. Thank you.

MR. LUBOWA (Budiopie county): Thank you very much, Mr. Chairman. I am still confused by the contribution by some Members and I really feel not convinced that three days are enough. For instance, my neighbour here who is a lawyer says three days are enough just because one can use evidence from one station and then lodge a petition but assuming the anomaly was in Soroti and the interested person is in Kamuli, how would I really get that information within just three days? For instance, even the Chairman of the Committee says information will have come out that there was an anomaly somewhere, well, for me, we have witnessed cases where Returning Officers have also been interested parties and giving wrong information. Assuming the Returning Officer does not reveal the anomalies and then the locals there or the voters, are the "Tebinkwatako" type, who may say after all, I do not mind and I only discover later! I really feel three days cannot be enough - seven days are really appropriate.

LT. GUMISIRIZA (Ibanda North): Mr. Chairman, thank you very much. I wanted to

remark that 72 hours for anybody who has been following an election procedure right from the time of the whole electoral exercise ought to be enough to produce a report challenging the validity of the elections. Because to me, I do not think that really what constitutes fraud is basically what takes place on the election day. Partly true, yes, but also right from the inception of the whole electoral exercise, what takes place ought to be put under study by any national who is interested in the smooth running of the election. A case in point for example is the 1980 Elections. Some of us right from the inception knew that the results would not be fair because I was in a constituency where there was gerrymandering and they would indicate one community of people on a map with an arrow linking it with another region completely separate. Now, with that kind of development, some of us knew that the election would not be fair at all. It is just the totality right from the electoral process that finally culminates into what will come out on the election day. So, any Ugandan or any national who has been following, monitoring the electoral process, the campaigns, the what and so on, ought to have come and even stationed very serious - to establish very serious information centres in a few sampled voting centres to make sure that at the election day he is fed with information so that immediately at the end of the exercise, he is ready to come out with a document that can challenge the stated position of the results or whichever the case. So I think 72 hours are really enough otherwise those who are talking of a month, 30 days or seven days it is just to give every Tom, Dick and Harry to come out with faked documents and just put the country in quagmire. Thank you very much.

THE CHAIRMAN: But if you have a situation, for instance, where the allegation is that there was no proper counting of votes at various stations across the country and also you look at the manner in which the courts behaved, the mere fact that you have proved one irregularity in one polling station is not sufficient to annul an election unless you can show that the tendency was such as to be able to reach to another conclusion other than to annul the elections. So how much evidence do you need to be able to establish? This is what I am trying to drive at but that can be answered by the lawyers.

MR. PETER AKURE (Jie County): Thank you very much, Mr. Chairman. Mr. Chairman, I am just wondering why people are worried of seven days. In the real sense, three days would not be appropriate

taking example of Presidential Elections, how will he know there was a fraud somewhere in Kisoro? How will he know there was a problem in Kitgum? At least - the agents may be there - but I want to give an example, Mr. Chairman. During the C.A. elections, much as we had agents in some stations - for my case - in some stations we had agents everywhere but it happened those agents never even voted for the candidate they wanted - I do not know exactly what happened - some candidates got zero, they should have at least had one vote from that station. You may have such malicious people whom you think you may have as agents there but then at the end of the day, you find there is nobody who has voted for you. So I think seven days is enough. You cannot gather information within three days and if we have got to be democratic, how do you tell me that you are now giving a room to somebody to manipulate, to make a petition? And I believe most people here have had petitions. I would like to know from them how many days it took them to prepare petitions? Mr. Chairman, I am sure a reasonable amount of time should be given to one to make a petition and, after all, if you know you have done very well, why are you worried, the results would still be the same. Thank you very much.

MRS. ADIO (Women Soroti): Thank you very much. Mr. Chairman, our recent C.A. Elections gives us an example of how things will be difficult for a candidate who will be for an entire nation. After our C.A. Elections, those who had to petition were given fourteen days if I can remember very well and that was for a small county. How about somebody who will be for a whole nation? Mr. Chairman, that candidate by then will still also be faced by election fever. This one we have all undergone, we normally experience that fever either before or after the elections and, therefore, to give room, we have to give room for the candidate to recover from the election fever so as to settle down to prepare for the petition. What is the hurry for, Mr. Chairman? Mr. Chairman, there is also this issue of poor communication, that one we cannot run out of it. This morning we heard the story of Karamoja. If the candidate is in Kampala here, there is an issue in Kotido Polling Station, it may cost you time - or in Kisoro - it may cost him time to connect to Kisoro before he can finalise that. Mr. Chairman, the lawyers of that candidate have got to be briefed and they have to study the issue before they can come in to defend their client. So, Mr. Chairman, for that

matter I would say that we stick to the Draft Constitution. I would, therefore, Mr. Chairman, urge the Delegates to stick back to the old proposal of the Odoki Draft. Thank you, Mr. Chairman.

MR. ELYAU (Kalaki county): Mr. Chairman, I do not see a big problem here because what we are after is to see whether elections have been good or not good. I do not see why people are hurrying about time as if they want to cover the mistakes. Areas where I come from, in the previous elections like the 1980s and the 1960s, some people could go and confuse a particular village that you will vote tomorrow, we shall vote today because the votes are not there for you. This kind of confusion can make a lot of malpractice. So to have such a time, you need a given time like a week at least so that the candidate gets something valid as an evidence to petition or to make a court case. So I think a week is enough not actually a month, I like a week not even three days but a week. Thank you.

MR. SABIITI (Rukiga county): Mr. Chairman we are trying to constitutionalise a fair procedure for electing a President. This fairness should be exhibited during elections and after when one citizen feels that there were anomalies during the electoral exercise. To be fair to the complainant or the complaining citizen, enough time is certainly needed. The fact that we shall declare a President after - in forty eight hours and if you have had a simple majority, this is a tricky affair because if he gets a simple majority, you will never know what will have happened during the electoral exercise and the candidate plus the ordinary citizens may discover that actually this simple majority was as a result of a certain malpractice. I would suggest - I would say that the time given, three days, is too short, such a short time that the complainant will have no time to launch in his petition. I would therefore suggest that 7 days, in fact 7 to 14 days would be fair. I would therefore, Mr. Chairman, move that we substitute three days to seven days.

THE CHAIRMAN: Hon. Delegates, it would appear, having surveyed the field that the idea of 72 hours is not popular. I think that is very clear. Hon. Mulenga, do you want me to put it to the vote?

MR. MULENGA: Thank you, Mr. Chairman. With that warning I will reply with care. First of all, to explain really that the matter was thoroughly discussed and that there is another consideration to

be made before you agree to increase the time, it would have been ideal even to stick to the 30 days proposed by the Odoki Commission if we were not constrained by this consideration that we should use the 60 days to ensure that by the time the President comes to assume office, the air has been cleared, there is nothing hanging over his Presidency or this mercy of the Presidency, that was a major consideration. The other point I would like Hon. Delegates to take into account is that we are talking of three days after declaration of the results but in fact, in view of the increase that has been made in Article 106 (6) to allow the Electoral Commission to declare the results in 48 hours, then we have extended the time within which this potential petitioner will gather his material, we are really talking of 5 days, it is no longer 3, we are talking of 5 days from the time of election because the election will be observed - as it has been acknowledged - will be observed during the process and after the election, people will know what has gone wrong and the results. If the results come, it will come when the person has the knowledge. So, Mr. Chairman, my position would be this that if the House would like to increase to 7 days, we need not spend too much time on it but I would then request that you consider extending the 60 days so that we make sure - *(Interruption)* - excuse me, please. My reason is this that we should really keep this idea of avoiding petitions over a man who has taken office. I think that one is acceptable that we should make sure that the petitions are concluded before the President takes office. If that is accepted, then I would still plead that you accept the three days which in reality is to become five for lodging the petition, then we have another period for determining, hearing the case and in case the petition succeeds, we have enough time to go back before the end of the term. I thank you, Mr. Chairman.

THE CHAIRMAN: But I think Hon. Mulenga there are some assumptions you have made there. The forty eight hours are not absolute forty eight hours because we talked of scrutinizing and declaring results within forty eight hours from the close of polling. If they are very efficient, they could declare the results in six hours from the close of polling, anything from whatever time it is to forty-eight hours so that does not give you automatically two days. Actually, it is just an assumption that we may be a bit inefficient and need forty eight hours but if we are efficient, we could do it in less than that.

MR. KAIJUKA (Sheema North): Mr. Chairman, I want to support the latest position of Hon. Mulenga. I think if you look at the notes on page 17, the committee's major considerations are contained in (7)(2) where they have been very clear in saying that it is important that any question on the validity of the election to the highest office in the country should be decided expeditiously and conclusively. In other words, if you want to decide on the Presidential Election challenge, it has to be done expeditiously. The question is how long and I think the House is agreed that three days is too short a period because of the nature of communication problem and the rural nature of our society but I think that is no longer the issue but we should also bear in mind the question Hon. Mulenga raises of 60 days within which period the President should assume office and in order to have petitions, you may end up having a series of petitions. We should really remember that the Supreme Court may indeed end up having a series of petitions and that is why whoever is bringing a petition to challenge the Presidential Election, it should not just be a joking matter or a playing field. It should be a serious person who knows that there are good grounds for challenging the elections, it is not a joke as it were. So for that very strong reason that a Supreme Court has got to pronounce itself on a series of petitions and if we go further down, if we pass No.3 as proposed, a judge has to do that I think in another 14 days, we should make sure that we do not widen the spectrum of petitions unnecessarily. I have heard people mention a month, I think that would be also a prescription for uncertainty. I think it is important to clear the air, let people have a whole week and whoever has a petition comes forward, judges pronounce themselves on the position and you have a duly elected President for the country to move forward because any other alternative that spreads, you could get to 60 days and you have petitions that have not been heard which would be contrary to this Constitutional provision the House has already pronounced itself over. So my support for Hon. Mulenga's position now is that he should not interfere with the 60 days as he was suggesting. I think 60 days should remain, and we should have a week and that should give enough time to the Supreme Court to clear current recommendations. I thank you.

THE CHAIRMAN: Hon. Delegates, do we have to debate further this matter? We have to make a choice between three days and seven days. Well,

we have the proposed three, 72 hours as recommended here and the general view has been seven days. What is the clarification about hon. Bidandi Ssali?

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman, I would like to know whether it would make any sensible difference if we added the word "working days" if we are talking in terms of - because I am imagining a situation where we are taking Saturday and Sunday. Should we continue taking it as part of the three days or part of the seven days?

THE CHAIRMAN: I do not know how the Interpretation Statutes really are written on that issue but those that I am familiar with, they say that if a law requires a matter to be done and that doing of the matter falls on a Sunday or a public holiday, then the next working day is the day on which that matter shall be done. So the matter is normally taken care of. Now really, we have to make a choice between three and seven and I will put it on three and if the "Nos" have it, then we shall be deemed to have gone for seven. If the "Ayes" have it, we have three. I will now put the question.

