



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 16TH JANUARY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2706]

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Monday, 16th January, 1995

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

NATIONAL ANTHEM

PRAYERS

(The Deputy Chairman, Prof. Victoria Mwaka, in the Chair)

(The Assembly was called to order)

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

CHAPTER ELEVEN - FINANCE.

ARTICLE 191 - ACCOUNTABILITY.

THE DEPUTY CHAIRMAN: Hon. Delegates, on Friday we had debated at length Hon. Ben Wacha's Motion on Article 191 that we stop at the words "*The Permanent Secretary in charge of a Ministry or Department shall be accountable to Parliament for the funds in that Ministry*" and he was proposing that we stop there and we remove the rest that follows and we could not pronounce ourselves on that one because we had some procedural problems. So I propose now that I put the question.

PROF. SENTEZA KAJUBI (Kyadondo North): Madam Chairperson, before the question is put on this amendment, I would like to propose a further amendment so that this Clause read as follows: "*The Permanent Secretary in charge of a Ministry or Department shall be accountable to Parliament for the funds in that Ministry or Department and in the performance of this function shall not be subject to the direction of any other person or authority*"

THE DEPUTY CHAIRMAN: Is that seconded? Your Motion Hon. Senteza Kajubi is not seconded. You can not discuss it when it is not seconded.

PROF. SENTEZA KAJUBI: Can I be given a chance to explain what I mean?

THE DEPUTY CHAIRMAN: But you have not been seconded.

PROF. SENTEZA KAJUBI: Okay, then I withdraw it.

THE DEPUTY CHAIRMAN: Thank you.

MR. BAGEYA (Kigulu North): Madam Chairperson, I was a member of Committee 3 which had put up the proposal which is there. The perimeters along which we had discussed had wanted to involve the Minister because in most cases, Ministers have gone away after having given directives to Permanent Secretaries and left trouble to the Permanent Secretaries and we also considered cases where a Permanent Secretary decides to be obstinate either because he does not support the government in power and would like to frustrate the Minister, that is the reason why we had left the proposal the way we put it in our report.

THE DEPUTY CHAIRMAN: Hon. Ben Wacha, I would like to request you to explain to Hon. Bageya, to remind him of the justification of your amendment.

MR. BEN WACHA (Oyam County North): Madam Chairperson, I am sorry but this is not my amendment. I had another amendment which was passed and not this one.

THE DEPUTY CHAIRMAN: Oh! it was not yours?

MR. BEN WACHA: No.

THE DEPUTY CHAIRMAN: I am sorry. Okay, it was Hon. Bidandi Ssali, I am sorry.

MR. BIDANDI SSALI (Nakawa Division): Madam Chairperson, first of all, I would like to make this observation that by the time you adjourned the House, what was remaining was to address ourselves to voting. Now the way the Hon. Member is bringing his point is re-opening and starting exactly where we started before we lasted about one and half hours and one wonders whether, if I am not here, something is said and I come the following day then I re-open the whole of this House in the same discussion again. How fast can we go? Some of us took time, stayed here for hours debated this and because one was not there and with all due respect to that or because one - *(Interruption)*.

MR. BAGEYA (Kigulu North): Madam Chairperson, is the Hon. Member holding the Floor in

order to impute that while these discussions were taking place I was not here when in fact I seem to have closed that day's session?

THE DEPUTY CHAIRMAN: Actually, your reopening of the debate implied as if you were not around. So now I propose that I put the question.

MR. BAGEYA: I was around.

THE DEPUTY CHAIRMAN: Because we discussed these things actually at length, now we are being pulled back by people who were not around.

MR. OGOLA (West Budama South): Thank you very much, Madam Chairperson. I was around that day but still the wisdom of hindsight counsels me to raise a point which, Madam Chairperson, you might find useful and the House might appreciate. Article 191 Clause (1) as it reads is not a problem with me. However, I am suggesting that perhaps we should make doubly clear that there are certain departments or institutions which are self accounting and at the same time they belong or they fall under specific Ministries but it is not clear here exactly whether the Permanent Secretary is also in detail accountable in matters of those institutions and it is for that reason that I thought that we might make it clear that we talk about a Minister and a Permanent Secretary being accountable to the Ministries under them but that also the heads of self-accounting institutions should also be held directly accountable and it is that clarity, Madam Chairperson, that I thought does not come out very clear and whether it deserves the attention of the House. Thank you, Madam.

MR. RWABIITA (Ibanda South): Thank you very much, Madam Chairperson. Madam Chairperson, allow me to put some light on what accountability means. It seems some Members are mixing accountability with utilisation of funds or somebody who must have taken the money. I think here, what it means - the Permanent Secretaries being accountable for all departments and Ministries under him or her is that he gives an explanation on how funds were utilised irrespective of him taking the money or the Minister or an office messenger or what have you. So as long as he can give an explanation giving how the money was utilised in the Ministry or department, that is the accountability we are talking of and if it happens that a Minister has stolen some money, the Permanent Secretary should in his or her own right report that this money was taken by the Minis-

ter, as simple as that. That is what we call accountability but there is an element where people think that to account you must have used the money yourself. I think that we should be clear, Madam Chairperson.

MR. CHEBET MAIKUT (Kween County): Madam Chairperson, I would also like to seek some clarification from the Mover of this amendment, Hon. Bidandi Ssali who sought only to put the whole responsibility of accounting to a Permanent Secretary in a Ministry or department. Now, my problem is that from our past experience, over the years, some Ministers are reported to have been responsible for causing some financial losses in their respective Ministries. Now, how do we, by virtue of this amendment on the Floor, how will such an irresponsible Minister be held responsible if we only took Hon. Bidandi Ssali's Motion as it is because to me, Madam Chairperson, 191 (2) in the Odoki Draft to me is quite good, it gives adequate provisions in my own view. Thank you very much Madam Chairperson.

MR. OBUA OTOA (Erute County North): Thank you, Madam Chairperson. Madam Chairperson, I am rising on a point of procedure. Hon. Ogola brought a point which I think is not being addressed. How do we proceed because he raised something which I thought was a very important matter which should be addressed by this House. The way we are proceeding is as if we are simply ignoring what Hon. Ogola proposed.

THE DEPUTY CHAIRMAN: He did not move a Motion so I thought Hon. Chebet Maikut was contributing to what he said.

MR. OBUA OTOA: Could he be permitted to move formally?

THE DEPUTY CHAIRMAN: Yes, Hon. Akure.

MR. AKURE (Jie County): Madam Chairperson, I believe whoever is in the position is responsible for accountability. Let us take an institution like Makerere, I believe the Vice Chancellor is the one to account for the funds if it is Makerere, so is Mulago Hospital. The Medical Superintendent or whoever is there is to account for the funds given to his institution. So I do not see the reason why then we should tie the thing to the Permanent Secretary alone. These are institutions which are responsible for accountability. Now, like this issue of the Minister,

I cannot really see the reason why the Minister also is involved in accounting because the Permanent Secretary is there as an Accounting Officer. The Minister is just a political head of that Ministry. Now how do we have two people accounting for the funds in the Ministry? It means, therefore, there may be misunderstandings, the Minister may have his own interest in certain places, the Permanent Secretary also in certain places, so they may not agree if we have two people accounting for funds in the same Ministry. For me, it is appropriate that the Permanent Secretary himself or herself must be the accounting officer in the Ministry. Thank you.

DR. BYARUHANGA (Kitagwenda County): Clarification! Thank you, Madam Chairperson. The practice has been and is up to today that the Secretary to the Treasury is the one who appoints accounting officers every financial year. It is not true that every Permanent Secretary in the Government is an accounting officer. For example, the Secretary to the Treasury is not the accounting officer. The Accounting Officer for the Ministry of Finance is the Deputy Secretary for the Treasury. In the case of State House, it is not the Principal Private Secretary to the President who is the accounting officer but there is somebody of the rank of Under Secretary called Controller of Finance who is the accounting officer. So, as it is now, unless we want to direct that in future the Secretary to the Treasury must always appoint Permanent Secretaries only as accounting officers, then Hon. Ogola has a very big point. Hon. Akure has also informed us that there are many self accounting departments or parastatals, you could call them parastatals with the government, Makerere University is one, Mulago Hospital and so forth. These ones, for example, the Accounting Officer for Makerere is the Secretary to the University. The Accounting Officer for Mulago is the Medical Superintendent. So, unless we clarify this issue, it will cause some confusion in future. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Ogola, it seems you have support from some Delegates so could you please move your Motion formally, they second it and then we proceed.

MR. OGOLA: Thank you very much, Madam Chairperson. My amendment would read like this: *"The Minister and the Principal Secretary in charge of a Government Ministry or Department or the head of a self accounting institution (Interruption).*

THE DEPUTY CHAIRMAN: There is a procedure problem.

MR. MULENGA (Democratic Party): Thank you, Madam Chairperson. Madam Chairman, as I understood it, there was an amendment on the Floor which has not been decided. I do not seem to read the amendment by Hon. Ogola to be an amendment to that one. Would it not be more appropriate to express ourselves on the amendment on the Floor before we tackle the other one?

THE DEPUTY CHAIRMAN: To you, it is the amendment on the Floor.

