



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

THURSDAY, 16TH MARCH 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3336]

Price Shs. 3,780

Thursday, 16th March, 1995.

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

P R A Y E R S

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

(The Assembly was called to order)

NO. 3 CONSIDERATION STAGE OF THE
DRAFT CONSTITUTION OF THE REPUBLIC
OF UGANDA.

CHAPTER 7 THE EXECUTIVE,

ARTICLE 112- ACTING IN THE ABSENCE OF
THE PRESIDENT.

THE CHAIRMAN: Hon. Delegates, we are going to Article 112 and I give the Floor to Hon. Mulenga, the Chairman of the Committee.

MR. MULENGA JOSEPH (Democratic Party): Thank you Mr. Chairman. Mr. Chairman, Article 112 is about - the subject is Acting in absence of the President and the committee recommends that Clause 1, of Article 112 be amended to read as follows. *"If the President dies, resigns or is removed from office under this Constitution, the Vice President shall assume the office of the President until fresh elections are held and the elected President assumes office in accordance with Clause (7), of Article 106."* Mr. Chairman, this is the amendment, although the words are not underlined from *'until fresh elections are held the elected President assumes office in accordance with clause 7 of Article 106'* are to replace the original proposition, which was that *'he assumes the office of President of for the unexpired term...'* This was necessitated by the removal of the running mate system. Mr. Chairman, I beg to move.

THE CHAIRMAN: There is an amendment by Hon. Byaruhanga.

DR. BYARUHANGA FABIUS (Kitagwenda County): Thank you Mr. Chairman. I beg to propose the following amendment which has the effect of denying the Vice President from taking over the office of the President when the President

resigns or is removed. It reads: *" Article 112, Clause I (a), If the President dies or resigns or is removed on grounds of physical or mental incapacity, the Vice President shall assume the office of President until fresh elections are held and the elected President assumes office in accordance with Clause 7 of Article 106.*

b) If the President resigns or is removed on other grounds other than physical or mental incapacity from office under this Constitution, the Speaker shall assume the office of President until fresh elections are held and the elected President assumes office in accordance with Clause 7 of Article 106."

Mr. Chairman, I beg to move.

THE CHAIRMAN: Is it seconded? Seconded by Hon. Tumukunde. Okay, let the Member speak to this Motion, then we proceed quickly.

DR. BYARURANGA: Thank you, Mr. Chairman. My main reason is, that I hold that if the President resigns for other grounds other than his physical or mental incapacity, or if that President is impeached, it really means that his Government has failed the country. And since the Vice President is part and parcel of the Cabinet and is a nominee of the President, as well as being the closest adviser and helper to the President, this Vice President has a share of the blame. As far as the failure of the President or the failure of that Government is concerned and therefore, this Vice President should not succeed the President. Now, in the absence of the Vice President, the next in line would be the Speaker. The Speaker is a Speaker, because he has been elected by Parliament. But however, if this President dies, or resigns due to health problems, the Vice President can take over.

MR. KABUGO: Point of order. Mr. Chairman, is it in order for the Hon. delegate to introduce something and to start to deliberate it without being seconded?

THE CHAIRMAN: He was seconded by Hon. Tumukunde. Order, order.

DR. BYARUHANGA: And Mr. Chairman, if we read the committee's recommendation that this Vice President who is taking over the President

may govern the country or may lead the country for 364 days, we should really be careful with the type of person we give this position. Because we are informed that this person that no election shall be held if the residual term of the President is one year or less. Now, if the Government has failed, then you get one of the main contributors to the failure to continue leading for the next 364 days. I think it may be dangerous for the country. Thank you, Mr. Chairman.