(Question put and negatived)

THE CHAIRMAN: Well, there was an attempt to rig but I think the NOES have it. And so we take it that we agree with the seven days proposition.

HON. DELEGATES: Yes.

THE CHAIRMAN: Hon. Malinga you are putting up your hand in advance of the leader of the discussion. Are you lodging some petition?

MR. MALINGA (Usuk county): Mr. Chairman, I want to be satisfied on the question of taking the matter to the Supreme Court rather than to the High Court. I have listened to the reasons given by Hon. Mulenga for these reasons but he does not seem to have taken into account the fact that the Supreme Court only deals with appeals and they are used to handling appeals whereby they already have the evidence on record and they take only legal arguments when they get to the court. Now, if you take a petition to the Supreme Court it means the Supreme Court will have to take evidence which is something they do not do everyday although they may have done it before, they are not used to it so you will not necessarily be expediting the act

because they will be doing a job they are not used to doing everyday. It will be slightly different because when they are dealing with appeals in ordinary cases they are dealing with a matter which has been handled by a High Court Judge where the evidence is on record and the manner in which they dispatch their work is quite different from a court handling a matter at first instance. So we may not achieve a saving in time by going directly to the Supreme Court I regret to say. That is the only point I wanted to raise.

THE CHAIRMAN: Hon. Malinga, you are making an observation I take it because we have already decided on No.(1) that the matter will go to the Supreme Court. I take it that Judges go to the Supreme Court through a process, either they have got to be very highly qualified barristers who have been at the game for some time or those who have risen from the High Court to the Supreme Court. I think we leave it at that.

MR. MULENGA: Thank you, Mr. Chairman. May I add that the Supreme Court Judges are capable of sitting as a Tribunal and recording evidence like Judges of the High Court and this has happened.

Mr. Chairman, Clause (3), it is recommended that Clause(3) reads: "*The Supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than 14 days from the date of the petitions filed.*" (Interjection).

THE CHAIRMAN: Hon. Kabayo but let us get the information first.

MR. KWERONDA RUHEMBA (Kajara county): Mr. Chairman, Article 106 Clause(5) was amended this morning to read 30 days. So I see this therefore it should read the same.

MR. MULENGA: No, no. Mr. Chairman, that is mixing up.

MR. KWERONDA RUHEMBA: It is not mixing up, Mr. Chairman.

THE CHAIRMAN: Which one are you referring to, which clause?

MR. KWERONDA RUHEMBA: Article 106 Clause (5) this morning was amended to give 30 days in which petitions could have been heard.

THE CHAIRMAN: I think you are misreading it.

MR. KWERONDA RUHEMBA: And consequent upon that, Mr. Chairman *(Interruption)*.

THE CHAIRMAN: No, I think you are not really informing us properly. Clause (5) relates to a situation where an election aborts and you will have to go to elect again, it is not a petition. Mr. Karuhanga.

MR. KARURANGA (Nyabushozi county): Thank you, Mr. Chairman. I wanted a clarification from the Chairman of the Committee, Hon. Mulenga, on this question of 14 days which we have now given the Supreme Court. Aware that the Supreme Court is now the Court of the original jurisdiction in this matter and that it is going to look for facts and evidence and that it may have to visit various areas to prove some of these facts, or requires some witnesses to appear in person before them, or research and find out some other matters to enable them to come to a proper decision and also, aware that the hearing in itself of the petitions may take more than let us say seven days or ten days including the hearing of witnesses and all that, if the Supreme Court having decided to drop everything else that they are doing on receipt at the Registry of a petition - and by the way they have not been required to do so - if they have other matters, they may as well go on with them and the Registrar, when he presents to them the case, they will have to position the case before them and those other matters are also constitutional before them. Now, assuming that all this is taking place and that they do not finish and come to a judgement within 14 days, then the Supreme Court will be acting unconstitutionally. However, the Supreme Court now is faced with a very serious position, they cannot meet the target of the 14 days and that is unconstitutional and they do not want to pass a wrong judgement on an important issue like that of annulling the elections or declaring a President who has been elected as not duly elected or taking any of the three positions we have given them, the validity of the election or annulling the elections or dismissing the petition. Now, what then happens? I hope the Committee discussed this in detail and may be the chairman will give me an answer to this but if they didn't. I think we need then to put a provision for the Judges so that at least, they say that if they do not decide this in 14 days, at least, they

have a way out of this embarrassing situation. So, I would like Hon. Mulenga to help me.

THE CHAIRMAN: But I think the simple answer is that if it comes to the 14th day and they are still hearing, they will lack jurisdiction after that.

MR. KARUHANGA: Well, if they lose jurisdiction then what happens, Mr. Chairman?

THE CHAIRMAN: Okay, let us hear Hon. Kabayo and then we go to Hon. Mulenga.

DR. KABAYO: Thank you, Mr. Chairman. My question or my concern is in respect to the possibility that the Supreme Court could be overridden by a multitude of petitions, many of which could even be false concoctions which may be even motivated by malice. This could eventually bog down the Supreme Court and even bring it to a halt. I am wondering whether we could not design a certain mechanism to separate wheat from chaff, to prevent a scenario which could result in this constitutional provision being unworkable, and I propose, maybe, that we could, instead of involving the registered voter, we could involve the affected candidate so that *-(Interruption)*.

THE CHAIRMAN: I think that one was argued. I am sorry to cut you short and unless we change the recommendations under clause 8 as it is proposed, if Parliament enacts a law, I can see a law which may say that the Supreme Court shall not hear a petition which in their view is voracious or malicious and so on, so that really all those are going to be covered in the detailed Statute. Here we are just saying these are the major things, they are under a duty to hear the matter quickly and come to a conclusion. As to the grounds of annulment and rules of procedures, those will be provided for if we pass 8 in its present form, and normally will take care of the situation you are looking at where you empower the court to look at a matter and say - I mean, this one is a play thing and we would not like to continue with it and strike it out, so that they do not have to waste their time on it. Hon. Mulenga, particularly what happens if for whatever reason the Supreme Court is not able to finish within 14 days, do they declare themselves to have lost the jurisdiction and, therefore, abandon the matter and person who was declared President continues to be President, not withstanding the petition?

MR. MULENGA: Technically, Mr. Chairman, they would lose jurisdiction after 14 days, unless there is, as Hon. Karuhanga suggests, an option left for power vested in them to extend the period. But, I think we should not use this enquiry in the formalistic way. The reason we propose that Parliament makes rules or laws to govern the procedures and even the ground on which an annulment can be made, is so that Parliament may provide for rules that make the enquiry expeditious, like tribunal, so that within its period given, it expedites. If you are a Supreme Court and you are given 14 days within which to finish the enquiry, you will expedite, you do not have to write or hand, like in a Magistrates Court, so that somebody is going to appeal, you are listening. So, Mr. Chairman, I can envisage, because of that constraint, rules being made that the court need not record evidence like in a trial where there is going to be an appeal. Because it is a final court, people are filed in, they give evidence, the Judges, the wise men are listening and they make up their minds. In 14 days, in my view, they can go through even 50 witnesses if need be. So, it will very much depend on the attitude taken; what type of procedure will be prescribed for that court listening to petitions be they ten, be they 20; are we going to have pleadings in the usual way; are we going to have evidence recorded? So, Parliament would, seeing these constraints of wanting to achieve something namely clearing the presidential election within a specified time, make laws to suite that situation.

THE CHAIRMAN: Okay, I think that is fair enough. Hon. Rukutana what do you have?

MR. RUKUTANA: Thank you, Mr. Chairman. Much as I cherish expeditious handling of such a petition as we are discussing, I do not want a situation where the Supreme Court Judges will be put in a situation where they are more interested in beating the deadline of 14 days, than the interest of justice. I have been in these courts for over 12 years, I know what can happen to proceedings in court. Unimaginable circumstances can arise so many times and the courts do not take off. However much they are interested in expediting, they may fail to take off for genuine reasons. So, if we are to set a deadline, which to me is very uncomfortable, let the deadline be reasonable. A matter of such a national magnitude where I imagine we are going to consider evidence from so many areas, from so many people, from so many interests, I do not think that 14 days,

even if it was to be hearing, if the court was to be fair and if I was representing my client who was a contending candidate for presidency, I do not think that 14 days will be enough to listen to all the witnesses I would need to prove my case.

Now, a situation arises, suppose I say I need more witnesses in order to establish my client's case, if the Judges see that they are going to be late, they are likely to tell me "no, that will waste our time". To me, justice will not have been made because I have been stopped from proving my case the way I wanted it! So, Mr. Chairman, I would think that the proposal of 14 days is too short at any consideration for any court to be expected to handle a matter of such great importance. As I said, the Judges will be only chasing time to beat the deadline of 14 days rather than to do justice. Unless you are going to put a proviso of what happens if the 14 days deadline cannot be made, I think, we should be a bit reasonable and, at least, make it 30. I am suggesting 30 as a concession, otherwise, in my opinion, it should have been even 60 days! But I am ready to agree with people suggesting 30, to say that, at least, 30 days should be provided for.

MR. KAGGWA (Kawempe Division, South): Thank you, Mr. Chairman. Much as I would go along with the previous speaker on having reservations on 14 days, I would also want to draw the attention of the Hon. Members to that fact that we have already tied ourselves with the 60 days, and I should want to call upon all those others who want to contribute to bear that at the back of their mind. And having said that, on recognising the fact that the office of the President is such an important office, and bearing in mind that once there is uncertainty to the highest office of the land, anything can happen, I think we could do well if we gave these three weeks, that is 21 days, as opposed to 30 days and so I would recommend. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, we should be moving. There is 14 days, there is 30 days, and there is a proposal of 21. I think what is making some Members uncomfortable is supposing 14 days is not enough and the court loses jurisdiction and therefore, the person who was declared President continues now because there is no base for another petition, because the days of petition are finished, and so there is a President with a question mark on him; people saying, actually he was just lucky or

that he manipulated the Supreme Court and they just failed to finish within 14 days. So, I think, for me I would suggest that you take the middle course of 21 days. Hon. Mulenga what do you think?

MR. MULENGA: Mr. Chairman, I think it is a reasonable compromise although it is getting too near, we have already increased to seven days, to 21 days, that is a month to finish. Mr. Chairman, I would have no objection to - I think the committee would have no objection to increase it to 21.

THE CHAIRMAN: Okay, it is 21 days, agreed.

HON. DELEGATES: Yes!

THE CHAIRMAN: Next, Hon. Mulenga.