MR. MULENGA: The one which sought to remove Ministers from accountability, the one that was not concluded on Friday.

THE CHAIRMAN: Yes, I wonder whether you were here when we started.

MR. MULENGA: Yes, I was here Madam.

THE DEPUTY CHAIRMAN: That is exactly what we are doing, we are trying to see whether we could improve on Hon. Bidandi Ssali's Motion.

MR. MULENGA: But how can it be an improvement if he is putting back what Hon. Bidandi Ssali sought to remove?

THE DEPUTY CHAIRMAN: No, no. We have not listened to him. I do not have his Motion. Okay, let us listen to him.

MR. MULENGA: But he started with the Minister.

THE DEPUTY CHAIRMAN: That is alright but he had not finished so let him finish and then we shall see how we proceed.

MR. OGOLA: I apologise, Madam Chairperson, I think it is true I misled the Hon. Member. I should have read the text which is the amendment from the Committee and I had inadvertently put in the word Minister. Let me read it more appropriately, Madam Chairman. The amendment would say: *"A Permanent Secretary in charge of a Ministry or a Department or - now this is the amendment, after the word "Department" put "or the Head of a self accounting institution."*

THE DEPUTY CHAIRMAN: Yes, proceed up to the end of your Motion.

MR. OGOLA: Okay, "*The Permanent Secretary in charge of a Ministry or a department or the accounting officer of a self accounting institution shall be accountable to Parliament...*" I beg to move, Madam Chairperson.

THE DEPUTY CHAIRMAN: Who is seconding him. Okay, seconded by Hon. Dr. Byaruhanga, any contrary view?

MR. CHEBET MAIKUT (Kween County): Thank you, Madam Chairperson. I would like to seek some clarification from the Mover of this amendment as to how he thinks all the heads of self accounting institutions can be accountable to Parliament. I am just seeking to see how it is going to be possible because in my own understanding, even post primary institutions, quite a number of them, are self accounting now and quite a number of other bodies which are para-statal - which may have some government interest - are self accounting in their own right, now, is the Mover of this Motion saying that all these various heads of self accounting institutions should be directly answerable to Parliament or go through their responsible Ministers?

MR. KWERONDA RUHEMBA: Information! Madam Chairperson, it is another clarification not information. These self accounting organisations the Mover of the Motion is talking about are corporations, may be, established by an Act of Parliament and these organisations, these corporations have got their Acts and in the Act it is spelt out clearly how they are going to account for the funds utilised in those organisations. Now, how does he want to smuggle it in to match with the Ministries or those departments headed by a Permanent Secretary? I want clarification, Madam Chairperson.

MR. OGOLA: Madam Chairperson, I think Hon. Chebet Maikut is mixing two accountabilities here. I think the head of a primary school is accounting to the District Education Officer, he is not self accounting in the sense of being a nationally self accounting but the accounting officers we are talking about are those who are appointed formally by the Secretary to the Treasury and those are the ones I think the Constitution is dealing with here and that is where I am attempting to amend. Thank you.

DR. KABERUKA (Ndorwa County West): Thank you, Madam Chairperson. I have consulted with the Hon. Ogola and I think for smooth reading of the amendment, we should read that "*The Permanent Secretary or the accounting officer in charge of a Ministry or department...*" and then we stop at where Hon. Bidandi Ssali suggested so that we have the Permanent Secretary or the accounting officer in charge because the other one is in charge of a Ministry and the other one is in charge of a department. So that one would read much better. I thank you.

THE DEPUTY CHAIRMAN: Is that seconded?

MR. OGOLA: I accept it, Madam.

THE DEPUTY CHAIRMAN: Okay, Hon. Ogola is accepting Hon. Kaberuka's amendment but Hon. Ndege had a problem.

MR. NDEGE (Luuka County): Thank you very much, Madam Chairman. I think the points which were raised were not properly answered. What my other colleagues were saying is that, for instance, there is this Produce Marketing Board - it is self accounting. Under normal circumstances, it reports to the Permanent Secretary who is in charge of that Ministry. Now, - (*Interruption*) - let me finish and then other people can come in - or any other Ministry or the Board but the Minister has a direct control and at the end of the year, they hand over their audited accounts to the parent Ministry where the Minister presents the accounts of the Board of that para-statal to Parliament; but if we change it, then what we are trying to say is that the accounting officers of those bodies like Produce Marketing Board, Mulago, Soroti Flying School or whatever will come directly to Parliament and present their case. So I think we should re-visit the whole thing and see how these organisations are inter-related with the parent Ministries vis-a -viz Parliament. I think that the original text as it reads is quite good; even the Minister, I think where he has authorised funds, should be accountable for those funds. The problem with the Permanent Secretary is that if a Minister has authorised funds, since he is his boss, he will tend to keep quiet and I think we should make him accountable for whatever portion of the public money he has used. So I think the original text is more appropriate than what we are trying to do. Thank you very much.

THE DEPUTY CHAIRMAN: Hon. Ndege, if you were around by the time we left Members, many Members had argued that once you put in that, you are regularising an irregularity, that the Minister should not - now why should you bring that provision that should - so that was the background that they are not trying to regularise the irregularities. Let us hear from Hon. Elyau.

MR. ELYAU (Kalaki County): Thank you, Madam Chairperson. There are two factors that I wanted the Delegates to understand. Here people are mixing para-statal accounts with the Government accounting procedure which are two different things. The parastatals are trading accounts which make profits whereas for the government it is purely estimates which is passed by Parliament which the Permanent Secretary is asked to control. The Permanent Secretary becomes accounting officer because he has to sanction payments where the Minister should not really appear at all but he can politically direct in the interest of the country. So this should not mix the Members up. I think the other day when Hon. Bidandi Ssali said okay if the Minister gets a problem with the Permanent Secretary, either one can report, in cases when the Minister takes authority to dictate on some payment, the Permanent Secretary has some chance of reporting because there are many ways of reporting a matter financially, even the auditor can correct that situation so I do not see why we are delaying, we should really vote on the issue, Madam Chairman.

THE DEPUTY CHAIRMAN: Okay, from what is going on, let us put it like this, let us first clear the last part and go away whether the Minister should be involved or not then after that we shall go back to an amendment of whether you put in other accounting officers or not because now you see each one is debating and we are confusing issues. I do not know whether Members have got on what I am saying. What I am saying, we go back to Hon. Bidandi Ssali's Motion, we clear that one, whether the Minister should be involved or not then after that, Members can bring their amendments when we know that actually we are no longer dealing with the Minister. Okay, Hon. Wanendeya.

MR. WANENDEYA (Budadiri East): Thank you very much. Madam Chairperson, I am a party to this decision and the point which is being overlooked but mentioned by Hon. Bageya is that we have seen in our country whereby Permanent Secretaries frustrate a government in power or authority

by denying them to spend money and, therefore, we had enjoined this clause with the Minister in mind so that if the Minister tells the Permanent Secretary, the Permanent Secretary has got to oblige but if it arises in Parliament that he forced the Permanent Secretary to bring up that expenditure, then the Minister should be in a position to explain and that is all that we had in mind as a way of not getting the government decisions or the government in power the decisions to be frustrated, Madam Chairperson, and with that explanation it is up to Hon. Delegates to decide whether they want that or they want Permanent Secretaries in some cases to frustrate the Ministers. I thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Now, let us hear from Hon. Bidandi Ssali, the Mover.

MR. BIDANDI SSALI (Nakawa Division): Madam Chairperson, you will recall as indeed Hon. Members who were there will recall that those were some of the arguments which were brought and there were also counter arguments. Now, if we open up the counter arguments that is a different matter. Hon. Wanendeya recalled that some of the argument against that was that money is not voted in block to the Ministry, the money is spent according to a budget and, therefore, whether you are a Minister or not you simply do not come in to order expenditure of money outside the budget and the moment you do that, as you were saying, Madam Chairman, you are institutionalising an irregularity whereby the yes, yes, Permanent Secretary will say alright, as long as you give me a document, then every now and then the Minister will be giving authority, authority, authority. By the time we find something is wrong, billions will have been misplaced. So these were the arguments throughout. So, Madam Chairperson, I would like, for the sake of those who were not there to say that my amendment was to the effect that the Permanent Secretary in charge of a Ministry or department shall be accountable to Parliament for the funds in that Ministry or department, full stop. That was the amendment over which we are going to vote and I suggest that you put the question.

THE DEPUTY CHAIRMAN: Okay, now there is a Motion that I put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now, I put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now we have struck off all the words from the third line, the last words that where a Minister authorises any expenditure he or she shall be accountable for that Ministry. All that is gone. Now, Hon. Ogola.

MR. OGOLA: Thank you, Madam Chairman. My amendment incorporates the amendment of the Chairman of Committee 3 which states as follows: "*The Permanent Secretary or Accounting Officer in charge of a Ministry or a Department shall be accountable to Parliament for the funds in that Ministry or department*".

THE DEPUTY CHAIRMAN: Would you not put in the word "respectively"?

MR. OGOLA: I am open for the advice but in my initial impression it was not necessary.