MAJ. TUMUKUNDE HENRY (Rubabo County): Mr. Chairman, we have agreed ourselves that this Vice President will be a choice of the President. We presume therefore, that if he is a man who is supposed to be close not only to the President, but to the leadership and to the office itself. Even if we follow the normal rules of collective responsibility Mr. Chairman, it comes clear, that if the President has failed, then his biggest Assistant must have had a problem too. And if we remove this President, what is there any more for his Assistant to do, that he did not do when the President was there? Mr. Chairman, another thing we would want to discourage here is the Vice President intentionally and deliberately opposing or sabotaging a President. Causing his impeachment and then, he is elected immediately or he is given the responsibility to act. This one, if encouraged, Mr. Chairman, would cause us a lot of friction between the two top people in a country. And Mr. Chairman, since it is very, very, crucial that we advance good working relations between these two big people, we must always, Mr. Chairman make sure that if one is going, the two must always go. Mr. Chairman, we give the benefit of the doubt to the Speaker, because he is off the main line of executive administration in the country. He will be the head of the legislature, although he is supposed to liaise closely with the President. Of course, the Vice President whenever necessary, at least he will not be so much in line with the day-to-day administrative laws of the President. Mr. Chairman, we imagine that since the Parliament will have taken a big role in throwing out the President, we imagine that the leader of the legislature can as well have collective measures to support this very effort. Of course, Mr. Chairman, there could be an argument, but the Speaker may encourage the impeachment of the President in the same way as the Vice President does, but at least what I am very sure of what I think most people would agree with me on here. It is that a Vice President is much closer to the President.

Another thing which I should raise in those circumstances, is about we have seen in our history.

Mr. Chairman, I am sure you have seen the Vice President sabotaging the President whatever the circumstances, we have a case of Dr. Obote and Paul Muwanga. The circumstances notwithstanding, but the very fact that a Vice President took an active role in sabotaging a President and was later on to replace him in very dubious circumstances should be a lesson to ourselves here Ugandans. Mr. Chairman, I would want to borrow examples of even some countries, I can borrow examples where they put steps, where they say, an Army Commander, you must go with a particular Chief of Staff. The Army Commander falls, you fall together. We can use that Mr. Chairman. The principle point in the Army is to make sure that the Chief of Staff never sabotages the Army Commander knowing very well that if he goes, they go together. This can apply to politics, especially to Third World countries, where our relations are still too fragile. Mr. Chairman and in our situation in Uganda here, since we have got a very, very, vivid history in our minds, I pray that this House considers that the two are put in one camp and must be responsible for the failures and successes of the Government they are leading. In those circumstances, if the President goes, the Vice President must not assume his responsibility, Mr. Chairman.

MR. KATUREEBE BART (Bunyaruguru County): Thank you, Mr. Chairman. Mr. Chairman, from the contribution both of the Mover of this Motion and the immediate proceeding Speaker, there appears to be some misconception here. The misconception seems to be that, the impeachment of the President is the judgement of the failure of Government. Mr. Chairman, that is not correct. We have provided for the impeachment of the President on clearly defined specific grounds, criminal grounds, which we have provided for. We have even provided for him to appear before the tribunal represented by a lawyer to defend himself. You cannot impeach the President on grounds that his economic policies have failed, that is not the ground for impeachment. So, let us not confuse impeachment of the President as a person, with the impeachment of the Government. This is not correct, the whole argument is misconceived.

Mr. Chairman, impeachment of the President is not impeachment of the Government. Secondly, if the

President has failed, suppose he is a criminal, or because he stole or because he is incapacitated, now, who should take responsibility for having put him in office? Surely, it cannot be the Vice President whom he appointed! It should be the people who elected him. Now, you want to say, because the President, who was elected stole some money, therefore, his Vice President should bear the responsibility for it. That is not even correct. Mr. Chairman, let us get this clear. Impeachment of the President is on clearly defined criminal grounds constitutionally provided for, not impeachment of Government. Thank you.

MR. KASAJJA PATRICK (Bulamogi County): Thank you very much, Mr. Chairman. Mr. Chairman, riding on the point which has been given by Hon. Katureebe, I would also like to oppose this amendment. Mr. Chairman, I would like to oppose it on the following grounds.

One, the point given by Hon. Byaruhanga that the Vice President is part and parcel of the team and therefore should bear responsibility of the misnomer that the President will have done. I think that one is not very convincing, as has been debated by Hon. Katureebe, I would like to say that in a situation where we have rejected the running mate to the President, we should be able to give confidence to the Vice President, because the Vice President will also be a political entity. He will have a Constituency, he will have been elected. Therefore, to deny a person who has had confidence of the people from his constituency, that he cannot be a President because the President whom he deputises has erred, I think is a denial of the highest order. Mr. Chairman, I would like also to build a culture where in Africa we should always not be looking at the President as a bad example. Because some people are saying, you see, in Africa, once a Vice President is working with the President, whatever the President will be doing, the Vice President will be taking it whole sale. We should just be able to look at the Vice President as a person who has also a brain. If he looked at the President doing something wrong, I do not think he would just go on supporting the wrong doings. Therefore, I would on that point, like to say that it is not proper for us to deny a person who is the second in the order of presidency in the country to act as a President, when the President dies or resigns.