MR. MULENGA: Mr. Chairman, the committee recommends that clause 4 reads: "*When a petition is filed within the time prescribed under Clause (2) of this Article, or where a petition having been filed is dismissed by the Supreme Court, the candidate declared elected shall conclusively be taken to have been dully elected as President.*"

THE CHAIRMAN: It is agreed, go to the next.

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (5) reads as follows: "*After due enquiry under Clause (3) of this Article, the Supreme Court may (a) dismiss the petition or (b) declare which candidate was validly elected or (c) annul the elections.*" Mr. Chairman, I wish to explain that some Hon. Delegates have been asked whether this is necessary, whether it includes all that the court can determine. First of all, Mr. Chairman, it is the normal way of providing the court with jurisdiction saying what it can order, that is the normal way of drafting the law. Secondly, it is my submission and the committee is satisfied that these are the only three alternative orders that could be made. Mr. Chairman, I beg to move.

THE CHAIRMAN: What about the orders as to costs?

MR. MULENGA: That is understood.

MR. MALINGA: But surely, the court can also declare that there were some irregularities, which irregularities should lead the candidate declared a winner to have been validly elected. So, the court

can also declare that there were some irregularities which did not affect the results of the elections.

THE CHAIRMAN: Could that not be covered in (b)? Because they could say that we did note some irregularities but they were not sufficient to reverse the results and therefore, so and so was validly elected. Okay, agreed. Next one Hon. Mulenga.

MR. MULENGA: Mr. Chairman, this is where now we reach troubled waters. Clause (6) reads: "*Where an election is annulled, a special election shall be held within 14 days from the date of annulment.*" Mr. Chairman, I said troubled waters because of the extension of the period. We have now covered over one month, now, if there is to be an election, another election, and it is within that same period, 14 days would take us just two weeks before 60 days expire and the worry is should there be another petition, then we would surely go beyond the 60 days. Mr. Chairman, I should explain that we had proposed a formula which would allow for two possible petitions, and if a second petition succeeds, we were saying on Clause (7) that we would have to postpone the elections because that would be a real crisis in the country, for election petitions against a presidential election to succeed twice would justify postponement of election for a reasonable period like six months. Now, with the alterations we have made in terms of time, I am now uneasy about the formulation in Clause (6) and (7) for the reasons that I have given. I would need guidance of the Assembly.

THE CHAIRMAN: Hon. Delegates, you have seen that we have extended to 21 days within which the court may hear and determine the petition, and should it annul the election, then you have an election within 14 days from that time, and Hon. Mulenga is saying that is cutting it too fine, and is seeking guidance.

MR. KARUHANGA: Mr. Chairman, my problem is on the 14 days. In (6), he has maintained 14 days after the annulment, this goes back to - I do not want to give the reasons why I am concerned about it because these reasons were given in the morning when we were discussing article 106, paragraph 3.5 where we extended the days from 14 to 30, and I think, therefore, that there is a need for a consequential Amendment because the same reasons still apply. If there is going to be another election, then the Electoral Commission needs to

prepare the ballot papers, they need to put transport together, they need to put the ballot boxes back to the constituencies, they need to get the people back in place, they need to get their transport, they need to go to the Treasury to look for the money, for the budget, and I think the 30 days which we have used on page 11, if you can look back on the Draft, are still valid. So, I would suggest or move that, as a consequential Amendment, we again put 30 days here.

MR. BYARUHANGA: Thank you, Mr. Chairman. We really have a very big problem because we have already committed ourselves to getting a President or swearing in a President who is not encumbered with petitions and yet going is what we already have now. We already have a problem because if the person in the first election, if the elections are petitioned, we shall need the seven days plus the 21, and then if unfortunately this other man again petitions, we need another seven plus 21, and when you add them together, you will find that we are virtually over the 60 days, because there are some other days we are not talking about, the days when we wait for results and what have you. So, I believe that we may have to go back and having a President who is encumbered with petitions or lessen the period between when a President is elected and when he is sworn in as President, but these 60 days, it appears with the elaborate arrangements we have in this report cannot be maintained. We could move the 60 to 90.

MR. BIDANDI SSALI: Mr. Chairman, in my view, we should continue with our logical conclusion and not be guillotined by this thing called 60 days. Clause (7) is trying to solve part of that issue of 60 days, and I think if it is redrafted to include any period that will be an overlap, then the speaker comes in. Otherwise, it is very, very important that there should be a logical sequence of events. You cannot give, as Hon. Karuhanga here has said, you cannot give 30 days earlier and then you give less. So, I think that if you gave that 30 and in the end you find that the thing has gone beyond the 60 days, then immediately the Speaker comes in to act until the process reaches its natural end.

THE CHAIRMAN: Yes, because I think Members have not had their minds drawn to the provisions of Clause (7). If you looked at Clause (7), the issue you are raising, maybe, would be handled that way.

DR. BYARUHANGA: Thank you, Mr. Chairman. You see, the arrangements in Clause (7) come after you have had another successful petition, that if in the consequent elections allowing the first elections also do not go on well and get another successful petition, and yet by the time you arrive there, the 60 days are already gone. So, unless we say that if ever we have a successful petition, even after the first normal elections, then we forget about the 60 days. But if we have to even cater for these second elections, then the seven will not be sufficient because by the time seven comes into play, the 60 days are already gone.

THE CHAIRMAN: Hon. Mulenga, what do you say to that? Okay, let us hear Hon. Karuhanga first and then you can come in to clear both.

MR. KARUHANGA: Thank you, Mr. Chairman. The problem raised by Hon. Byaruhanga, is correct. However, it should not blind the Assembly. I was the other day looking at the American Constitution and I found out that although they have a fixed term, there are circumstances where days do overlap, and they have said those circumstances are agreeable, if those circumstances take place. So, what we are discussing really now are the rare situations, when things drag on, and even when you compete, the days you find that we are not talking about 60 days or 30 days, but we are talking about four days, and we do not even need the operations of seven, the incumbent President to continue before he hands over until those circumstances - in America that is what they do, the President continues until those circumstances do happen. In fact, I thought, I was trying to get the Odoki report because I think it was also discussed there, if not in this report, but I do not have the exact page where it is. But I think we don't need to be so mathematical, what we are doing is not a mathematical equation, it is just to make sure that the Presidential elections and the succession is smooth and orderly.

THE CHAIRMAN: Well, I do not think the Americans when they were writing the Constitution never envisaged a situation to happen in real life that they would have a President who has not been elected at all by the people, as they had with President Ford because President Ford never got himself elected at any point. He was appointed as Vice President because Aginue was disgraced and then when Nixon was disgraced he became President. But I do not think they envisaged such. So, some of these things can happen.

MR. KARUHANGA: Yes, the problem is that apparently during their C.A. they got stuck on this issue, I was reading, and the only thing they did to evade it was to make sure that the direct elections are done through middle people who accumulate the votes as a college and they count the college elections to avoid petitions.

THE CHAIRMAN: Okay, Hon. Mulenga, could we finalise this?

MR. MULENGA: Mr. Chairman, I am inclined to the view by Hon. Bidandi Ssali. I think with the assistance of the Technical Committee, we could recast Clause (7) and then later, another one that makes reference to it, in such a way that if there is a second petition - first of all, an election after an annulment, there is another election followed by a petition which goes beyond the 60 days to provide that the Speaker will at the end of the term take over, and if that petition should ultimately succeed, then he hands over to the successful person. If he does not succeed, then another election takes place after the postponement we have proposed in Clause (7). I think with the assistance of the Technical Committee, we could do that - *(Interruption)*.

MR. BASOGA NSADHU: Point of information. Thank you very much, Mr. Chairman. I wanted to inform the Hon. Mulenga, the Chairman of the Committee, that there is a problem also with the Speaker, because I do not know at what stage Parliament will have been dissolved but I wanted to imagine that if Parliament had been dissolved, then we shall have a problem. There will be no substantive Speaker at that time because we shall be preparing for general elections. Unless, we review the process of electing a Speaker and he does not have to contest and he is there on a full time job, maybe, we need to look at that one also. That is the information I wanted to give so that it is duly taken under consideration. Thank you.

THE CHAIRMAN: I thought the normal procedure is if the Parliament has been dissolved and an election is taking place, if there is a situation where a speaker should be required, because say declarations of war and you must present the matter to that Parliament, you can actually recall it so that the Speaker continues until the new Parliament has been elected to elect another Speaker. That is what I thought, but I stand to be corrected. Let us hear the Hon. Mulenga who is the Chairman of the Committee.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, in our next report which will be on the legislature, we are recommending that Parliament shall serve its full term, it is not dissolved in mid-term, and that at the end of the term - we have proposed that at the end of the term, seven days elapse and the next Parliament comes in. So, the gap of having no Parliament or Speaker is being avoided.

THE CHAIRMAN: Okay, now here - Okay, Hon. Kirenga.

MR. KIRENGA (Mityana North): Mr. Chairman, I am a member of Committee Two and I would like to draw the attention of the House to the proposal which came for discussion mainly whether the Speaker should assume the Office of the President if the position of the President is being contested and there is no valid President if the period expires, while the electoral petitions have not yet been finalised. Then there was another idea that, in fact, the incumbent President should continue until the issue of the new President is determined. I would like the Members to bear that in mind that we had to choose between the two. Secondly, Mr. Chairman, there was also the question I note that we are saying in Clause (7) that if after a fresh election is held under Clause (6) of this article, there is another petition which succeeds. I want to draw the attention of the House to the possibility of there being petitions, not only one, are we here making it legal to petition again after the second petition, or can you call it petitioning until you are exhausted? Because every presidential election is liable to be challenged by a petition. So, I want to draw the attention of the House to a possibility where every presidential election is challenged, so that if A is elected he is challenged, in the next election B is elected and is challenged, then in the third election C is elected but challenged, and then D and so forth. In fact, we could have a possibility where the whole five years could be occupied by petitions.

THE CHAIRMAN: But I think what is complicating our matters really is a desire to have a President without petitions. If we had said "*Kama mbaya mbaya*", if you are elected President they petition against you, and if it is annulled they elect and they petition against you, whether you are in office or not, it would be easier. But now we are trying to work time, trying to fit hours and minutes to a situation of a desire to have a President without

petitions and this is creating a very serious mathematical question with regard to our time of 60 days and how we should coach it in our constitutional arrangement, making it quite very, very complicated now, when you look at Clause (7).

MR. MASALU MUSENE (Manjia County): Thank you, Mr. Chairman. I think the matter which Hon. Kirenga has raised, the two matters, are very important and should be considered by this Hon. House. The first one is that instead of the Speaker taking over, we should have the incumbent President continue even if there is a petition. The main reason being that this will discourage potential petitioners from lodging frivolous fictitious petitions for the sake of it because they will know that whether we petition or not, still the man is in power. Some of us would have proposed that the Chief Justice takes over as a neutral person but then the Chief Justice will be involved in hearing the petition. So, I think the incumbent would be better.