THE DEPUTY CHAIRMAN: Because you are talking of Permanent Secretary or the Accounting Officer in charge of a Ministry or department. That means the Permanent Secretary can also be an accounting officer of a department. Is that the implication?

MR. OGOLA: Yes, as long as he has been appointed by the Secretary to the Treasury.

MR. KIWANUKA KAGIMU (Bukomansimbi): Madam Chairman, I am asking whether Hon. Ogola can allow me to improve a bit for clarification to read that "*A Permanent Secretary in charge of a Ministry or accounting officer in charge of a ministry or the department as specified in Article 189 Clause 2 (2)...*" so that it is a bit clear because if you say department, it is a bit vague.

MR. OGOLA: Madam Chairperson, those departments will keep changing so I think there is no need again to go back and add so many departments each time.

THE DEPUTY CHAIRMAN: Now, I put the question. Those in favour of Hon. Ogola's amendment seconded by Hon. Kaberuka that we add in the words, so that it reads: "*The Permanent Secretary or the Accounting Officer in charge of a Ministry or department shall be accountable to Parliament for the funds in that Ministry or department*".

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So now we have finished Clause 1(a) of Article 191. Hon. Kaberuka can we proceed?

DR. KABERUKA: Thank you Madam Chairperson. In view of the fact that we have amended sub clause (a) to eliminate the Minister, I would suggest that we also make some slight amendment in clause (2).

THE DEPUTY CHAIRMAN: How about (b)? Let us start with (b) before we go to Clause (2).

DR. KABERUKA: Okay, madam Chairperson, my Committee is recommending that since all the districts due to decentralisation, are going to be self accounting, we are proposing that we have a clause but in this clause we recommend that it be transferred to the section on Local Government but should read that: "*The Accounting Officer in charge of a district shall be accountable to the District Council*". I beg to move.

THE DEPUTY CHAIRMAN: So that means we do not want it here?

DR. KABERUKA: We want it under Local Government, finances of Local Government.

THE DEPUTY CHAIRMAN: So you are proposing deletion? Deletion from here and transfer.

DR. KABERUKA: We introduced it but thought that it is appropriate under Local Government not under here.

THE DEPUTY CHAIRMAN: Hon. Kaberuka and his Committee have revisited Clause (b) and they are saying that this be transferred to the Chapter on Local Government.

DR. BYARUHANGA: Clarification. Thank you, Madam Chairperson. The problem I have with this clause as it is now is that under decentralisation, Parliament votes monies to be sent to the districts. They sit down and vote this money. One would have expected that at a later date, one would account again to Parliament how this money that was voted at the beginning of the year was spent because when we say that the Accounting Officer in charge of a district shall be accountable to the District Council how

does Parliament get to know how this money which it voted to go to the districts was spent?

THE DEPUTY CHAIRMAN: I have a proposal in order to save time that Hon. Kaberuka is telling us that they want to transfer this provision so when you transfer it, that means the Committee discussing Local Government is going to integrate it in the context of the other provisions they have decided on. So I do not see the purpose of discussing it here, we are putting it back to the Committee which is dealing with Local Government, it is not our work now.

MR. OCHYENGH (Kapelebyong County): Thank you, Madam Chairperson. Madam Chairperson, I think the recommendation is, by inference, based on advice from the Legal and Drafting Committee and Technical Committee. I was of the view that may be before we transfer this to Local Government, we could hear from the Legal and Drafting Committee as to what they say about this because it is referred to them - transferred by the Legal and Drafting Committee with the help of the Technical Committee. It would probably be more useful to us now if the Legal and Drafting Committee could advise us on how we proceed because under Local Government finances, Parliament is expected to make laws governing the finances of the district and this could be one of the laws Parliament is likely to make and by saying that the Accounting Officer in charge of a district shall be accountable to District Council will already have preempted the other laws Parliament would make in regard to these appropriations of a district. So I would rather we seek advice from the Legal and Drafting Committee. Thank you Madam Chairperson.

MR. ELYAU (Kalaki County): Thank you, Madam Chairperson. I want to get more light on this issue. Now, supposing, as we are now decentralising power to people and soon we shall also decentralise money from Parliament to the lower councils like the District Councils even including the RC.3 Council. I wanted to get more light as to how and who should report the matter to Parliament. Is it the Minister for Local Government or the Minister for Finance? This is a very important point for us to know otherwise if we leave it like that this will remain vague. Can I be clarified?

THE DEPUTY CHAIRMAN: Hon. Kaberuka, can you assist there? The Member, Hon. Elyau, was wondering whether we should not be specific here

whether the districts will be accountable to the Local Government or whether it should be to Parliament, what will be the chain of command?

DR. KABERUKA: Madam Chairperson, I think our view was that the district council carries out some budgeting, present it to the Council and it is approved. Now their budget will consist of funds from the centre and funds that they raise within their district. Now, it is like, for instance, when we borrow money and incorporate it in our budget, do we account to the people where we borrowed? So for us we were of the view that the accounting should be to the Council because they will be explaining how the budget performed. So may be Parliament would be advised to look at the budget of these Councils but otherwise for us we think the accountability should be to the Councils.

THE DEPUTY CHAIRMAN: Well, Hon. Delegates, I think we should really have our minds clear. We are talking of a District Council but then later on in the Local Government way, they would agree, we may even have another pair. So what do we do because we have not actually decided. So I think it would be good if we followed the proposal by the Committee so that if it comes back to us, we have the reconsideration stage rather than passing it here when actually we do not know what is in the Local Government provisions. Hon. Mulenga.

MR. MULENGA: Madam Chairman, I entirely agree with your proposal. The minute in the report from Committee 3 says it was resolved that the above amendment be transferred by the Legal and Drafting Committee with the help of the Technical Committee to the Chapter dealing with the local Government. I do not see why we should at this stage talk about this at all and I understand from this Minute that it has yet to be synchronized by the Legal and Technical Committee and an advice will be given to the Committee dealing with Local Government as to where to fit it if that Committee thinks they agree with it. So if we make a decision on it now we will be preempting the work of the Committee dealing with Local Government. I therefore, Madam Chairman, suggest that you continue on that line and we move to Clause (2) because this one is not really tabled here by Committee 3 except it was put in to alert us that there is an area which they are sending to Local Government. So I would strongly commend that we move on to Clause (2) and this one is referred through the appropriate committees to the said committee on Local Government. Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: Let us do it formally.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So we are transferring Article 191 Clause I(b) to Local Government for synchronization with other provisions. Hon. Kaberuka, can we go to Clause 2?

DR. KABERUKA: Thank you, Madam Chairperson. As I was saying, in view of the fact that we have amended Clause (1) sub clause (a) to eliminate the reference to the Minister, the subsequent amendment which we had made on (2) have become superfluous and I therefore propose that we adopt Clause (2) as it appears in the Draft Constitution. I beg to move.

THE DEPUTY CHAIRMAN: Let us get clearly what Hon. Kaberuka is saying. Hon. Kaberuka is saying they are withdrawing their proposed Clause (2) to go back to Clause 191 (2) which reads that "*A Minister or any person holding a public office who directs an accounting officer or any other officer to apply or use public funds contrary to law or to existing instructions shall be accountable for any loss arising from such directions and may be required to render an account or to make good the loss even if he has ceased to be a Minister or to hold public office.*" Then what do you say about that one? Do you want that word "Minister" to be there?

DR. KABERUKA: Yes.

MR. KARUHANGA (Nyabushozi): Thank you, Madam Chairperson. Madam, when you look at No.2, you will then realise the implication of No.1

THE DEPUTY CHAIRMAN: Which No.2?

MR. KARUHANGA: Clause (2) in the Draft - you will then realise the implications and the grave error that has been committed by us in removing the "Minister". And when you look at the Chapter on Cabinet and Ministers, you start realising the actual responsibility of the Minister who is in charge of the policy and administration of his Ministry. When you take on responsibility for administration and now in (1) we have said "Administration" means administration except funds, that is what we have said. The Minister now in Uganda will be a Minister in charge of administration without funds. That is the implication we have made by passing Hon. Bidandi Ssali's amendment. *(Interjection)*.

MR. BIDANDI SSALI: Information. I would like to inform the Hon. Member holding the Floor that in my other capacity, I have been a Minister responsible for the policy and general administration of the Ministry but at no time during my tenure as a Minister have I been an accounting officer. So this is not new as to apply that you get the money from a Minister and therefore he cannot perform. We are talking of policy and general administration. The question of accounting for money and so on is something other than specialties. I just wanted to inform him.

THE DEPUTY CHAIRMAN: So what is your view on having the Minister reverting to the original where you have the Minister as the first person?

MR. BIDANDI SSALI: Of course, Madam Chairperson, my view is that we should not constitutionalise an irregularity.

MR. KARUHANGA: Madam Chairperson, it is not true that Hon. Bidandi Ssali as Minister has not been an accounting officer - *(Interjection)*. Madam Chairperson, if you look at the Constitution which has been governing this country, the Ministers and Permanent Secretaries have together been accounting officers. *(Interruption)*.

DR. KABERUKA: Information! Madam Chairperson, I wish to inform Hon. Karuhanga that an accounting officer is always appointed to account for funds and that is either a Permanent Secretary or any other officer of the same rank who the Secretary to the Treasury appoints as an accounting officer and I do not think he ever appoints a Minister to do that.