Mr. Chairman, I would also like to request the members that the Vice President in Africa has been

weakened by virtue of our own thinking and opinion, the way that we are presenting here, because we have not been able to support this institution. That is why you find that the Vice Presidents have not had even a lot of work to occupy them. But because we are trying to build a new culture, whereby we have new politics, I think we should be able to look at this as a guide, so that the Vice President will be able to act even when the President has left his or her seat. So, I would like to ask the members that in order to build confidence in this post, in order to respect the order of presidency in this post, let us not give another person to act when the President has resigned or has died. So, with those two reasons, Mr. Chairman, I would like to request the members that we should not support this amendment.

MR. LUBEGA WAGWA (Butambala County) Thank you, Mr. Chairman. Mr. Chairman, I rise to support the amendment as proposed by Hon. Dr. Byaruhanga on two grounds. Mr. Chairman, yesterday, we passed a Clause that the Vice President deputises for the President as and when the need arises. And secondly, we said, he or she has to carry on the functions as may be assigned to him or her by the President. So, it means that the Vice President is appointed by the President and he works on his behalf. So, I see no reasons why when the President resigns, the V.P should not go with his Cabinet. He should go with his Cabinet because he is the one who appointed them and has reasons to go with them, because we cannot see how we can leave behind his Vice President if he resigns. I am referring to resignation of the President.

THE CHAIRMAN: Hon. Lorot, please, do not heckle the Speaker on the Floor.

MR. LUBEGA WAGWA: Thank you for protecting me, Mr. Chairman. I am saying, Mr. Chairman, the Vice President is appointed by the President and when it comes to deputising he does that on behalf of his President. And when he resigns, the reasons maybe, given by the President can affect the Vice President and again the Vice President is his immediate adviser. You cannot see how the President resigns and you say, now the Vice President take over for some time. So, Mr. Chairman, I appeal to members to support this wise amendment by Dr. Byaruhanga. Thank you, Mr. Chairman.

MRS. BAGARUKAYO JANET (Women-Ntungamo): Mr. Chairman, I stand to support the amendment moved by Hon. Byaruhanga on grounds

President has failed, suppose he is a criminal, or because he stole or because he is incapacitated, now, who should take responsibility for having put him in office? Surely, it cannot be the Vice President whom he appointed! It should be the people who elected him. Now, you want to say, because the President, who was elected stole some money, therefore, his Vice President should bear the responsibility for it. That is not even correct. Mr. Chairman, let us get this clear. Impeachment of the President is on clearly defined criminal grounds constitutionally provided for, not impeachment of Government. Thank you.

MR. KASAJJAPATRICK (Bulamogi County): Thank you very much, Mr. Chairman. Mr. Chairman, riding on the point which has been given by Hon. Katureebe, I would also like to oppose this amendment. Mr. Chairman, I would like to oppose it on the following grounds.

One, the point given by Hon. Byaruhanga that the Vice President is part and parcel of the team and therefore should bear responsibility of the misnomer that the President will have done. I think that one is not very convincing, as has been debated by Hon. Katureebe, I would like to say that in a situation where we have rejected the running mate to the President, we should be able to give confidence to the Vice President, because the Vice President will also be a political entity. He will have a Constituency, he will have been elected. Therefore, to deny a person who has had confidence of the people from his constituency, that he cannot be a President because the President whom he deputises has erred, I think is a denial of the highest order. Mr. Chairman, I would like also to build a culture where in Africa we should always not be looking at the President as a bad example. Because some people are saying, you see, in Africa, once a Vice President is working with the President, whatever the President will be doing, the Vice President will be taking it whole sale. We should just be able to look at the Vice President as a person who has also a brain. If he looked at the President doing something wrong, I do not think he would just go on supporting the wrong doings. Therefore, I would on that point, like to say that it is not proper for us to deny a person who is the second in the order of presidency in the country to act as a President, when the President dies or resigns.