Secondly, he has raised the issue of petitions after petitions. I think since we have opted for the Supreme Court which is the highest court in the land and which is highly respected, we should further restrict only one petition, that after presidential elections, there will be one petition and the decision of the Supreme Court shall be final and there will be no more petitions so that will prevent a situation of having petitions after every election. I think these are serious matter raised by Hon. Kirenga which we should consider if we are to avoid people lodging petitions after petitions for the sake of it. I thank you, Mr. Chairman.

MR. OKALEBO (Bukedea County): Thank you, Mr. Chairman. When we considered this article, we touched on so many areas, basically the period of 60 days is very important, and if we are going round trying to find solutions to other matters, that is the basis of what we decided in as far as the exercise is concerned and I wanted to give some other information that there is a danger of putting into power a President with a petition hanging over him, the danger and the risk is that once the person is sworn in as a President and then you put in a petition against him, there is a possibility of pleading immunity since he is already installed as a President.

THE CHAIRMAN: But will that be the case if the Constitution says that there shall be no immunity in that sort of situation? Can the Constitution say that

in the event - as far as electoral petitions are concerned, the presidential immunity to court matters is not available, and that will sort out the matter. I think we are really having a problem of having this idea of protecting the President from having petitions, it is taking us into a serious mathematical arrangements. In fact, what was said by Hon. Musene indicates that, in fact, you can have a President with petitions. Because, if the incumbent continues and people can petition while he is there, you will be having exactly the same. So - Hon. Bageine.

MR. BAGEINE (Bufumbira County East): Thank you, Mr. Chairman. I thought the idea of allowing petitions is to ensure we have the right President who has not smuggled himself into the presidency and we give enough time to the petitioners to, actually, forward their complaints and have them resolved. I did not think the idea is to really limit the petitions, because how do you determine whether the first petition that comes through is the right one, and is the only one to be handled? In the absence of any mechanism to determine the valid petition to be handled, I think we have already kind of restricted them by giving a time frame within which petitions may be brought. Now, when it comes to determining when fresh elections may be held, I think if we kept consistent with what we passed earlier on, 30 days, you would be running into trouble whatsoever because that is only an assumption and it says "within". So I do not see why we should necessarily envisage that it will be exactly after 30 days that the election will be held and that exactly after 30 days the annulment will be pronounced. So, Mr. Chairman, following the spirit that was behind the 14 days that the committee proposed, I think we could just adjust 14 to 30 in order to be consistent with what we passed and I do not think it has very serious consequences, Mr. Chairman. Thank you.

MR. SAKWA (Bungokho South): Thank you, Mr. Chairman. I would like the House to consider the situation as mentioned earlier where the incumbent President is himself taking part in the election and he could be the one declared winner, and then somebody challenges his election. If we are going to have fair play and justice to be executed, I think it would be wise for us to put in a provision which removes immunity from the President on electoral matters as soon as he declares his candidacy. Otherwise, how do you expect a person who is

being petitioned to be given the opportunity to continue in office because there is another petition pending? I think first we should recognise that once he has got a petition on him, he has already got a question mark and, therefore, we should allow the Speaker to take over the running of the country to ensure that now the person who is being petitioned is on the same level with those who are petitioning. Otherwise, we are giving ourselves a situation where we might end up in a loop which never ends. Mr. Chairman, I would appeal to the Chairman of Committee Two to probably come out with a formulation which removes immunity from the President during these circumstances, the incumbent President. Thank you,

MR. ZZIWA (Kawempe Division North): Thank you very much, Mr. Chairman. I am a member of Committee Two and we had quite a lot to talk regarding a President who would take up office with pending petitions and one of the facts has been brought up, and that is the fact of immunity, that probably he would claim immunity in certain areas but there are also other factors, Mr. Chairman. We had the factor of the President with a hanging petition making constitutional appointments; appointing ministers and appointing various other constitutional positions, and then we considered the position whereby such a President has been successfully kicked out of office by petition, and we considered what repercussions would come in as regards these constitutional appointees. Will they fall with him, what is going to happen! And, in fact, we went very far and thought the whole thing would turn up into a turmoil and a fiasco sometime, if we elect a President who took office before he is cleared of all possible petition, and Delegates should not confine themselves to the immunity issue, there are also quite a number of other issues which might come up when a petition is successfully lodged and, Mr. Chairman, I wanted to draw the attention of the House.

THE CHAIRMAN: Okay, Hon. Ringwegi, do you have an answer for us because we have been bogged down on this one for too long?

MR. RINGWEGI: Thank you, Mr. Chairman. Mine may not be really an answer, but I am wondering why Hon. Delegates are failing to grasp the import of the provision in Clause (7). Clause (7) is seeking to provide for a situation whereby two presidential elections have been held, the second one having been necessitated by the annulment of

the first one, by a petition in the Supreme Court. Now, the committee thought it wise that there should be a break to this impasse. Now, we can only break that dead-lock by providing for a Speaker, an independent person assuming the duties of the presidency, and then the election should be postponed so that we do not have endless petitions and endless election. This is the first scenario and that is the import of the provision in Clause (7) that we would have the first election, thereafter, if that petition has succeeded, there would be no further election immediately, but then the duties of the President would be usurped by the Speaker for a specific period to allow for further elections to be conducted but then you do not immediately go in for a third election. So, Mr. Chairman, I would like Hon. Delegates to read the provisions in Clause (7) and have in mind that we are providing for only two elections, and in between, we want a period whereby some other person assumes the duties of the President and then a subsequent election is organised to take place, so that even when the incumbent President will have left office, then the Speaker comes in to take over his duties.

Secondly, Mr. Chairman, if this provision in Clause (7) is allowed to stand, we shall have eliminated the necessity for providing for an exemption in immunity because it will not arise. We are saying that the incumbent President will have to leave office as a Speaker takes over his office so that if he wants to run for another election he will be running not as an incumbent President, because the Speaker will be performing that function. So, you do not need to exempt anybody. I do not know whether I have been clear enough to be understood.

THE CHAIRMAN: Yes, but what about a situation where, say you hold the first election where the President is one of the candidates and he wins and he is still in power, but there is a petition against him, he is going to be sworn in again after 60 days, but during the 60 days, he still is the President, but petitions can actually be brought against him because he has won and he is still exercising powers of the President. So, what I am saying is that we cannot completely avoid a situation of having a petition against the President.

MR. RINGWEGI: I would like to agree with you on that point, but then that should not disturb the discussion on Clause (7). Maybe we could think of the exemption in another provision but not certainly under Clause (7).

MR. KATUREEBE: Thank you, Mr. Chairman. The intention here was not do away with petitions during those 60 days. We recognise that the President could himself be a petitioner even during those 60 days because he has been a candidate and he has lost and he is not satisfied and he could himself be a petitioner. But he continues in the executive office by virtue of the prior mandate he had from the previous election, he continues to complete his five year term. The intention of these provisions was to try to finish all petitions as much as possible before the expiry of the 60 days so that when we are swearing in the next President, he comes with a clean ship because there are serious consequences that would follow if you swear in someone, vest in him the executive authority of this country, he makes executive appointments, he signs treaties, and a few months later, you annul the elections. Now, when you annul the elections, what happens, does that mean the election was null and void and, therefore, whatever he has done in the execution of his office is null and void? Now, we are trying to avoid those question, that is why we tried to put in this tight time table such that as much as possible, all petitions are finished. Now, in the event that they are not and you require a third election, then the provisions of section 7 would come into play.

THE CHAIRMAN: But can I ask one question, would you say that 7 read together with provisions relating to 60 days and the provisions relating to assumption of office, they tie in properly?

MR. KATUREEBE: Yes, from my understanding it is that at the expiry of the period of the incumbent President, that is the five years have elapsed, if there has been no validly elected President, then you have the Speaker coming in.

THE CHAIRMAN: I think the 7 does not say that properly.

MR. KATUREEBE: Maybe we can amend it or somebody can help us because it says "*upon the expiry of the term of the incumbent President*" - that is the crucial point. "*Upon the expiry of the term of the incumbent President*", that is when this clause into play.

MR. KAGGWA: Thank you, Mr. Chairman. On top of what you have said with which I agree entirely, I would also want to See a situation in this

paragraph putting a time limit as to the period when the Speaker is supposed to be in office because as it stands now, there is no time limit and it is open headed. I would want, on top of what you have said, to put a time limit, Mr. Chairman. Thank you very much.

THE CHAIRMAN: Hon. Mulenga, that should be the final one and we either take it as it is or send it back for panel beating.

MR. MULENGA: Mr. Chairman, first of all, let me respond to what Hon. Kaggwa has said. If you look at, I think 112, it provides for whenever the Speaker takes over elections - and there are several ways when he takes office as President; either because the President and Vice President have been removed or have died or have resigned. So, there is a general clause that provides that he will stay in for a maximum of six months when the elections will be made. Mr. Chairman, I wanted to respond generally on this question. It has arisen because of Clause (6) where it was felt that in order to be consistent, we should increase the period to 30 days when fresh elections may be conducted after annulment of a previous one. I did say, and I want to repeat that, after hearing what Hon. Bidandi Ssali suggested, I was inclined to the view that Clause (7) with the assistance of the Technical Committee can be rephrased to allow for the petitioning or the process of petitioning and determining the second election to go beyond on the understanding that at the expiry of the regular term, the Speaker would take over, and depending on the results of the second petition, the successful candidate takes over or we wait for the postponement in case the second election is also annulled. Elections are postponed as proposed in this article and meanwhile, the Speaker will be holding fort. So, the question really of recasting Clause (7) as a result of having increased this period - because when we calculated the three days, seven days, 14 days, it was possible to have two elections, two petitions and still beat the deadline of the 60 days. But now that it has been extended, what I see is a question of arranging in such a way that in the event of a second petition, that is after one election is annulled, you have another election and there is a petition that is bound to go beyond the 60 days. So, we provide for that eventuality that in that even the Speaker will take over anyway, the petition continues and it is also determined expeditiously. If it is successful, the election is postponed, if it is unsuccessful, the man who was elected the second

time takes over and I think this can be arranged by reformulating Clause (7).

THE CHAIRMAN: I think to be fair to the Constituent Assembly, I do not think many Members have been very clear on this. It should be better if it was written in the formulation which you are suggesting.

MR. MULENGA: Yes Mr. Chairman. In effect, I am saying let us be given opportunity to go back on Clause (7) only, the rest seems to be fair, and then we shall bring it back duly formulated.