MR. KARUHANGA: Now, I would like to read out the clause which made the Ministers accountable in the Constitution of 1967. It is Article 34, Clause (2). I had also raised this matter in Parliament at some stage when Ministers were trying to accept responsibility for mismanaging their Ministries: "*Where a Minister has been charged - because Article 31 charges them with the responsibility for administration - 'Where a Minister has been charged with the responsibility for any Department of the government of Uganda, he shall be responsible for the administration of that department and shall exercise direction and control of that department and shall in the discharge of his functions under this Article be responsible to the Cabinet'*". *(Laughter)*. Exactly. How do you exercise - *(Interruption)*.

THE DEPUTY CHAIRMAN: Hon. Obua Otoa wants to clarify. Let us hear Hon. Obua Otoa first, I will come back to you.

MR. OBUA OTOA: Thank you, Madam Chairperson. I think what I am about to say might make us move a bit faster. Now that we have decided that the Minister should not be brought into this business of accountability, I think it would help us if we simply say “*any person holding a public office*” and delete the word “Minister” all together because we have now excluded the Minister from accountability and I think very wisely too. So any person would in fact include a Minister. Therefore, it would help us to move if we simply say “*any person holding a public office who directs...*”

MR. MED. KAGGWA (Kawempe Division South): Thank you very much, Madam Chairperson. First of all, I had wanted to clarify to my learned brother, Elly Karuhanga that he should not confuse administration with accountability of funds. I think our laws here are very clear as to the accountability of funds and it has been repeatedly said in this House that the Secretary to the Treasury appoints an accounting officer and in relation to funds only. The fact that the Minister is overall does not make him an accounting officer. Secondly, regarding this issue of removing the Minister, I want to disagree with that proposal on the ground that when this Draft Constitution was being made, as all of us know, it had peoples views in mind. The other day, I think last Friday when we were here discussing the first clause we have considered, we all agreed that there are those Ministers who would go out of their way to direct Permanent Secretaries over the use of funds and the populace was very much concerned with that kind of behaviour and when it comes to accounting before Parliament, the Minister will stand aloof. It was after that consideration that the Drafters of this Draft Constitution felt that the Ministers should be, among other things, singled out so that they are put on notice that if they do so, they will have to account for the use of those funds. So I wish to disagree with the other proposal of removing the word “Minister”.

MR. BEN WACHA: Thank you, Madam Chairperson. Madam, Hon. Elly Karuhanga unfortunately misled this House. Article 34 of 1967 Constitution which he read to this House has nothing whatsoever to do with the accountability of public funds. Article 67, however, which deals with the functions of Permanent Secretaries has the following

to say, 67 (2): “*The functions of a Permanent Secretary under this Article shall include (a), (b), (c) and (d) responsibility for the proper expenditure of public monies*”.

THE DEPUTY CHAIRMAN: Thank you very much. Let us hear from Hon. Karuhanga then I will say something.

MR. KARUHANGA: Thank you very much, Madam Chairperson. Now, the information which I have got from all my Hon. Colleagues has only helped to buttress and support the point I am making that the import of the amendment of Article 191 Clause (1) talks about management of funds not expenditure of public funds. Management of funds, and in the exercise of the management of funds therein lies the administration of funds and when you look at our Constitution now and you look at Article 114 (1) on the Cabinet where Ministers come in, you will find that one of the responsibilities is the administration and execution of the functions of the government. Now, to deny them access to views and the control of the funds in their departments and to say that the Permanent Secretary who is not a Member of Parliament will go and be responsible to Parliament and now to go ahead in (2) and remove the Minister from being responsible to Parliament and to account for the money he has been spending in his direct discharge of the administration in his Ministry shows that what we have done in (1) is faulty. However, if you want to even push that line and get these Ministers to be completely not responsible to Parliament and when Parliament is talking about a certain Minister, how he is mismanaging his Ministry and he says you know, in the Constitution I have nothing to do with the management of the funds, then now you better remove him and then put the Permanent Secretary or the accounting officer of a department who directs that the money be spent will be responsible for that money even when he has ceased to be employed in the Ministry. Then the Permanent Secretary becomes responsible but I urge this House on my knees, I beg you that if these Ministers have no more responsibility to Parliament and they come and sit there and the Backbenchers ask them responsibility for the Ministries and they say read what the great thinkers, the fathers and mothers of our nation wrote - (*Interruption*).

THE DEPUTY CHAIRMAN: Hon. Kanyeihamba has the Floor.

PROF. KANYEIHAMBA: I thank you Madam Chairperson, I think that I have very great sympathies with the arguments being made by Hon. Karuhanga and I think the confusion is a technical one. The question is distinguishing between legal responsibility and political responsibility. Obviously, where there has been expenditure which is explicable, then the minister must remain politically responsible to Parliament. And he should be the one to answer for the misdeeds and acts of his ministry, But legally, it is of courses the Permanent Secretary who is the accounting officer and who must count the cash where it went and so forth and we must distinguish these two responsibilities. So, I think that if we emphasize on its technicality that the Permanent Secretary is only the accounting officer and, therefore, he is responsible, we shall be relegating the Political responsibility which must remain with the minister. I thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: We have a technical problem that we have already Passed a Clause. Now we are revisiting it, that is out of regular. That provision can only come back during the reconsideration stage when we are revisiting our problem - I mean when we are revisiting whatever we have done.

MR. KARUHANGA: I Just wanted to have sufficient fear in the minds of the Members to know that we have blundered ourselves. However, Madam Chairperson I just want to give you an example of one minister - of one of the Ministries where we have had a problem *-(Interruption)-*

MR. DICK NYAI: Madam Chairman, I believe that under your wise judgement and guidance, once a question has been put and the House has decided on it, I thought this is normally after due consideration. Is it therefore in order for the Hon. Member holding the Floor to call such decisions a blunder.

THE DEPUTY CHAIRMAN: I think Hon. Karuhanga you are out of order, and by the way, that is a problem of absenteeism. If you were around yesterday, you would have raised that issue. Now you did not raise it, better wait until a latter date when you can bring it back.

MR. KARUHANGA: Madam Chairperson. I am debating article 191 (2) not (1). I am only drawing influence to article 191 which we have passed to support *-(Interruption)-*

THE DEPUTY CHAIRMAN: But would you withdraw the derogatory language you have used! I think it was unfair, you were away, now you are saying people blundered, but where were you, you were among those people who blundered.

MR. KARUHANGA: Would the word "mistake" be substituted sufficiently for "blunder"? So if that is the case, then I withdraw the word "blunder" and I substitute it immediately for "mistake". Madam Chairperson, I have seen here in our country people, Permanent Secretaries jailed, being arrested for expenditure in important ministries going up to billions which billions were directed by Ministers, - a minister a particular minister, and they sit and they live happily having absolutely taking no responsibility. Now I am not going to support Hon. Kaberuka's amendment in 191 (2), saying that the minister or any person holding a public office who directs an accounting officer or any officer to apply or use public funds contrary to law or to existing instruction shall be accountable for any loss arising from such direction and may be required to render an account or to make goods a loss even if he has ceased to be minister of a public office. If Hon. Kaberuka now removes the minister from this responsibility, I would not like to support this, I would like them to remain responsible because I know that they will be ordering things around.

DR. KABERUKA: Thank you Madam Chairperson. I think Hon. Karuhanga has not been attentive. My contribution was that in view of what we have recommended which was taking into account what we had done in Clause (a) of this article, we have decided that what we have - the amendment which we had recommended on (2) has fallen by the way side, and therefore, we recommend that we retain the original formulation of Clause (2) as it is which still contains the word "Minister". And that was in recognition of the fact that the present accounting procedures or instructions do allow that a minister directs in writing to an accounting officer to carry out an expenditure, and this is taken care of here. That should he direct him wrongly when he is not following the procedures, then he will be required to render good even when he ceases to be a minister. So, I imagine Hon, Karuhanga was not attentive and therefore, he was not following. I thank you.

MR. KARUHANGA: Now, Madam Chairperson, my view is that, if Hon. Kaberuka has accepted to withdraw the other one, and substitute it with this,

I would go very much along with him only, only that I would beg him to also add on top of the minister where the word or any person holding a public office; would like also to add there the Permanent Secretary to be clear so that we can that so that he can also be charged after he is no longer Permanent Secretary.

DR. HIGIRO SSEMAJEGE: Madam Chairperson, I think we need to be clear. The word which matters here is "direct". The minister may not legally be the accounting officer at all, and he is not. But we are saying that where he has directed - where that word "direction" is the most important word, all of us who were in that committee and some of us who have been in the Sectoral Committee for Economy in the Parliament, we know that the minister surely should not simply be kept free when in actual fact he directs that so much money be spent, and when they ask about it, the minister is just there without - he seems totally out of the picture. That is why we are saying and we agree with the commission when they say that a minister or any person who directs - Madam Chairperson, the word "direct" or "authorise," this one, the minister should not just be free to direct that so much money be spent and when they come to ask for it, he is just away. I support 191 (2) whole heartedly Madam Chairperson.