Mr. Chairman, I would also like to request the members that the Vice President in Africa has been

weakened by virtue of our own thinking and opinion, the way that we are presenting here, because we have not been able to support this institution. That is why you find that the Vice Presidents have not had even a lot of work to occupy them. But because we are trying to build a new culture, whereby we have new politics, I think we should be able to look at this as a guide, so that the Vice President will be able to act even when the President has left his or her seat. So, I would like to ask the members that in order to build confidence in this post, in order to respect the order of presidency in this post, let us not give another person to act when the President has resigned or has died. So, with those two reasons, Mr. Chairman, I would like to request the members that we should not support this amendment.

MR. LUBEGA WAGWA (Butambala County) Thank you, Mr. Chairman. Mr. Chairman, I rise to support the amendment as proposed by Hon. Dr. Byaruhanga on two grounds. Mr. Chairman, yesterday, we passed a Clause that the Vice President deputises for the President as and when the need arises. And secondly, we said, he or she has to carry on the functions as may be assigned to him or her by the President. So, it means that the Vice President is appointed by the President and he works on his behalf. So, I see no reasons why when the President resigns, the V.P should not go with his Cabinet. He should go with his Cabinet because he is the one who appointed them and has reasons to go with them, because we cannot see how we can leave behind his Vice President if he resigns. I am referring to resignation of the President.

THE CHAIRMAN: Hon. Lorot, please, do not heckle the Speaker on the Floor.

MR. LUBEGA WAGWA: Thank you for protecting me, Mr. Chairman. I am saying, Mr. Chairman, the Vice President is appointed by the President and when it comes to deputising he does that on behalf of his President. And when he resigns, the reasons maybe, given by the President can affect the Vice President and again the Vice President is his immediate adviser. You cannot see how the President resigns and you say, now the Vice President take over for some time. So, Mr. Chairman, I appeal to members to support this wise amendment by Dr. Byaruhanga. Thank you, Mr. Chairman.

MRS. BAGARUKAYO JANET (Women-Ntungamo): Mr. Chairman, I stand to support the amendment moved by Hon. Byaruhanga on grounds

that we passed an Article the conditions under which we shall have a person ruling as a President. Article 106, says that the President of this country will be elected by universal adult suffrage through a secret ballot. So, I do not see the essence of empowering the Vice President to become our President under conditions that may be surrounding the loss of the President's office. So, Mr. Chairman, on that point, I would also think that when have this hand-picked Vice President, not for the people, but for a President, although endorsed by the Parliament he or she will have enemies in the essence that, as it has been said, she or he will be a person working hand in hand with the President. So the enemies of the President will obviously be the enemies of the Vice President. So, Mr. Chairman, as far as those two points are concerned, I support the amendment on the Floor and oppose the issue of having the Vice President taking over the office of the President. Thank you.

MR. PINTO EMMANUEL (Kakuuto County):

Thank you, Mr. Chairman. Mr. Chairman, I thought my Hon. Colleagues would remember the wise counsel you gave in respect of this particular scenario. And I remember you quoting an incident of the past President of America Ford, who became Vice President because the Vice President then, Spiro Agnew had been disgraced and therefore, Ford was appointed Vice President. Later when the substantive President Nixon was impeached. So, the man who was not even elected, having been appointed Vice President, now automatically became the President of a country without having participated in any election. I believe from the principle of leadership by mandate, there is an automatic disqualification of the hand-picked President from assuming the Presidency where we say that this person must be elected by universal adult suffrage. From this point alone, and not taking into account the reasons advanced by Hon. Bart Katureebe, I can see that this is a very good amendment which is going to protect the office of the President. I support this amendment.

THE CHAIRMAN: Hon. Delegates, we have heard four speakers supporting the Motion. I would like to hear more speakers opposing the Motion, and I have heard two speakers opposing the Motion.

MR. DICK NYAI (Ayivu County): Thank you very much, Mr. Chairman. I am very shocked Mr.

Chairman, by the proposed amendment on the Floor. For one, it may change the meaning of the word *Vice*, because if a Vice does not take over from the substantive, then he is surely useless. I do not think it is in our preview to put it into this Constitution, organs of Government which will not be effective.