THE CHAIRMAN: Okay, Hon. Delegates, this has taken a bit of time and now the situation is this that upon a petition which will lead to elections being held beyond the 60 days, then there will be need for the Speaker to take over, but this one does not say so clearly. Therefore, there is need for the committee to go back and take that into account by rewriting Clause (7) of this article, then come back with it and then on the basis of what they have written, we shall pronounce ourselves on that particular clause taking into account that lacuna which has been identified. So, that is how we leave it, I think we do so because in Clause (6), the general view is that we should have 30 days - was it 30 days? Yes, 30 days for the election from the date of annulment and therefore, you take into account the fact that if you apply 30 days, you are going to go beyond the total number of 60 days and what happens to the presidency? Most likely during that time, the term of the previous President will have expired, whether he has been re-elected and challenged or not, then they are suggesting that the Speaker takes over, but that does not come out clearly here, and that is what they should go back and rephrase and come back to us. Agreed? Thank you. Hon. Mulenga, I think number 8 we could accept it if you so recommend.

MR. MULENGA: Mr. Chairman, I so recommend with enthusiasm that Clause (8) be accepted as part of the article.

THE CHAIRMAN: Now, we cannot pronounce ourselves on 107 because of that clause 7. So, we have accepted all the others except (7) and then when that comes and we clear it, we can proceed to announce ourselves on Article 107 to stand part of the Draft Constitution. Could we go to Article 108?

MR. MULENGA: Mr. Chairman, Committee Two on considering Article 108 on the term of office of the President, it is recommending that Clause (1) of the Draft be retained, with only a slight Amendment of referring close reference to Clause (4) of the article. It should read: "*A person elected President under this Constitution shall, subject to Clause (4) of this article, hold office for a term of five years.*"

THE CHAIRMAN: Agreed? Next.

MR. MULENGA: Mr. Chairman, the committee recommends to insert a new Clause (2) to read: "*Notwithstanding the provision of Clause (1) of this article, the first President elected under this Constitution and the President elected under Clause (2) of Article 112, will hold office for more or less than five years so that the next election of a President is held on the first Monday of February nearest to the date of the fifth anniversary of the assumption of office by the incumbent.*" Mr. Chairman, I think this is self explanatory.

THE CHAIRMAN: Yes, it is agreed. Next.

MR. MULENGA: The committee recommends, Mr. Chairman, that Clause (3) be retained to read: "*A person shall not be elected under this Constitution to hold office as President for more than two terms as prescribed by this article.*"

THE CHAIRMAN: Agreed. Next!

MR. MULENGA: The committee recommends that Clause (4) reads: "*The Office of the President shall become vacant (a) on the expiration of the period prescribed in this article or if the incumbent dies or resigns.*"

THE CHAIRMAN: Okay, agreed. Next!

MR. MULENGA: Five, the Committee recommends that Clause (5) be retained to read: "*The President may, by writing signed by him or her and addressed to the Chief Justice, resign from office as President.*" The Committee recommends Clause (6) to read: "*The resignation of the president shall take effect when it is received by the Chief Justice.*" And recommends that Clause (7) reads: "*The Chief Justice shall upon receiving resignation of the President under this article, notify the Vice President, the Speaker and the Electoral Commission of the resignation.*"

THE CHAIRMAN: Hon. Delegates, that brings us to the end of that particular article. So, I put the question on Article 108.

(Question put and agreed to)

MR. MULENGA: Mr. Chairman, on Article 109, the Committee recommends some amendments. Clause (1), the Committee recommends that, Clause (1) reads: "*The president shall be paid a salary and allowances and afforded such other benefits as Parliament shall by law provide.*" Mr. Chairman, we deleted the expression "reasonable" as vague.

THE CHAIRMAN: Hon. Wanendeya, what is the problem, I can see everybody says okay.

MR. WANENDEYA: Thank you, Mr. Chairman. Mr. Chairman, just a small amendment, just in case it was forgotten by the Committee, you find that *salary and benefits and afforded and allowances*, Mr. Chairman, if we come to get it read - *a salary, allowances, and afforded such* - The word to cross out is "and". Mr. Chairman, you see that in Clause (3), it was corrected on page 20. You find that in some other places also, instead of writing salary and allowances, and affordable - you know - So that "and" should be crossed out, so that, a salary - *(Interruption)*- you see there are two "ands"; *salary, allowances and afforded*. Yes, I know Mr. Chairman. What I am saying is that, the word "and" should be crossed out and after the word "salary", there should be a coma.

THE CHAIRMAN: No! Hon. Wanendeya, you are having a problem, because you are being misled by (3). But the way it is rendered in (1), I think that should be the correct language. Anyway, let us go on. I think the majority have seen the point.

MR. MULENGA: Mr. Chairman, Clause (2). The Committee recommends that Clause (2) which reads: "*Parliament shall by law make provision for the grant of benefits for a president who ceases to hold office otherwise than by being removed under paragraphs (a) or (b) of Clause (1) of Article 110 of this constitution*" should read: "*paragraphs (a) or (b) of Clause 1, of Article 110.*" The two amendments, their removal will be reasonable as in Clause (1), and also removal of the word, "retirement" on this ground. We thought that there could be eventuality of the President dying in office and provision is made for what is commonly called

death benefits as a state and it is covered in that paragraph.

THE CHAIRMAN: Agreed.

MR. MULENGA: Mr. Chairman, the Committee recommends that, Clause (3) reads: "*The salary, allowances and other benefits granted to a president under this Article shall be charged on a consolidated fund*", no amendment is there.

THE CHAIRMAN: Agreed.

MR. MULENGA: Clause (4), Mr. Chairman, the committee recommends that, Clause (4) be amended to read: "*The president is exempted from direct personal taxation on allowances and other benefits, except on the official salary*".

THE CHAIRMAN: Agreed. Next.

MR. MULENGA: Clause (5): "*A president shall not hold any other public office, other than those put by this constitution or any office of profit or emolument likely to comprise the office of president.*"

THE CHAIRMAN: Agreed.

MR. MULENGA: Clause (6). The committee recommends that, Clause (6) reads: "*The salary, allowances, and other benefits granted to the President under this Article, shall not be varied to the disadvantage of the president while he or she holds office.*"

THE CHAIRMAN: There is clarification sought by Hon. Kirenga.

MR. KIRENGA: Thank you, Mr. Chairman. This is a point of general application to the whole constitution, which refers to "he" or "she" in this constitution. Here, I note that we are using president "he" or "she" whereas I noted that, there is another provision in the constitution namely Clause (26). I do not know what the committee in that constitution will bring out Clause (10) subclause (b). I am not a Member of that committee but it says; "words importing male persons including female persons in corporations." I am wondering whether we shall go in every clause saying, he or she.

THE CHAIRMAN: That has been the work of the Technical Committee. When we come to putting together the final text. Thank you.

MR. MULENGA: Lastly, Mr. Chairman, in this Article, the committee recommends that Clause (7) reads: *"The retirement benefits granted to a president under this article shall not be varied to the disadvantage of the president."* Mr. Chairman, there we have deleted *"during his life time"* because retirement benefits, in any case, last for a life time. It was an unnecessary addition.

THE CHAIRMAN: Okay. Now, I put the question on Article 109. Hon. Wanendeya, do you have any problem with us on voting on 109?

MR. WANENDEYA: Mr. Chairman, I would like a slight amendment added. The point over here is that: *"The retirement benefits granted to a former president under this Article shall not be varied to his or her advantage"* and we cross *"advantage of the president"* again because it is a repetition, Mr. Chairman. I therefore, beg to move.

THE CHAIRMAN: I do not see any - I will put the question on 109.

(Question put and agreed to)

ARTICLE 110

MR. MULENGA: The committee recommends several amendments in this Article. Mr. Chairman, the committee recommends that Clause (1) reads: *"The president may be removed from office in accordance with this article on any of the following grounds:*

(a) Abuse of office or wilful violation of the oath of allegiance and presidential oath or any provision of this constitution." There is no amendment to that paragraph.

(b) Misconduct or misbehaviour:

(i) that he or she has conducted himself or herself in a manner which brings or is likely to bring the office of the President into hatred, ridicule, contempt or disrepute.

(ii) That he or she has dishonestly done any act or omission which is prejudicial or inimical to the economy or security of Uganda." Mr. Chairman and Hon. Delegates, the amendment there is to add *"security of Uganda"* on the ground that if you dishonestly do any such act as would prejudice the security of Uganda, it is as bad as the economy.

(c) Physical or mental incapacity", namely that, he or she is incapable of performing the functions

of his or her office by reason of physical and mental incapacity.

THE CHAIRMAN: Next Clause.

MR. MULENGA: Clause (2), Mr. Chairman, the Committee recommends that Clause (2) be retained to read: *"For the purpose of removal of the President under paragraph (a) or (b) of Clause (1) of this article, a notice in writing, signed by no less than one third of all the Members of Parliament, shall be submitted to the Speaker, (a) stating that they intend to move a resolution in Parliament for the removal of the President, on a charge that he or she has wilfully abused his or her office or wilfully violated the oath of allegiance and the Presidential oath or any other provision of this constitution; or has misconducted himself or herself, or misbehaviour in terms of paragraph (a) or (b) of Clause (1) of this article.*

(b) Setting out the particulars of the charge, supported by the necessary documents on which it is claimed that the conduct of the president be investigated for the purposes of his or her removal."

AN HON. DELEGATE: Mr. Chairman, anyway I do not know whether I am late but for Clause (2), if you say that, *"not less than one third"*, Mr. Chairman, you may find that for example if it is a party politics, you find that the other party has one third and it can gang up against the president. So, I do not think I would be comfortable with one third. I think this should be two thirds. Because the other one third can gang up.

THE CHAIRMAN: But even if they ganged up, they will have to prove the grounds so this does not arise. I mean they can gang up but if the grounds are not provable, then this does not arise.

MR. MULENGA: Clause (3), Mr. Chairman, there is an amendment recommended that, Clause (3) reads: *"The Speaker of Parliament shall within 24 hours..."* - that should read *"The Speaker"*, *"of Parliament is unnecessary."* Mr. Chairman, in view of the definition under 286 - *(Interjection)*-

THE CHAIRMAN: Please strike out the words *"of Parliament"*, that *"the Speaker shall..."*

MR. MULENGA: *"The Speaker shall, within 24 hours after receipt of the notice referred to in Clause (2) of this article, cause a copy to be*

transmitted to the President and the Chief Justice.”
Clause (4): The committee recommends that, Clause (4) be amended to read: *“The Chief Justice shall, within 7 days after receipt of the notice transmitted under Clause (3) of this article, constitute a tribunal comprising three justices of the Supreme Court to investigate the allegation in the notice and to report its findings to Parliament stating whether or not there is a prima facie evidence for the removal of the president.”*

Clause (5): The Committee recommends that, *“Clause (5) be retained to read, the President is entitled to appear at the proceedings of the tribunal and to be represented there by a lawyer or other expert or person of his or her choice.”*

Clause (6): The committee recommends that, Clause (6) reads: *“The tribunal determines that there is a prima facie case for the removal of the President under paragraph (a) or (b) of Clause (1) of this article, then if Parliament passes a resolution supported by the vote of not less than two thirds of all Members of Parliament, the President shall cease to hold office.”*

Clause (7): Mr. Chairman, it is recommended that Clause (7) reads: *“For the purposes of the removal of the president on grounds of physical or mental incapacity under paragraph (c) of Clause (1) of this article, there shall be submitted to the Speaker, a notice in writing signed by not less than one third of all the Members of Parliament -*

(a) Stating that, they intend to move a resolution in Parliament for the removal of the president from office on grounds of physical or mental incapacity.