MR. NGOBI: Thank you, Madam Chairperson. I would like to inform the Hon. Member that the question of being an accounting officer does not prevent the minister from initiating policies which would be carried out. Once a policy has been decided, the minister has done his work, and that policy, when it is being implemented, of course there will be expenditure. It must be in accordance with that policy but it is totally wrong to think that the minister must have authority to direct expenditure of money either out of policy or outside the laws. It will be a pity if ministers act that way. He says: "Because I am a minister, therefore, bring one million shillings because I am going for a weekend!" You must have reasons for that one million shillings. Therefore, what I am saying is that that article is perfectly in order to inform the minister and the word "minister" there must be included because he is a very important person in this matter. It is important to state here that neither a minister nor anybody else should direct expenditure of money out of the law. And, of course, this will not reduce the power of the minister to initiate policies for proper use of money. I think we should support this view and especially taking into account what we have seen in the past that some

ministers have been alleged to order their Permanent Secretaries to incur expenditure of money out of what was budgeted for, I think it is wrong to say that the question of accountability does in any way reduce the responsibility and the ability of ministers to initiate policies.

Mention has been made - you have the Vice Chancellor there, of course the Chancellor and the Vice Chancellor, you also have a chairman but the accounting officer is the University Secretary. He is not the Vice Chancellor nor the chairman, he is the accounting officer. Having decided what must be done, it is up to him to see that that expenditure is incurred accordingly. So I am asking my Hon friend Hon. Elly Karuhanga that this is not contrary to what we have done, what has been done is perfectly in order and we should have this Clause as suggested by the chairman of the committee. Thank you very much.

MR. RWOMUSHANA (Rujumbura): Madam Chairperson, I think it is true that a Permanent Secretary is a senior civil servant and Madam Chairperson, think it is also true that a person should have principles from which he should compromise or which should not be compromised. Now if you are a Permanent Secretary the accounting officer and sole person to release the funds, I do not see how you should succumb to the minister who asks to release the funds outside the law. Madam Chairperson, there is a provision that when things are done in a way you do not support, then you should resign. If I am Permanent Secretary and the minister compels me to release funds outside the law, I should refuse because it is contrary to the law. And if the situation is unfavourable, then I should resign my job. But to go further and release funds because they have been asked by the minister outside the law, to me I think you are an accomplice, you are an accomplice in that offence. So I would not like to protect the Permanent Secretary on this, it should have been the other way round that that Permanent Secretary must account for that loss. Thank you, Madam Chairperson.

MR. MULONGO SIMON: Thank you, Madam Chairperson. I am a Member of the Committee Three. Unfortunately I have not been a minister before, and I am not now. I will not be the Permanent secretary, I am not aspiring for any of those either, but what I read and see happening in this country causes a lot of concern. I would like to applaud Hon. Karuhanga for his sentiments, the Chairman of the

committee, Hon. Rwomushana and all these other Members. Despite the fact that the previous constitution talks so well about the functions of two, I do not know how we can answer the question as to how the ministers have access to funds. There is no way you can tell us that Permanent Secretaries have this duty, they are so specific and therefore, the minister has no access, he just directs according to policy. But we see them dipping directly their hands, in a way, into funds. They have been involved in all sort of scandals and these things are real.

MR. KARUHANGA: Point of information. I wanted to give information to my learned friend that ministers do have access to funds in this way. In every ministry, every month they receive releases from treasury. When the money arrives, the Chairman or Chairperson of the Finance Committee in every ministry is one of the ministers in the ministry it is allocated, so they chair the Finance Committee of the ministry, they decide how the money will be spent which has come from treasury and the accounting officer starts issuing out cheque. That is how they get access to those funds, and I thank you for supporting me.

MR. MULONGO: Thank you, Madam Chairperson. Therefore, what we are trying to say here, if the ministers in their official capacity have been hiding in a way, let it be clear that they are given some responsibility explicitly so that they can be clearly accountable for such funds so that we can change the constitution. We should not work or discuss in a way as if the previous constitution is the permanent yard stick, and therefore, we can not alter anything here. What we are saying here is simply the cries of the people of this country as expressed in the Odoki Commission Report. We should find a way to accommodate this problem so that it does not just continue like that. So, in that case, I would like to plead with the Members of this House that, the amendment in question be passed holding the minister responsible so that these Permanent Secretaries who have been the sacrifices - "the Jesus" - of these other Members, somehow get consolation or protection of some kind. Therefore, I ask the Members, please, let us have this thing moved in that direction. Thank you.

DR. MUGYENYI: Madam Chairperson, I would like to correct Hon. Karuhanga that this House did not make a mistake. We actually took a right decision to get the Minister out of this mess of

running around looking for receipts and so on to account for the money. And we said we are leaving this responsibility to the Permanent Secretary. And that is what we passed in the first Clause. Then in the second Clause, Madam Chairperson, we are saying that, if the minister goes wrong and goes against the laid out regulations of directing for release of funds, the following should be done, and I think Madam Chairperson, we are in order to say that in case the minister is out of order and he instructs the Permanent Secretary out of the laid budget and out of the regulations, then the following should be done and the minister should be held responsible. Therefore, Madam Chairperson, I think and I implore this House to keep the minister included in the second Clause so that the minister, together with any other person that may direct wrong use of public funds as we have always read in the Newspapers, should be held personally responsible. The ministers have been wrongly directing PSs to use funds, we are saying that, in case they do that, then they should be held responsible. I do not support Hon. Rwomushana who said that the PS should stick to his guns. Definitely, when we are saying that you should do this, we are catering for the bad weather. In case the Permanent Secretary is overwhelmed by the political weight of the minister, then the minister should be held responsible. So the minister should be included in the second clause I thank you.

MR. MULENGA. Thank you very much, Madam Chairperson. The way I see these two Clauses going together is like this; we have fixed the accountability on the Permanent Secretary, he is the one to account. He will even tell of how money was stolen or whatever. That is a specific responsibility. Clause (2) is intended to cater for the situation of authority, because a minister is the one finally responsible for the ministry. He may, in the exercise of his authority, direct a Permanent Secretary and the Permanent Secretary may be obliged, because of that relationship - never mind about fearing and so forth, to obey against his better judgement. Therefore, this Clause is saying, if that should result into a loss, then the minister will be answerable. However, I think saying directly "contrary to law" is going too far because in that case really, there is no one who should excuse the Permanent Secretary. They would be together answerable. Contrary to law means illegality, so we may try to revisit the phraseology. In fact, I would have preferred not to have it there at all except when someone said it is to serve as a warning to ministers. Now if we need to put warnings in the constitution for

Ministers, then let us have it there. But let us rephrase it. Because in the case of spending contrary to law, the spender himself is responsible. The Permanent Secretary would be responsible, he has no excuse to obey the Minister if it is against the law. I would support this Clause only if that is removed and it is to serve as a warning.

DR. BYARUHANGA (Kitagwenda): Madam Chairperson, I had an amendment which goes along with what Hon. Mulenga has just told us. I wanted to remove this "*contrary to the law*" but to put there "*against existing instructions*" and then add on "*and the officer who releases the funds*" so that it would read as follows: "*A minister or any person holding a public office who directs an accounting officer or any other officer to use public funds against existing instructions and the officer who releases the funds shall be accountable for any loss arising from such a direction and may be required to lend an account or make...*"

MR. KARUHANGA: Point of clarification! If the Permanent Secretary, for example, issues an instruction contrary to the existing standing instructions, to a cashier in Bundibugyo and the cashier having received a letter from the Minister, Permanent Secretary releases funds, now you will start harassing this cashier in the constitution. Poor man! These are the people who are suffering today, these are the victims - this is what I was talking about, these are the people now in jail. But the people who are directing are the ones responsible.

DR. BYARUHANGA: My experience and knowledge from my membership of the Public Accounts Committee of the NRC has taught me that the situation is not exactly as Hon. Karuhanga is trying to tell. What happens is that, these lower officers see a weakness for money in the senior officer, they may see that the minister, for example, is perpetually broke, then they will start - for example, the Principle Accountant or the Under Secretary in charge of finance will start coming to the Minister and say, by the way, we could find you some money, we could find you something for the weekend. Then of course, the poor man says. I am broke as usual. Then the Under Secretary or Principle Accountant will say, we could try to get you something. Because the minister is willing to take something, these people will go for example, and apply and get in cash directly from Bank of Uganda. They will get about 5 million, give the minister 500,000 shillings and eat

the rest. Usually, when money is lost in the Ministry, even small fellows, right from the Cashier and this one who examines vouchers, and the Principle Accountant and - usually even the Under Secretary finance sometimes even the Permanent Secretary are involved. Now if you are working like he is telling me of this person in Bundibugyo, if you are holding an office and you are totally ignorant of the financial instructions and your ignorance of financial instructions causes you to lose public funds, definitely it is your fault to be ignorant. And, therefore Madam Chairperson, that is why I believe that the person who gets the money and the person who gives the money should both be held accountable because in most cases, they are eating together. Even if you tie the 10 million on one person and say it is the minister who ordered, but you will find that the minister did not take all of it, that that 10 million was shared between the receiver and the person who actually made the release.