Secondly, Mr. Chairman, we passed on page 26, that the President shall with the approval of Parliament by simple majority appoint a Vice President. Now, if you are going to say that the Vice President suffers from all the ills of the President, then what about Parliament which concurred with the President? How do you exonerate Parliament and sacrifice the Vice President? Thirdly, Mr. Chairman, the argument of Hon. Dr. Byaruhanga seems to run as follows. Since Hon. Dick Nyai is mad, therefore, his wife is also mad, and brothers too I suppose. It is so ridiculous, Mr. Chairman, I do not believe this is what we intend. I believe we intend in a smooth succession of authority. If we are going to put into this Constitution a provision, that after the speaker has sat on the impeachment of the President, then he has kicked the President out. Then he becomes a President, he has a very dangerous scenario. There will be members of Parliament who will convince the speakers that we are going to support you, you impeach this President, they find him guilty, they throw him out. And on the Speaker assuming the presidency, he appoints his cohorts as Ministers and Mr. Chairman, I think that is very dangerous. It does not augur well for a smooth handing over of power. I totally oppose this Motion and I believe all Hon. members will oppose it.

MR. BATEGANYA DICK (Bukooli Central):

Thank you very much, Mr. Chairman. I wish to start to oppose this Motion by defining *Vice*. According to the Oxford Dictionary, Vice means, a substitute or deputy, next in rank. Now, if we take that or those as the definitions of Vice, it means that in the absence of the president, the Vice is the President. Therefore, it becomes very absurd to imagine that the substitute would be called something else, unless the movers of this Motion want us to change the title of Vice President to something else. If that is the case, or we abolish it, because it will be against best grammar-English Grammar.

secondly, it is against the Vice President's human rights to accuse him or her in a crime that has been committed by somebody else, even in basic law. I

think it is common knowledge that if a husband say, commits a crime, they do not interrogate the wife for the same crime, less there is enough evidence to implicate her in the crime.

Another point I do not understand with this Motion, in business, if we replace the Manager - if we have to replace the Manager, we normally get somebody from Management to replace, we do not go to the Trade Union. So, it is very unusual in this particular case to go to fish in the Trade Union to replace the executive. We are mixing up the principle of separation of powers. The Vice President is in the executive arm of the state, the Speaker is not and I do not understand why we should depart from the immediate replacement and fish far a field for a replacement when there is a natural replacement. Another problem I have with this amendment, is that, it will be a recipe for instability. If we look at the Second Schedule, we have at least 48 nationalities in this country. And by the time the President elects his Vice, he will have taken into consideration this factor and will have found somebody who will satisfy the nation, that in case he is not there, he will maintain the policies of his Government. Now, in case the Speaker is not in the same party with the President, how do you think this man will continue with the policies of the President who has resigned? I am sure this is going to be very dangerous for us in case of multi-party politics, which at one time we shall have in this country.

MR. BIDANDISSALI (Nakawa Division): Point of information. On this very point, Mr. Chairman, let us imagine that the President under multi-party system belongs to - rather the majority in Parliament belong to a party which is different from that of the President and the dictates over multi-party politics are definitely to supplant. So, it is possible that the Speaker who will have been elected, will belong to the same party as the majority party in Parliament. I am emphasizing the point of instability. So, it will be very easy for the majority party in Parliament to connive against the President and therefore, cause instability by initiating the Speaker to take over from the President. Whereas if the Vice President is the one who automatically takes over, is already a choice of the President and that the Parliament as such.

THE CHAIRMAN: Are you informing him or contributing?

MR. BIDANDI SSALI: No Sir, I was informing him by emphasizing his point of instability.

MR. BATEGANYA: Thank you neighbour for that useful and elaborate information. I would like to wind up by opposing the Motion on this last point that, we have seen that the Vice President will also be elected from members of Parliament, who will also have been elected from grassroot. So, in this case, on the question of mandate, the Vice President and the Speaker almost have equal mandate. So, if they all have equal mandate, I would rather take the person who is in the executive arm of Government than from the legislature. So, on those points, Mr. Chairman, I wish to urge members to support this amendment. Thank you very much.

THE CHAIRMAN: We have had four speakers on either side apart from Mover and I think we - unless members feel they are not fully satisfied, I do not see new grounds coming up for or against. What we should do now is decide, pronounce ourselves on the amendment. The essence of the amendment is that, that the Vice President should not take over in case where the President is removed on grounds of impeachment or misbehaviour. Those who are arguing the question of resignation, I do not know whether it is one of them. Those are the grounds I think the Speaker should take over from. I will put the question, with those in favour of Hon. Dr. Byaruhanga's Motion.

(Question put and negatived)

THE CHAIRMAN: I take it that the text remains as it is, now, we go to the next one.