(b) giving particulars of the alleged incapacity.”

Mr. Chairman, it proposed that Clause (8) be amended to read as follows: *“The Speaker shall within 24 hours after receipt of a notice under Clause (7) of this article, cause a copy to be transmitted to the president and the Chief Justice.”*

MR. OBUA OTOA: Thank you, Mr. Chairman. Mr. Chairman, I am wondering, what is the point of submitting a notice to a president under Clause (7), who is mentally disturbed?

THE CHAIRMAN: Hon. Obua Otoa, you would be prejudging the matters. These are allegations

that, the president is mad. He may not be and so until you prove him, you cannot say that he is mad

MR. OBUA OTOA: Mr. Chairman, people are making too much noise, I am not hearing your ruling Sir.

THE CHAIRMAN: My ruling is simple that, you are prejudging the matter. What has happened is that an allegation has been made to the Speaker that the president is mad and so you know, I have begun a process of proving whether he is. But if you have got to do so, you might as well tell him as well because it is possible that he is not mad.

MR. MUSUMBA: Thank you, very much, Mr. Chairman. In the same vein, Mr. Chairman, I am wondering at what will constitute physical incapacity. Let me paint a scenario. Supposing this president is coming from shower or bathroom and he breaks his leg, now does that constitute physical incapacity to the extent of warranting this particular provision?

THE CHAIRMAN: Could Hon. Mulenga tell us what in law is meant by physical incapacity?

MR. MUSUMBA: Yes, thank you, Mr. Chairman.

MR. MULENGA: Mr. Chairman, I would urge the Hon. Delegate to go back to page 22, Clause (1) and read (c). It says: *“physical or mental incapacity namely: that he or she is incapable of performing the functions of his or her office by reason of that physical or mental capacity.”* Now, beyond that, it is the next section we are going to where we provide for a team of experts to certify that this person by reason of this incapacity is unable - is incapable of performing the functions of the office. Now, if you break a leg and the doctor treats you, you may be temporarily unable to perform while you are being treated. But no doctor will certify that you are incapable of performing the functions of the office.

MR. OWOR: Point of information! Mr. Chairman, in addition, I would like to inform the Hon. Member that, physical or mental incapacity are merely allegations which will be submitted as we later see, to a tribunal. Now, it is up to that tribunal to assess the extent of that physical or mental incapacity, which would, according to what the Chairman of Committee 2 has just said, be capable of stopping him from performing his duties. So, these are all

evidential issues and we cannot now be shadowed with defining them at this stage.

THE CHAIRMAN: Okay. I think Hon. Mazima gave us a distinction between physical disability and physical incapacity and so on sometime earlier on when we were discussing rights.

MR. MULENGA: Mr. Chairman, the Committee recommends that Clause (9) be amended to read as follows: *"The Chief Justice shall, within 7 days after receipt of the notice transmitted under Clause (8) of this article and in consultation with the Professional Head of the Medical Services in Uganda, constitute a Medical Board comprising five qualified and eminent Medical Specialists to examine the President in respect of the alleged incapacity and to report its findings to Parliament."* The reasons for the amendment are given in the footnote.

Clause (10): The committee also recommended, Mr. Chairman, that a new Clause (10) be inserted to read: *"The Chief Justice shall, within 24 hours after constituting the Medical Board, inform the President accordingly and the president shall submit himself or herself to the Medical Board for examination within 7 days."*

MR. LUMALA: Mr. Chairman, I feel that there should be a time limit within which this action should be taken rather than to say that after 24 hours. Because the Chief Justice may not act for fear and so on for a long time. May I be clarified on this point?

THE CHAIRMAN: Within 7 days. If you read 9, You would see that he has 7 days to set up a board and then he has 24 hours at most to inform the president, essentially asking him to go and present himself for examination.

DR. BYARUHANGA: Point of clarification! Thank you, Mr. Chairman. I am seeking clarification from the Chairman of the Committee. Supposing this president refuses to submit himself within these 7 days?

THE CHAIRMAN: Is that not sufficient ground to prove the matter?

MR. KARUHANGA: Thank you, Mr. Chairman. Mr. Chairman, I think the question raised by Hon. Byaruhanga should not be looked at lightly. The

problem is that, any president has people who surround him, who protect him, and who really assume certain things when they know the president is not so well. They will not even avail him to the public, and they will start, in anyway, hiding him for their own benefit. Like what happened when in America, General Alexander said that he was in charge when the President had a bullet in his body. We have a problem. Where we are involving the judges and in this type of process, I think we have raised before that in the impeachment process for incapacity reasons, we should try as much as possible to keep away from the judges and make sure that parliament some how has a leeway of forcing things to happen or going on without the Board. I am told that, number 12. Mr. Chairman, I do not know whether number 12 really will help us.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I think Hon. Karuhanga should read it before he wonders. Mr. Chairman, the committee recommends that Clause (2) should read: *"If the Medical Board determines, that the President is by reason of physical or mental incapacity unable to perform the functions of the office of the president, and parliament passes the resolution for the removal..."* It should read: *"...removal of the president supported by the votes of not less than two thirds of all the Members of Parliament, the President shall cease to hold office."*

Now (12): *"If the Medical Board after the expiration of the period of 7 days referred to in Clause (10) of this article reports that the president has failed or refused to submit to the Medical Board in accordance with that clause, and Parliament passes the resolution for the removal of the president supported by the votes of not less than two thirds of all the Members of Parliament, the president shall cease to hold office."* This is a new clause.

MR. ELYAU: Thank you, Mr. Chairman, I wanted to find out in case the president may have heard that he has been served a notice and he has gone to treat himself by a given doctor, will it not imply that this man has been receiving treatment, therefore, he has a reason, can I be clarified on this?

MR. KARUHANGA: Thank you, Mr. Chairman. Now, if the president is mad, or is incapacitated or allegedly or is as proved, some people need to go to attend Medical examination, and then parliament does not find the two thirds of all the Members present of all the Members of Parliament then what happens to the country?

THE CHAIRMAN: Because the National Body responsible for the functions has failed to discharge its duty.

MR. KARUHANGA: Because, Mr. Chairman, when You think about a situation where you are asking two thirds of the Members of parliament - all the Members of Parliament, what will happen is that, some of his relatives will just disappear from attending the motion and the two thirds absolutely may not be realised. So, why do we not -

THE CHAIRMAN: Are you saying that there is a possibility of more than one third of Members being his relatives and going away?

MR. KARUHANGA: I did not hear, Mr. Chairman - *(Interruptions)*

THE CHAIRMAN: Order, order! Because Hon. Karuhanga said that, there is a possibility of relatives of the president disappearing and denying parliament a chance. I am saying, the reckoning of the two thirds does not mean that they must be physically present. What would happen is that, you take the total membership of parliament and you determine the votes. And if those who have voted for, taking the total membership, are more than two thirds, that is fine. Because we do not have to have first the House filled by all the Members. But when you are reckoning the two thirds, that is fine. He goes. We do not have to have first the House filled by all the Members. But when you are reckoning the two thirds, you reckon it against the total Membership. Now, you would be stupid to try to vote when you are less than two thirds. But if you are two thirds and more, but not necessarily 100 percent, you can vote.

MR. KARUHANGA: But, Mr. Chairman, my problem was this, here we have a situation where the whole procedure has taken place, a notice has been given, the judges, the high court, the boards constituted, everything is in place, the man just refuses to submit himself, everybody, by that time is really suspecting this person is mad. Now, when he refuses, then in order to remove him at that stage because of his refusing, may be he is refusing because of the incapacity, then you will now sit down and start counting these complicated numbers, and then you do not receive. Because for example, here in the CA, there are a number of times we want to vote and people are not there. Why do we not say

that at that time the country really is interested in solving the problem? Members of Parliament should be given notice to attend such a meeting and those who are present and voting counted instead of saying that all Members. We say, all present and voting and when there is ample notice for Members of Parliament.

THE CHAIRMAN: Let us hear other Members on this issue and we move all the quickly.

MR. ABALIWANO: Point of information! I would like to inform Hon. Karuhanga that this particular clause has two advantages. One advantage is that it should be possible to remove a president when he is incapacitated, the other is not to make it too easy to remove a president. Because when you make it too easy, then we are simply going to have president after president. And it is a very costly exercise. And that nobody would bring this kind of Motion, if they know that it is not a serious matter. I think this is a situation which really will go to extremes. Where really somebody gets mad. It happens. I am not saying it does not happen, but we hope that it will not happen too often. And please Ugandans, let us behave so that we do not make our presidents mad. Thank you.

DR. KABAYO: Thank you, Mr. Chairman. I have no comment on the point raised by Hon. Karuhanga, but I wanted to raise another point and that is that, I am surprised there is no provision or reference to the need to consult the personal physician of the president. Because, Mr. Chairman, I am concerned that he would be able to advise this Board. So whatever is happening, in a matter of informing the Board, Mr. Chairman, I feel the person entrusted with the health of the president should be consulted. We should make a provision, we should include a person in charge of the health of the president, and require that he is consulted. Because he would be the one to know whether the plans of submitting the president for examination and so on are, for example, interrupting his treatment if he is receiving treatment and so on. I think it will be a desirable feature of the provision in the formation of the Medical Board if we provided that there is consultation on the person entrusted with heading the business. Thank you, Mr. Chairman.

MRS. KALEMA: Thank you, Mr. Chairman. Mr. Chairman, I tend to disagree with the Hon. speaker who suggests that the personal physician of the

president should be included. Because I feel that in the first incidence, if he was a fair person and a good doctor who has the interest of the country at heart, he should have already alerted the government that his client is not well. And he will have had personal attachment to him that he could not easily advisedly be included on the Board. In fact, it is necessary to have an independent body for one reason. He would not really be willing to advise the government because he will be loosing his job as a personal physician to the president.

ANHON. MEMBER: Point of order! Thank you, Mr. Chairman. The point of order I wanted to bring - is it in order for the Hon. Member to mislead this House by saying that the personal physician can inform the country on the health of the President when it is basically wrong for a physician to release any information of his patient without the consent of the patient?