MR. PINTO: Thank you, Madam Chairperson. Hon. Byaruhanga is referring to cash but I think there is more than cash that could be involved when we talk about accountability. Supposing the Minister authorises or directed for the supply or purchase of equipment, let us say Iron sheets or any other material, for such a project and not necessarily within the budget in that ministry and such equipment is purchased. This represents cash that has been spent out of the budget. He may authorise transport or fuel supply using public vehicles to go and do a job or functions that are private to the Minister. Haven't we known of roads that have been made using government equipment for personal and private purposes? Haven't there been expenditures even on private and personal constructions using public funds where direct involvement may not necessarily be cash? So, I think it is important not to look at only cash, the directive may be in the form of action and the action involves expenditure misusing public funds and ultimately, when you question that, it will not be an authorised expenditure but a public expenditure duly authorized by the Permanent Secretary or whoever would have authorised or given directive. To do this could have complied with a ministerial directive. Even these activities must be considered not necessarily cash.

MR. BIDANDI SSALI: Point of information! I would like to inform the Hon. Member or just to request him to distinguish between - misuse of office and instructions to an officer to spend. These are two

different things. Misuse of office is such a thing as go and do my private work and so on but what we are talking about here strictly - not strictly but one of the aspects for example, is, Madam Chairperson, when there is money in the budget meant for work X and there is work to be done on Y, as an example here, he insists according to the instructions that this money cannot be diverted, then the Minister, according to his own reasons, directs against the provisions of the law. Here we are saying, yes Permanent secretary you can agree, sign it but do not worry, it is the minister who will be responsible. I think you are laying bare the authority of the Permanent Secretary and even cowering him much more under the authority of the minister. The Permanent Secretary is more protected when there is only one law and that is, he is the person to authorise expenditure. If a Minister comes and gives instructions to the contrary, a worthwhile Permanent Secretary - and I have know many of them - will politely tell the Minister, this is against the law unless we get permission, may be from above and so on and so forth. Otherwise, if you provide for this, Madam Chairperson, you are saying even no Permanent Secretaries will continue as long as they are protected. That something wrong which he is authorising, he knows it is wrong, he knows it is wastage of public funds, but he is protected in order to protect his position.

MR. PINTO: Thank you, Madam Chairperson. I have listened to the Minister's explanation. I accept Hon. Bidandi Ssali's explanation but I find little to differentiate between misuse of office and misuse of public funds. It would also be a difference in using unauthorised funds. I believe all these come to the same thing. What we want to do is to put blame squarely on the accounting officer and if for any political reason he is directed and this is beyond his control, the officer who directs should be held responsible and accountable. There are so many examples that can come forward, but because of the difficulties that we have experienced, I think we should lay in the constitution guidelines that are going to protect people who may be discharging their duties under the directions of responsible political authority like the ministers, that they should not be unduly victimised.

MR. KAJJUKA: Thank you, Madam Chairperson. I do not know why we are mixing issues but I will attempt to assist the House at least judging by my short experience in government as a minister. I think you should look at the position of a minister as that

one of a chief executive within an organization. But to differentiate it from a commercial organization, whilst the Minister is in charge of a Ministry, his preoccupation revolves around policy orientation and more often than not, the directives that he takes are geared towards policy orientation. In matters that have to do with funds, in the few years I have served as a minister, I for example, I do not even know how a ministry cheque book looks like. In other words, bear with me. In other words, the Minister apart from being in charge of policy making, the man who is responsible for day to day operations to make sure that expenditure is in accordance with the approved estimate is principally one person and that is the Permanent Secretary. Even in his absence, any one who acts for him, the man responsible in a ministry or a woman responsible is the Permanent Secretary. In other words, you cannot have two officials being responsible or accountable and I think by passing Clause (1), the House has taken care of this.

However, I can see the concern that Members have where they are saying, in some cases ministers do interfere, in some cases ministers influence accounting officers to spend. And I want us to take note of this that, that is not what should happen. If a minister does that, he has no right, he has no right to direct a Permanent Secretary, if he does, the Permanent Secretary would not be doing his right job, and I think listening to Hon. Bidandi Ssali, I thought he explained one important point that it would even be dangerous if we constitutionalize this. At the moment, there is no such provision. Are you with me, there is no provision. Where ministers have erred, they have been able to be pinned down either by the Auditor General or any other. But today, should you institutionalize, you are saying in the constitution, do not worry for as long as I am the minister, I will be accountable myself, I direct. It is extremely dangerous and I want urge the House to make sure that accountability is in the hands of one principle officer and that is the Permanent Secretary because whether you put this provision or not, at the end of the day, it is going to be a question of a man's integrity Vis-a-Vis the directive he gives. Because if you are the minister, according to some officers who are saying almost beggars, where you say every weekend you must sit down with a Permanent Secretary and say: Ahh! Will you not help me over this weekend? You should not have him as a minister in the first places because if you are going to be bothered about two shillings or small money for the weekend, then you have a problem.

In my view, Madam Chairperson, in conclusion, I want to really advise that a minister never perhaps even signs because the minute you say he can direct the use of public funds, it presupposes that you will even end up having a minister being a signatory to the ministry accounts, and I do not want to envisage such a situation. Even if there is no bulldozer who can force his way, I can assure you that my short experience in government, ministers may claim to be bulldozers, but on matters relating to finance, if the Permanent Secretary is a man who knows what he is doing, there will never be misappropriation of funds. That is a fact as far as I am concerned. Maybe I have not moved to the very big funded Ministries because that may be different. But I can tell you, from my experience that we should in the end not waste time to put in a constitution which is going to help us not to complicate matters, I thank you Madam Chairperson.

MR. WAGIRA: Thank you, Madam Chairperson. The problem in view that we have is that, in passing the preceding laws, we did agree that technically speaking, it is not possible to have two accounting officers in the same department. However in spite of that fact, there were sentiments also expressed, and one of the most founded fears was ministers who bulldoze their Permanent Secretaries to make expenditures which is contrary to that. And it is, I believe, in the same spirit that this Clause that is before us now is receiving that kind of support from the House. However, my reservations are these; in the first place, I find a bit of difficulty in legislating for irregularities, and this is where I would like strongly to agree with Hon. Rwomushana that the moment you are saying, if a man directs expenditure contrary to laid out procedures - that is why I prefer even the original Motion because it was laying the nakedness - it was laying naked the negative aspect of the Motion itself. Because in the first place it is based on the promise that it is legislating for irregulars. We are now saying, you can violate this constitution and authorise expenditure provided you appear to account for it in Parliament.

Secondly, if we are saying - and this is why I think there is a proposal - that even the Permanent Secretary should also appear, may be that these people appear to account both of them in case of the illegality, then we are defeating the very Motion that we passed that there should be somebody responsible. Because this idea of creating a situation where people can push back and shift responsibilities on others, would be a difficult thing. It is in light of that

that I would personally wish to say that, if we are looking for a strong Permanent Secretary in the ministry, we would rather have that Permanent Secretary with full responsibility and with full powers with the capacity to resist any advances of the minister.

We are arguing on the wrong premise that these ministers normally get money through duress only. But there is a point which was raised that there can also be a kind of connivance, both of us will find a way of explaining the matter provided you agree to sanction or provided you agree to spend the money. Why don't we just agree at this point and say, we have one person who is supposed to be answerable in case anything goes wrong, and that person should be able to speak out his guns. In any case, the Permanent Secretary is even more informed, the Permanent Secretary is regarded as the highest technical person in the ministry, and he is better informed to advise the Minister that you are violating the law. Now, me I would like strongly to say that let us have a Permanent Secretary who can stick out his guns and refuse to do that kind of thing and withstand any bulldozing from the Minister. In light of that, I would therefore wish not to involve another person in the accounting process.

THE DEPUTY CHAIRMAN: Hon. Wagira we are dealing with two (2). So are you saying that Clause (2) be deleted?

MR. WAGIRA: That is essentially what I am talking about.

THE DEPUTY CHAIRMAN: Then you move it properly, otherwise you are just going around the problems. But before you do so, let me clarify. Hon. Mulenga brought a proposal that we remove the words "*contrary to the law*", then Hon. Byaruhanga tried to improve on it to say that, instead of the word *contrary to the law*, we use the words "*against the standing instructions and the accounting officer who releases the funds shall be accountable for the loss raised.*" Now, that one is a third, that we completely remove the Clause. Usually we start with the furthest, that means if you are to debate those three, we have to start with Wagira's, come to Hon. Byaruhanga's, if we say that it is staying and then move to Hon. Mulenga's.

MR. ADOKO NEKYON: Madam Chairperson, the two Motions are exactly the same. If you say "*contrary to the law*", and you say "*against*"

standing instructions”, you are saying exactly the same thing. Because the standing instructions are given by Parliament in a resolution when passing the Budget. We in the Parliament have agreed that the proposed Budget of the government as debated by us must now be in this form after amendments have been proposed and passed or rejected. So the instructions come from Parliament in the form of a law by resolution, and the Permanent Secretary is therefore, responsible for carrying out the instructions from Parliament which is the law. He accounts for everything which must be implemented according to that instruction. If he goes outside the Parliament instructions, he is committing an offence irrespective of how he got the idea of altering Parliament instructions, whether by himself or by the Minister or by the Policeman. He is not allowed to alter anything which is being instructed by Parliament. Now for us to argue that a minister can impose himself on a Permanent Secretary and force him to change instructions from Parliament, is every awkward.