MR. MULENGA: Thank you Mr. Chairman. The committee recommends the insertion of a new Clause (2), to read: "*Notwithstanding the provisions of Clause 3 of Article 106, elections for the President under this Article shall be held within six months after the death, resignation or removal of the President.*" Mr. Chairman, I beg to move.

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Mr. Chairman, the committee recommends the insertion of new Clause 3, to read: "*No elections shall be held if the residual term of the President is one year or less.*"

THE CHAIRMAN: Okay, agreed, next.

MR. MULENGA: Mr. Chairman, the Committee recommends that Clause (4) should read as follows: "*Whenever the President is absent from Uganda or is for any reason unable to perform the functions of the office of President, the Vice President shall perform those functions until the President returns or is able again to perform those duties.*" Mr. Chairman, I beg to move.

MR. KATUREEBE: Point of clarification. Thank you, Mr. Chairman, I am seeking clarification on this Clause. When the President is absent from Uganda, is he deemed not to be able to discharge his functions? Like now when the President is said to be on a State visit somewhere, is he unable to perform his functions, so that you require an Acting President?

THE CHAIRMAN: I think the importance of this is to say that there must be a President within the borders of Uganda at all times. I think that is what he is trying to say, may be Hon. Mulenga should take this down and clarify it.

DR. BYARUHANGA: Thank you Mr. Chairman. I wish to propose the following amendments to Article 112, Clause 4. I wish to add just after Uganda in the first line, the following words, "...in his private capacity," so that the Clause will now read as follows:

"Whenever the President is absent from Uganda in his private capacity or is for any reason unable to perform the functions of the office of President, the Vice President shall perform those functions until the President returns or he is able again to perform those duties." Mr. Chairman, I wish to move.

THE CHAIRMAN: Are you seconded. I see no seconder. It fails from the word go.

MRS. JANAT MUKWAYA (Mukono County South): Point of Clarification. Mr. Chairman, I want a clarification either from the Chair or from the Chairman of the Committee. To me, delegated power, Mr. Chairman, I think when the President is out of the country, he delegates to the Vice President, but the actual President is still alive. So why do we actually make delegated power a substantive President, when the substantive President is still around? Because if we constitutionalise that, the Vice President will be a substantive President when the President is away, a week, two weeks. It means

you are going to have two Heads of State at the same time for the same country. So, I need a clarification before I support, Mr. Chairman.

MR. OBUA OTOA (Erute County North): Thank you very much, Mr. Chairman. First of all, I do not know whether this amendment is seconded.

THE CHAIRMAN: No. We are not talking about the amendment. It is now just general discussion, members are seeking clarification from the Mover.

MR. OBUA OTOA: Mr. Chairman, I also want to seek clarification in that case, because I do not see what difference these new words, three or four words will make. The thing we are talking about is the absence of the President, whether in his private or official capacity is quite irrelevant. I do not know the import of these few additional words. What does his private capacity mean? Does it make any difference whether he went there in his private capacity or whether he went there in an official capacity? The fact is that he is absent. I want to know from the Mover why he really feels we should add these words.

THE CHAIRMAN: Hon. Obua Otoa, that Motion is not on the Floor, it was not seconded. So, the issue does not arise.

MR. TIGWEZIRE JOHN (Bunyangabu County) Thank you very much, Mr. Chairman. Mr. Chairman, when I read the Clause, I fail to understand whether it includes such functions of the President, like making certain appointments. Is it true that when the President is absent, the Vice President can assume such powers as to make some big appointments, in the absence of the President, Mr. Chairman?

THE CHAIRMAN: Let us get clarification from Hon. Mulenga.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, the whole essence of providing for acting, is on the premise that the substantive holder is unable to act and I think in formulating this Clause to include when he is absent from Uganda, the assumption must have been that, by reason of not being in Uganda he is unable to act. So, on reflection, after the intervention by Hon. delegates, I think really we could do away with this expression of being absent and simply concentrate on unable

to perform his duties for any reason. I think - I have not had time to consult with the rest of the committee, what I do recall, is that, this issue was not adverted to. Whether mere absence from Uganda necessarily makes him unable to act. It was not discussed, but there are many members of the committee here, I am not betraying their mandate. So, Mr. Chairman, I think if we recast it, it would retain the same effect.

THE CHAIRMAN: So that it would read..