THE CHAIRMAN: Now, are you directing that, at Hon. Kalema alone, or also at Hon. Kabayo because he is also - he was purporting to suggest that the physician of the president will go around disclosing his details to the tribunal under the guise of consultation. So, I guess you have educated us on the ethics of medical conduct. Can we now, finalise this one. Hon. Owor, do you have something very important on this matter? If you do, please go ahead.

MR. OWOR: Mr. Chairman, I just wanted to alert the House on another possibility of solving a possible impasse. There is still the option of any citizen going to the courts of law if there is a strong evidence that the Medical Board indeed prove that the president is labouring under mental or physical incapacity as to impair him from performing his duty, which by constitutional provision makes him incapable of being a president. That option is still there, so I do not think the situation is really as it is being put. That is just the little information I wanted to give.

THE CHAIRMAN: Thank you.

MR. MULENGA: Yes, Mr. Chairman, I wanted to remind Hon. Kabayo that this type of provision will be resorted to because the president and his physician will not have taken the proper thing namely: to resign. If he is unfit and it is being observed by at least one third of members of Parliament, and he is still going on, it is only either because he has not

been proper advised to resign, step down or because it is untrue, hence the inquiry. So, asking the personal physician, even if there was no ethics of constraint, would not be the most reasonable thing to do. Because he will probably be not objective enough. He wants his patient to continue or his patient has told him not to. It is important that an independent team is set up. This is the counter part of the judicial tribunal that has been suggested in case of misconduct or breach of the constitution. Mr. Chairman, I think this Clause was mainly put in - the one we are considering now 12 - to cater for the impasse. In the event, we first of all said in Clause (10) that it is a duty on the president whether he is otherwise physically incapable, it becomes his duty to report once he is notified by the Chief Justice, he shall report. So, it is an obligation on him so that there is no question of saying, you know, he was requested and he was still considering or he had gone for treatment elsewhere. It becomes a duty for him to report in 7 days. Now, should he fail or refuse, under Clause (12) we are saying, the Medical Board will report to Parliament that he has refused or he has failed to turn up and Parliament will go on and debate. Because removal of a president is a political action. My neighbour here was asking, why cannot the Medical Board report be enough. It is a political decision to remove a president. So, with or without an examination, the matter should still be decided by Parliament whether or not the president should be removed. And in this case, the possible case where he does not cooperate, I was saying that, the Parliament should pass the resolution on that basis. Thank you, Mr. Chairman.

THE CHAIRMAN: Clause 13.

MR. MULENGA: It is recommended that, Clause (13) should be retained to read: "A resolution for the removal of the President shall be moved in Parliament within 14 days after the receipt by the Speaker, of the report of the tribunal or the Medical board.

MR. WANENDEYA: Point of clarification! Thank you, Mr. Chairman. I want the Chairman to clarify to us as to how Members of Parliament could be protected in case they decide that the president who is mentally sick should be removed and in turn, this guy who is still the head of the Armed Forces turns around and gets the army to take Members of Parliament to prison or different prisons in the country. How, Are those Members going to be protected, Mr. Chairman?

THE CHAIRMAN: But I think, if Hon. Wanendeya you had read (12) and (11) properly, you would see how it ends. Upon the vote being carried, the president ceases to hold office.

MR. MULASSANYI: Thank you, Mr. Chairman. Mr. Chairman, this provision assumes that Parliament will be in session given that there is a specific notice to convene parliament. Supposing the report comes at that time when the Parliament is not in session, do we see these two weeks being sufficient, Mr. Chairman? I want clarification to that.

THE CHAIRMAN: Hon. Mulassanyi, this should be a constitutional requirement. This would be a constitutional requirement that Parliament must act on this matter within 14 days and therefore, even if they are in recess, the Speaker will be duty bound to convene the parliament for purposes of that case. Agreed?

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (14) of Article 110 (b) reads as follows: "*The President is entitled to appear in person and be heard and to be assisted or represented by a lawyer or other experts or a person of his or her choice during the proceedings of Parliament relating to the resolution under this article.*"

THE CHAIRMAN: Hon. Delegates, that brings us to the end of Article 110. And now, I want to put the question on Article 110. I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Article 111.

MR. MULENGA: Mr. Chairman, Article 111 is on the Vice Presidency and was amended as a result of the decision to do away with a running mate and it is proposed that, Clause (1) of that article should read: "*There shall be a Vice president of Uganda.*" That is to establish the office.

THE Chairman: Agreed. Next!

MR. MULENGA: It is recommended, Mr. Chairman, that Clause (2) reads: "*The President shall, with approval of Parliament by simple majority, appoint a Vice President.*"

Clause 3, provides for the details of Vice president and it is recommended that it reads as follows: "*The Vice President,*

(a) deputizes for the president as and when the need arises and (b) carries on such other functions as may be assigned to him or her by the President or as may be conferred on him or her by this constitution.

MR. BIDANDI SSALI: Point of clarification! Mr. Chairman, I just want to be clarified whether we are all satisfied by the expression "*when the need arises.*" You see, "*deputize for the president as and when the need arises.*" Who decides on the need?

THE CHAIRMAN: There are situations where the President may travel out of the country. I think there is a specific situation relating to acting arrangements -

MR. BIDANDI SSALI: Then we should refer to that. Otherwise, this is ambiguous.

MR. OBUA OTOA: Thank you, Mr. Chairman. Mr. Chairman, I think what the Hon. Bidandi Ssali is saying makes some sense, if we bother to examine it a bit further. Is it not sufficient for us to simply say one of the functions of the Vice president is to deputize for the president. Why do we have to add "*as and when the need arises.*". Of course, as and when the need arises but must we say so? Would it do any damage if we stopped at deputize for the president?

MR. KAGGWA: Thank you, Mr. Chairman. I was just looking here in my small dictionary; deputy means to appoint someone to act on ones behalf. And if that meaning be accepted, then it should only be in play when and if need arises. Thank you, Mr. Chairman.

MR. MULENGA: Mr. Chairman first of all, this is not an amendment, it was lifted from the Draft, and it is satisfactory because you are saying he will deputize when necessary to make it clear that he does not trick upon himself anytime to go and say I am deputizing. The clear example I can think of is when there is a meeting of Cabinet. Ordinarily, the President presides and he tells his secretary, okay, I will ring for cabinet to convene at 10.00 O'clock. If he should say, I will not be around, then the Vice President will deputize. But it is not upon

the Vice President to say, I shall deputize even if the President is around. That is how I can distinguish between the two to emphasize that, it is only when it is necessary that he deputizes.

MR. ATWOKI: I thank you, very much, Mr. Chairman. Mr. Chairman, I want to observe that, I do not believe the example given by the Chairman of Committee 2. In other words, he is saying that if we do not put that phrase "*as and when the need arises*", there will be no role for the Vice President to deputize. But I do not believe that. I will think it will be better and be a matter of good drafting if we just state precisely, that he deputizes for the president.

MR. BAGEYA: Thank you very much, Mr. Chairman. Mr. Chairman and fellow delegates, we are here constitutionalising the post of a Vice president. I find it rather absurd when we say that this Vice President will be used on temporary basis as and when needed. I would therefore feel strongly about the suggestion of both Hon. Atwoki and Hon. James Obua Otoa that we go as far as "the Vice President shall deputize for the president" because that is the job that this particular individual is supposed to do. To deputize. I do not see any need to go further to say as and when need arises. We have had cases here where presidents have picked up some other person to act as president. I would like to avoid that kind of occurrence. This must be a person in place, they are appointed as long as the president is there - I mean as long as government is there, there are vice presidents, they should be in a position to perform automatically. I therefore, move that we delete the words "*as and when the need arises*". I beg to move, Mr. Chairman.

THE CHAIRMAN: Hon. Okwakol, are you speaking to the Motion?

MR. OKWAKOL: Thank you, Mr. Chairman. Mr. Chairman, the post of Vice President is one of the most miserable jobs in the world. This is factually the position and we should not run away from it even if we constitutionalise it. What a Vice President does is at the instance of the president. We should therefore, not pretend that when we put in powers of the Vice President here, the president will have no responsibility, the president will have no capacity to order the Vice President around. Therefore, Mr. Chairman, I would urge that the Vice President deputizes for a president as and

when the need arises. In my view, the words "as and when the need arises" are actually superfluous because deputizing is of necessity as and when need arises. It cannot be otherwise. I therefore, urge and recommend to my colleagues that the words "*as and when the need arises*" be deleted. I support the amendment.

MR. KAVUMA: Thank you very much, Mr. Chairman. Mr. Chairman, I think the problem we have here is to identify who is the source of the immediate instructions to the Vice President to deputize. And I think it is only logical to think that this is the president. We have already provided that the president nominate or appoint the Vice President, and therefore, he should be the source of authority for the Vice President to deputize. So, Mr. Chairman, I think the problem we have is, if you say "as and when the need arises", you are leaving it too wide in my view, in that, an overzealous Vice President could even, without taking instructions from his immediate boss, go and judge a situation and say, in my view, I must deputize now. Even if we talked about the argument Hon. Mulenga was advancing about chairing a Cabinet meeting, he could go without instructions to chair a Cabinet meeting, he finds the president is not yet there, he says, there is need for me to deputize and then they could go on and make decisions on very, very crucial matters in the Cabinet.

Secondly, Mr. Chairman, I also think that if you leave it just to say "deputize for the president", you have not yet solved the problem. So, I want to suggest that we should improve on the Draft by indicating that the source of authority shall be the president. This could be done and I am actually talking on a matter of principle Sir. If we agree, then the drafting can be done. This could be done by saying for instance that he or she would deputize for the president as and when, in the view of the president, the need arises. Or we could draft it in such a way that we really specifically indicate that the president must give authority to his Vice to deputize.

MR. LOOTE: Point of information! Now, I would like to inform my brother Hon. Steven Kavuma that (b) takes care of what he wants as a matter of principle. So, that one is catered for in (b).

MR. KAVUMA: Mr. Chairman, I thank the Hon. Delegate but I would like to advise him that actually,

the interpretation according to (b) is not what actually it says. This is normally a residual kind of clause, and we are dealing with a situation of identifying in (a), where the source of power lies for the Vice President to deputize. So, I have not found that information very useful. It is misleading.

MR. OCHYENGH: Point of information! Thank you, Mr. Chairman. Mr. Chairman, could I inform the Hon. speaker that it is not the president who needs a deputy, it is this nation which needs a deputy to be ready, to be in place, when the president is not there. Two, it is not the president who gives the Vice President powers, it is the constitution which is giving the Vice President powers.

MR. KAVUMA: Mr. Chairman, I really do not think, that was information. It was an argument advanced by the Hon. Delegate, and it is subject to being digested by the delegates.