A Permanent Secretary is protected by law, he is not responsible to the minister for his position. He is protected by his linkage with the treasury and also by his linkage with the head of the Civil Service who is directly linked to the President. So if a Permanent Secretary finds that he is in an awkward position, he is being compelled out to a legal action, he has got a passage to the President to whom the minister is responsible. So, he can get a report to the President to the effect that this Minister is now trying to carry out projects which are outside the instructions of Parliament. And the Minister will immediately be summoned by the President to say what are you doing? But Madam, the problem is temporary one. What we are debating arises from the past that right now we are in Parliament voting a budget which is imaginary. The Budget we passed in Parliament is imaginary, the money is not there and we say we are voting for this amount hoping that EEC will send in this, America, USAID will put this and in the end we find the money has not come. So what happens, the Permanent Secretary, may be the Minister and the treasury begin to make adjustment outside instructions of Parliament.

So, all the people have been committing a crime because the law provides that where a minister finds that they are not able to implement their projects, they must prepare a supplementary budget asking Parliament to reallocate the votes. But my experience is that, these ministries, including the treasury,

including everybody, have not been going back to Parliament to reallocate their votes. But once the Permanent Secretary insists, he has only to prepare the re-allocation budget and take it back to Parliament for new legal instructions. And once that is on time, nobody has to be charged for any kind of offence. So this correction, it is not just between the minister and the Permanent Secretary, it is the whole government which must be prepared to go back to Parliament from time to time for re-allocation.

Therefore, I do not think that we should really waste time on something which - when we become rich and the money becomes available and we begin to vote real budgets like we used to in the '60s, then the issue will not arise at all.

THE DEPUTY CHAIRMAN: Hon. Nekyon, what is your proposal, the change in the language that one you answered, the addition of the Hon. Byaruhanga's you have not touched, so you have left the -

MR. NEKYON: My idea and considered opinion is that those Motions are not necessary. We have given the responsibility to the Permanent Secretary and he must be the accounting officer and he must reject any proposal from the minister for illegal expenditure.

MR. WANENDEYA: Point of clarification! Madam Chairperson, the law as it stands now, Hon. Nekyon is right, and the only thing Permanent Secretaries could do is to write a note if the Minister forces him to do something against the law and he takes that note to the highest authority in the land. I personally did it once, and somebody did not come back to me. So that would be the only way if a minister is forcing you to do something. I thank you, Madam Chairperson.

MR. ADYEBO: Madam Chairperson, before I give a brief contribution on this topic, allow me just to give a small scenario of what is happening around. Over the weekend, Madam Chairperson, I took a walk and I toured one hill here in Kampala amongst others, it was Ntinda hill. I had not been there for the last 3 years I decided to head that way. But once I went round, I was pleasantly surprised to find that the whole hill has been covered with new executive houses all over, and I also asked whose houses they were, and they were introducing the houses and also telling me the owners. Some of them are Ugandans inside Uganda, others are outside and they are

working. I was really impressed, and I thank them for the development. Now from what I saw, Madam Chairperson, I think now when we are talking about the responsibility and accountability of funds, it will be unfair to pin down only a cross-section of Ugandans to account for these funds. It is also true that in the 1960s, the management of Uganda was very decent, that is true but we are now not in the 60s. There were several sectors that contributed to the efficiency of the management of Uganda by then. There were expatriates, there were people from India from Britain, from Germany, from America all in all being in the management, especially for finances and they contributed to the efficiency at that time. But we are dealing with Uganda of 1995, and a lot of changes are taking place in the world.

Now, Madam Chairperson, I was happy that Hon. Karuhanga tried to actually contribute and give us some recommendations but I think he was so eager that he used some rough language. That notwithstanding, he was trying to make a very positive contribution for which I thank him. It is in my own submission, Madam Chairperson, it is time we brought in together the accounting officers together with the Minister's responsible for the funds under their department in all Ministries. (Applause) It will be unfair to leave the Ministers out. A Minister is politically a powerful person, and because of that power, the Minister can influence the accounting officer. Even during the appointing of the accounting officer, the Minister may have influence for the appointment. So, even if you are arguing that let us put the laws, we did not go to the accounting officer mainly the Permanent Secretary must operate, that is one thing. But in practice, the accounting officer is always under the influence of the Minister, be it directly or indirectly. And mind you, Madam Chairperson, the accounting officer in the name of the Permanent Secretary as it is in Uganda, he is the chief technical adviser to the Minister almost daily. He is the chief adviser. Now when things go wrong in the department, especially, financially in the department of the Ministry, they should be able to hold the two responsible (Applause).

I am happy that we have dealt with the amendment in (1) and now that Clause (2) is coming up with amendment to make a Minister also responsible, I think we should support the amendment which is saying that "*A Minister or any person holding a public office who may, by himself or by direction to an accounting officer or any other officer, apply or use public funds against the existing instructions*

should be accountable for any loss." That is in order. It may not surprise you to find that you can make a National Budget through real or temporary or imaginary - but I think budgets are always made to guide the running of the Nation. But during the implementation of the Budget, a Minister being a politician, being in power, may want to visit for example, the corners of Uganda but the funds may not allow, but the Minister may tell the Permanent Secretary that "Look you, you are joking, I want the money, how you get it is not my concern, I must travel!" It may happen I am telling you. Now, if the Permanent Secretary is to make things happen, the Permanent Secretary may even borrow funds from outside the budget. He may be forced to borrow money from a bank. It may happen, and if that Minister may have some projects under him or her, the Permanent Secretary may even be forced to borrow funds from the project, it may happen, but since the Minister instructs, the Permanent Secretary may be bothered if there is no record. If you take that person to court, he may get away with it. Now are we being honest, are we being kind, are we being fair to the Permanent Secretaries? It is high time we brought the two together and this is why I am supporting this amendment. Let us protect the Permanent Secretaries, the accounting officers, let us also make the politicians, the Ministers, responsible for any financial losses that may happen under their ministries due to their intervention, and this is the provision and let us support the provision.

MR. DICK NYAI: Thank you, Madam Chairperson. I have a fear that we are trying to correct an injustice by putting an unjust provision. It is sad that in our past history, Ministers have been very, very powerful, and therefore, twisted the hands and arms of accounting officers. But my fear, Madam Chairperson, for the present amendment is that, if you read it in the reverse, it tends to empower the Minister to the extent that he can go to the accounting officer and say, "You fellow, I am essentially responsible and held accountable for this money, do not ask me what it is for, just give me the money." Now the Minister has been particularized, may be we could go a little way, I do not know what Hon. Richard Kaijuka would think, but the other fear which was also raised was that why should Ministers be accused of being the only thieves while there are other thieves. May be we could come to a middle ground by deleting the first three words from that amendment. We start it by saying "*any person including gunmen...*" then we will have come a long way. Thank you, Madam Chairperson.

MR. BAGEYA: Thank you, Madam Chairperson. Madam Chairperson and fellow Delegates, I think we have to first of all pose a question as to why in the Draft Constitution the Minister was expressly and particularly mentioned. We have got to remember that this Constitution we are making is far different from that of Namibia and Mozambique and any others. This was through a wide consultation of the population. It is also quite true that Permanent Secretaries have been the only accounting officers, and in spite of that, there has been a lot of violations. What this particular clause is seeking is the words "*shall be accountable for any loss arising from such directions and may be required to rewrite an account or to make good the loss even if he has ceased to be a Minister or to hold public office.*" I think we must put emphasis on that issue. The mere fact that the Permanent Secretaries have had a free hand and either they have been used or misused, should not leave the minister scot free. It is because the people have felt that ministers have used these avenues probably to amass wealth and like the Hon. delegate from Kwania pointed out, and rightly so, his words of wisdom carry a lot, because he has been in the centre and, maybe, he was trying to tip you on something that we should follow. I, therefore, feel that it is imperative that we commit these ministers, not to allow them to use money anyhow, but to know the consequences after they have committed whatever crime they have committed. But the moment we leave them free, you can rest assured that the situation will remain as it has been, because nowhere in the Constitution have we ever found that a minister is responsible. This is the first Constitution of the people. So, we must support what is in the Draft as Clause (2).

THE DEPUTY CHAIRMAN: Hon. Delegates, I have a formal Motion from Hon. Dick Nyai that the words "the Minister" in the current Motion be deleted. Is that seconded?

MR. OBUA OTUA: Seconded.

THE DEPUTY CHAIRMAN: Okay, Hon. Obua Otua is seconding the Motion by Hon. Dick Nyai that the word "Minister" be deleted that it reads that: "*Any person holding public office...*" So, the Minister will be subsumed under "any person" and he has already clarified on his Motion. So, can we hear from Hon. Obua Otua?

MR. OBUA OTOA (Erute County North): Thank you very much, Madam Chairperson. Madam, you will recall that earlier on I, actually, made a suggestion to the effect which is now being brought as a formal Motion, that any person would, in fact, include a Minister. Madam Chairperson, I do not know why we would like to argue that any person does not include a Minister, and a Minister, after all, is a person and he is also in a public office and also "any person" includes even the Permanent Secretary. So, anyone who misdirects the use of public funds is being covered under this provision. The only other concession I would like to make is that this "*where it is contrary to the law*" we could cancel that one out because if you say "contrary to law", now it simply becomes a criminal matter. But if you say "*any person holding a public office by himself or by direction to any accounting officer or any other officer applies or uses public funds* -(*Interruption*).

MR. AKURE: Point of information! Madam, I do not know why really we are trying to dodge the point. There is no reason to say "anybody." Who is this person we are talking about? Why do we not say, Minister and Permanent Secretary, why do we dodge things? We must be straight forward and say ministers and Permanent Secretaries must be accountable, rather than saying "any person." Who could this be?

MR. OBUA OTOA: Madam Chairperson, I am not really very much informed on account of that -(*Interruption*).

MR. ELYAU: Point of clarification! Thank you, Chairperson. I wanted to be clarified as to who else, as my brother has said, can now direct an accounting officer who is a Permanent Secretary. You think over your head and say who else can direct a Permanent Secretary apart from being perhaps a minister. So, may I be clarified -(*Interjection*)- I am seeking clarification.

MR. ADOKO NEKYON: Point of information! I would like to inform Hon. Elyau that the other persons who can give such instructions to the Permanent Secretary are the President, the Vice President, the Prime Minister, the Secretary to the Treasury and what have you.

MR. ELYAU: So, unless I am satisfied in this way - now, who will really sign the cheque between a

Permanent Secretary or President or Minister? This is where I want to be clarified, because to be an Accounting Officer, you are a man responsible for signing the cheque. Now, are we saying that the Minister also should be able to countersign the cheque or not? Because, I have two in one, it is very complicated. I want to be clarified.

MR. OBUA OTOA: Madam Chairperson, thank you very much. But really, I do not think we should go into the details of who is signing the cheque. I read this Clause (2) as being a sort of protection to the Permanent Secretary. It is essentially a protection to the Permanent Secretary or to the Accounting Officer, whoever he is, and we must read it like that, not going to details as to who signs the cheque and so on and so forth. And I think the Accounting officer would be sufficiently covered if we say "any person" who does this and that, contrary to instructions and so on and so forth, will be held personally liable and as Hon. Nekyon has just said, there are so many other people who could come and descend upon the Permanent Secretary like tons of bricks and say "if you do not do this, you are fired!" So, I really think we are spending too much time on this particular phraseology when it is very clear in our minds that this is the protection that the Permanent Secretary obviously needs because of previous malpractice. He is being covered under the phrase "*any person who misdirects the spending of public funds...*"

PROF. KANYEIHAMBA (Rubanda County East): Thank you, Madam, Chairperson. I have listened to the debate and the very pertinent contributions from Hon. Members on this issue and also I am aware of the Amendment proposed by Hon. Nyai on this matter, and I thought that, maybe, we could come to near the conclusion of this matter, if this Amendment that incorporates the idea that has been suggested could be accepted. With your permission, Madam Chairperson, if I could read it out: "*Any person holding public office who directs or concurs in the use of public funds contrary to the existing instructions shall be accountable for any loss arising therefrom and may be required to make good the loss even if he or she has ceased to hold public office.*" I beg to move, Madam, so that I can incorporate everything.

THE DEPUTY CHAIRMAN: Then can I have it, because the "Ayes" indicate that it has been seconded. So, can I have it so that I read it out please? Let me get it first so that I know what I am talking about.

PROF. KANYEIHAMBA: Madam Chairperson, if I could read it very slowly: "*Any person holding public office who directs or concurs in the use of public funds contrary to the existing instruction shall be accountable for any loss arising therefrom and may be required to make good the loss even if he or she has ceased to hold public office.*"

THE DEPUTY CHAIRMAN: Hon. Dick Nyai, Hon. Kanyeihamba is trying to improve on your Motion, in essence, he is agreeing with you we get rid of the word "minister" but he is adding in some other language that "*who concurs*", what do you say about it?

MR. NYAI: Thank you, Madam Chairperson. I am very appreciative of Hon. Kanyeihamba's contribution in trying to resolve our different ways of thinking. I think he has not only helped me but he has also helped those of us who think that "*contrary to the law*" should be removed, and I think he has neatly done that. I think his introduction of the word "*concur*" means that if we take into account the scenario which was put forward here that any accounting officer can come and tell the minister, I can make this money available, then I think that is concurrence and I do not see why he should get away with it. To that extent, Madam, I think I would accept Hon. Kanyeihamba's Amendment.

THE DEPUTY CHAIRMAN: And before we proceed, that also takes care of the original submission by Hon. Byaruhanga, but there is a difference in language.

MR. SABIITI: Thank you, Madam Chairperson. At last your eye has caught me, but before, maybe, I make a small contribution, may I know from Hon. Kanyeihamba whether his Amendment includes a "minister" or it does not.

PROF. KANYEIHAMBA: Madam Chairperson, I moved this on the assumption that the definition of public office includes minister, but if it does not, I am prepared to add the word "minister" as well to improve it (*Applause*).

MR. SABIITI: Madam Chairperson, the Amendment which Hon. Kanyeihamba has put forward, if he adds the "minister" I think I would be satisfied, satisfied in the sense that really the former article presented by committee 3 had two areas which

should be clearly understood. One, that is the area of a minister directing and two, where an officer, whether a minister or any public officer, who is given funds misuses the funds. So, if he puts there the word "minister" I think this is an Amendment which really we should support so that whoever misuses public funds is brought to book. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Then we are going back to square number one. So, rather than going round, let us vote on the first item whether the word "minister" should be maintained or removed.

MR. KOMAKEC: Thank you, Madam Komakec. All accounting officers have been subjected to all sorts of influences from different people. So, we want to take all the eventualities, the Amendment which caters for all the people, including the President of this country, I think should be included under this Amendment and that is why I support the reinstatement of a minister and any other person, meaning that even the President should be included in this.

THE DEPUTY CHAIRMAN: Actually, it had not been deleted. Now, I propose that I put the question on whether we leave the word "minister" or not.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now, we have Hon. Dick Nyai's Motion that we remove the word "minister" - *(Interjections)* - no, we had not voted on it.

PROF. KANYEIHAMBA: Point of order! Madam Chairperson, I wanted to protect the Chair from some detractions. If you recall, Madam, my Amendment which I hope is the one you are putting on the Floor, says that "a minister or any other person holding public office..." So, I was not proposing that "minister" should be deleted. I had originally gone under the impression that the term "public office" includes a minister, but having been advised, then I moved that we should include the minister in the Amendment so that it reads "a minister or any other person holding public office".

THE DEPUTY CHAIRMAN: Okay, so Hon. Dick Nyai concurred with you?

PROF. KANYEIHAMBA: Yes, Madam.

THE DEPUTY CHAIRMAN: Okay, sorry for that.

MR. ADOKO NEKYON: Point of clarification! Madam Chairperson, I want to be clarified by the Mover, Hon. Kanyeihamba, on where his Motion says "shall be accountable for any loss arising therefrom." Does it mean if there is no loss, such instruction would be acceptable? Is authorising other persons to give instructions against Standing Instructions provided there is no loss?

PROF. KANYEIHAMBA: Madam Chairperson, I think that the theme and the concept under this rule is that there should be no instructions which amount to public loss and, therefore, that is the wrong which we want to cure in this Constitution. I do not want to speak on anything else that may happen. The State should not lose at all! I do not know under what circumstances we may gain by not following the law, if we gained, I do not know whether we should sue anybody for gaining. So, for me, I think that it is important we deal with the wrong which is likely to arise rather than speculate on what else might happen. So, certainly it is to deal with the wrong.

DR. BYARUHANGA: Thank you, Madam Chairperson. Hon. Prof. Kanyeihamba's Amendment includes this word "concur" and in legal language, I think it is much better than what I was putting forward. It is much better than the words I had put forward, although they have a similar meaning and therefore, I am happy with Hon. Kanyeihamba's Amendment.

THE DEPUTY CHAIRMAN: Thank you very much. Now, I can comfortably put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now I put the question on Hon. Kanyeihamba's Motion.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, we are nearly through, and may I call upon Hon. Kaberuka to give us the last clause on that article?

DR. KABERUKA: Thank you, Madam Chairperson. My committee proposes that we amend Clause (3) to read: "*Parliament shall have powers to monitor all expenditure of public funds.*" I beg to move.

THE DEPUTY CHAIRMAN: I propose that I put the question on Clause (3).
(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now I put the question that Clause (3) remain as it is.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, now we can pronounce ourselves on Article 191 as amended. That Article 191 as amended do stand part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, we have disposed of 191 and by implication, we have disposed of the Chapter on Finance. Now, given the time, I adjourn the Assembly until tomorrow when we start on the Chapter on Defence. So, we stand adjourned until tomorrow.

(The Assembly rose and adjourned until Tuesday 17th January, 1995, at 2.30 p.m)