THE CHAIRMAN: I think let him finish then we

MR. KAVUMA: But, Mr. Chairman, I was saying that in fact it would be dangerous to leave this provision so open ended. You remember, Mr. Chairman and dear delegates that we even talked about, I think we were talking of a small office like governor of Bank of Uganda, where we said on principle that it is wrong to have two people who can claim to derive authority from the constitution in the performance of their duties while one of them is actually in effect supposed to serve under the other. Now, giving this a constitutional prominence in the terms of the Vice President able to deputize as of right from the constitution would create that problem of possible conflict of interest and insubordination. Mr. Chairman, I therefore beg to request the delegates that we should improve on this draft and the principle should be that we should clearly indicate that the Vice President deputizes for the President as and when the president authorises him to do so. I thank you Sir. And I so move.

THE CHAIRMAN: The Constitution very clearly says the area which would worry the Assembly is the area of exercise of executive power and the constitution has very carefully, as you have drafted it said, all executive power of Uganda is vested in the President. And then you go on to say, he may have other people to assist him but there is one principle one, that is the Vice President. But the

Vice President is not getting any direct executive power here. He can only deputise for the President and you can choose to add "*as and when the situation arises*", or even just leave it because all the power is vested in the President. All the other things like ceremonial attendance and funerals and weddings, those are matters of courtesy which I do not think really should worry us in the process of making our Constitution.

PROF. TARSIS KABWEGYERE: Thank you, Mr. Chairman. I think your clarification concludes the debate. The only thing that one wants to point out is that we must not put in the constitution a position and by implication mean that you are putting a rival to the President. The Vice President is there to act. Mr. Chairman, we have obvious examples. We have you as Chairman and we have the Deputy Chairman here. She only acts when there is need, when you are not present. When you are present, she sits there and she participates in that capacity of being a silent observer. This is what the Vice President is supposed to do. When the President is required to be in the place and he cannot be there, the Vice President goes there. That is why this clause (b) comes in to give the office a bit more work because the job of Vice President will just be simply to wait until the cases arise. In the case of today, Mr. Chairman, when Her Excellency the Vice President Specioza Kazibwe acts in the Ministry of Gender and Community Development, she is doing so as a Minister and they are only those occasions when she acts in the capacity of Vice President. So Mr. Chairman, the clause as presented is the correct one. The Vice President acts when there is need and in fact she must get instructions from him and often those instructions are in writing.

THE CHAIRMAN: But I think also Members, you are confusing what they call the style and title. The style and title conferred on the person appointed as Vice President is the Vice President of Uganda. That is title and style, that one is daily until otherwise the situation dictates. But as far as what that person does is subject to the overriding fact that all the executive authority of Uganda is vested in the President.

MR. ETONU: Thank you very much, Mr. Chairman. I would like to request some clarification from Hon. Prof. Kabwegyere that where the President is not in the country and visitors from outside arrive in Kampala, I would like the Professor

to clarify to me that those people who have come and they would like to get a decision from Uganda Government, can the Vice President take that decision?

PROF. KABWEGYERE: Mr. Chairman, the answer is no. Unless the President mandates him or her to discuss the matter and take responsibility for the decision that he or she will take. In fact even it is stated by the President to represent him just as ambassadors become extraordinary and plenipotentiary because they represent the President. When they act in that capacity, there is a procedure they must follow for the action to be truly representative of the appointing authority. That is why therefore, I would say that the Vice President deputises for the President as and when the need arises.

MR. PAULETYANG: Mr. Chairman, thank you. I have no problem with the present formulation of this article. The problem in Africa is that any President is the first leader in the dance to the Presidential tune. He deputizes to the President literally and I think it is on the basis of recent practice and experience that we have had some President assigning Vice Presidents portfolios and that has sort of eased the position of a number two man or woman. Mr. Chairman, I would like just to draw the attention of the Assembly on a decision we have just taken which does not appear to tally with this. In Article 108(7), we have passed that the Chief Justice, upon receiving the resignation of the President shall, among others, notify the Vice President. Now, the Vice President will be appointed by the President and we have just passed that, though with the approval of Parliament. I do not see any need, Mr. Chairman, that when a President resigns, his or her Vice President who deputizes for him or her who is appointed by him or her needs to be notified because I assume that once the President resigns, automatically the cabinet and the Vice President included will resign. I think we may have to revisit that article Mr. Chairman in light of what I am saying because definitely there is no point of notifying somebody who is going with the person who is resigning. Thank you.

THE CHAIRMAN: Anyway, I think we shall be coming to 112 which will cover these other situations. But for the time being, I think the Members are just looking at a statement which says he deputizes or she deputizes for the President. But there are more specific situations which will come

under 112 and I think when we come there, then we can see whether really we have been wasting time or have been constructive. Now, there was a motion on the Floor. Hon. Tibamanya, do you think you have new matters that you are going to add on this?

MR. TIBAMANYA: Yes I do. Mr. Chairman, it will be very dangerous to delete the words "*as and when need arises.*" By way of an example, His Excellency the President is now away in Sweden but would that automatically entitle the Vice President to assume the role of commander-in-chief and summon the army and declare war on a neighbouring country and so forth? It is obvious that those words should be retained. Thank you.

THE CHAIRMAN: Yes, let us now declare ourselves on the amendment by Hon. Bageya. It was seconded that we should knock off the words "*as and when the need arises*" from paragraph (a) of Clause (3) Order, order.

(Question put and negatived).

MR. MULENGA: Mr. Chairman, the committee recommends that clause (4) be retained to read: "*The qualifications prescribed for the office of the President by Article 105 shall apply to the office of the Vice President.*"

THE CHAIRMAN: Agreed. Next!

MR. MULENGA: Mr. Chairman, it is recommended that Clause (5) be amended to read: "*The office of Vice President shall become vacant if the appointment is revoked by the President or the incumbent resigns or dies.*"

MR. ONEGI OBEL: Thank you, Mr. Chairman. Mr. Chairman, I have got a small problem here. That the Vice President will simply be removed by the President, whereas in his appointment, Parliament is involved to approve. It should follow therefore, that this firing should be with the approval of Parliament. Thank you Mr. Chairman.

MR. KABUGO: Mr. Chairman. We have already catered for this and set a precedent whereby the appointing authority is the one who is entitled to disappoint somebody. So in this case, since this is not a running-mate and in place the Vice President is elected, appointed and confirmed by Parliament, but when it comes to firing, it must be the President to fire without reference to Parliament.

DR. KABAYO: Thank you Mr. Chairman. I think we need to include paragraph (c) to cater for another type of removal in Article 110 which we have just considered regarding the removal of the President and attached with the disciplinary measure because that is not covered in either (a) and (b). And say that the incumbent is removed from office in accordance with Article 110.

THE CHAIRMAN: Do you envisage a situation where the President may continue having a Vice President who is mad?

MR. KABAYO: Mr. Chairman, the president may not agree with the judgement of others about the conduct of the Vice President and since Ministers can be censored, I do not see the big distinction between them and the Vice President. And so, an action can be brought by people other than the president to remove the Vice President.

MR. BAGEYA: Point of information! Thank you, Mr. Chairman. Mr. Chairman, sub-clause (a) reads very clearly that: "*the office of the Vice President shall become vacant if the appointment is revoked by the President.*" I think the Hon. speaker holding the Floor would like to know that then the President will have noticed any irregularities and that is one of the reasons why he revokes that appointment. I thank you.

MR. MULENGA: Mr. Chairman, I also wanted to draw attention of Hon. Kabayo to the fact that originally, the Draft recommended in Clause (6) that the provisions of Article 110 should apply to the Vice President. But that is when it was recommended to have this system of a running-mate. But many reasons have been give why we should not adopt the running mate. Therefore, the Vice President will become an appointee not elected by the people but appointed by the President and the President should have the right, if he discovers that he can no longer work with him, to remove him and for that, he does not need approval. That is one of the reasons that was advanced for defeating the idea of a running-mate.

DR. BYARUHANGA: Thank you, Mr. Chairman. I would like to draw the attention of Hon. Mulenga to Article 121 of our Draft where a vote of censor can be passed against the Minister. Why can we not have a similar arrangement for the Vice President since he is also a Minister of a sort and has been

appointed in the same way as Ministers have been appointed?

MR. MULENGA: Mr. Chairman, the answer is simple. The case of censor is not a case for necessary removal. Here, in this article, we are talking about vacating the office. If Hon. Byaruhanga would like the censor procedure to apply to the Vice President, he should wait until that article and move to apply it to the Vice President also. But right now, we are talking about vacancy of the Vice President. Censor does not necessarily lead to removal.

THE CHAIRMAN: Okay, agreed. I do not think there is really much we can - Hon. Mulenga, I think we go to the next one.

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (6) be on the following terms with the exception of Clause (2): "*The provisions of Article 109 shall, subject to this constitution, apply to the Vice President.*" 109 is about conditions and terms of the office.

Mr. Chairman, Clause (7): "*Where the office of Vice President becomes vacant, the President shall, with the approval of Parliament and as soon as possible but in any case not later than 14 days, appoint a person qualified to hold the office of Vice-President.*"

Clause (8): "*The Vice President shall, before commencing to perform the functions of Vice President, take and subscribe the oath of allegiance and the oath of Vice President prescribed in the third schedule to this constitution.*"

THE CHAIRMAN: Hon. Delegates, let us declare ourselves on this Article 111. I put the question.

(Question put and agreed to).

THE CHAIRMAN: Article 111 stands part of the constitution. And now we do Article 112. We have a whole ten minutes Hon. Delegates and I think within that time, we can complete this article.

MR. RINGWEGI: I thank you, Mr. Chairman. Mr. Chairman, I have noted that since morning, we have seriously conducted the business of the Assembly and Delegates have shown a lot of zeal and diligence and it is now 6.15 p.m. I beg your

pardon, it is 6.20 and Mr. Chairman, the law of diminishing returns is stepping in very slowly and I think delegates would like to have a fresh mind to tackle the issue of acting by the Vice President in case the President dies. Mr. Chairman, this subject is a very important subject. I will therefore move that the Assembly be adjourned to tomorrow at 9.00 o'clock because of those reasons.

THE CHAIRMAN: Under the rules where a motion is moved of this nature, the matter is left to the Chairman and if he puts it and if he allows it, it is not debatable although it can be a basis, under normal Parliamentary practice, for 30 minutes of debate on any matter of general interest. So I might want to invite the House. But seeing that the general opinion is that we should be here tomorrow on time, I would like to adjourn the House to tomorrow at 9.00 o'clock. We stand adjourned. Thank you.

(The Assembly rose at 6.20 p.m. and adjourned until Thursday 16th March, 1995 at 9.00 o'clock.)