MR. MULENGA: So that it would read: "*Whenever the President is for any reason unable to perform the functions of the office of President, the Vice President shall perform those functions until the President is able again to perform those functions.*"

THE CHAIRMAN: I think that is the member for Bukomansimbi, anything new?

MR. KIWANUKA-KAGIMU (Bukomansimbi County): Mr. Chairman, for me still, I would have again more fears because there is an Hon. Member who raised almost a similar issue yesterday and said that, the Vice president can claim that the President cannot perform. For me, I think Article 111, Clause 3, suffices, such that, if the President sees that he is unable, then he assigns. I think that Article suffices, otherwise, there is a problem when the Vice President -

THE CHAIRMAN: I think you are reading it too narrow. This one is to the extent of a situation where for any reason for instance, on medical grounds, the President is say in Intensive Care Unit. How does he assign the functions? So, it really takes care of that sort of thing, so that there is someone who can actually perform his functions until he comes back.

MR. AGGREY AWORI (Samia Bugwe North): Mr. Chairman, I am seeking further clarification from the Committee Chairman, regarding limitations to the acting President in his executive functions. Did they consider it or should we add a new item to limit his capacity as an Acting President? I would give an example, Mr. Chairman, the Acting President could take advantage of the President's or even with the connivance of the substantive President who is away to declare a state of war or a state of emergency for political reasons. Or even political gain and yet, this man who is acting President, does

not have the support of the country entirely as per universal adult suffrage election. Mr. Chairman, if I may look on the other side also. The Vice President and the President could connive, that I, as President, coming from such and such a region, my capacity to do A,B, would cause loss of votes. So let me go to the UN or abroad and while I am away, you declare a state of emergency and do the following. So, Mr. Chairman, I am requesting or I am also enquiring from the Chairman of the committee, whether they ever considered having a direct and clear cut limitations on the executive functions of the Acting President.

MR. BIDANDI SSALI: Mr. Chairman, I think it is wrong to assume that when the President goes to the UN, he is unable to perform his duties as President, because the duties he is going to do at the UN, are part of the Presidential duties. So that scenario does not really arise.

ii) I think it is wrong to keep on suspecting the intentions of a Vice President in every situation, because the argument by Hon. Awori is, conniving on part of the Vice President. Then, on the other hand conniving by the President, then whom are we trusting? Now, a situation of declaring war as you have stated somewhere else, is not a function of one person called a President, it is with the approval of the Parliament. So, I think we are stretching it a little bit too far to keep on suspecting every person we have put in a certain office.

THE CHAIRMAN: I think the general view is that, the Clause as revised be accepted.

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (5) read as follows: "*Where the President and the Vice President are both unable to perform the functions of the office of the President, the Speaker shall perform those functions until the President or the Vice President is able to perform those functions or until a new President assumes office.*"

THE CHAIRMAN: Agreed. Next.

MR. MULENGA: Mr. Chairman, on Clause (6), it is recommended that it reads: "*The Vice President shall before assuming the duties of the office of the President under Clause (1) of this article, nominate a person to the office of Vice President subject to the approval of Parliament.*"

THE CHAIRMAN: Agreed, next.

MR MULENGA: Clause (7). Mr. Chairman, it is recommended that it reads: "*Person nominated under Clause (6) of this Article, shall before assuming the duties of the office of Vice President take and subscribe the oaths in respect of that office under Clause (8) of Article 111.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: It is recommended, Mr. Chairman, that Clause (8) reads: "*Before assuming the duties of the office of President under Clause (5) of this Article the Speaker shall take this and subscribe the oaths specified in relation to that office in the Third Schedule to this Constitution.*"

PROF. KANYEIHAMBA GEORGE (Rubanda East County): Thank you Mr. Chairman. I have no quarrel with the substance of the Clauses read by the Chairman of the Select Committee 2. But I think Mr. Chairman, the wording in Clause 6 is subject to misinterpretation. Because it is saying that the Vice President shall before assuming the duties of the office of the President under Clause 1, of this Article, nominate a person subject to approval of Parliament. It is as if Parliament is approving the nomination. I assume that really the word meant is that he shall appoint a person rather than nominate, because Parliament approves the appointment and not the nomination.

THE CHAIRMAN: I think we have to be consistent, the language should be appoint.

MR. MULENGA: Agreed, Mr. Chairman. Mr. Chairman, the last Clause is (9). The Committee recommends that it reads: "*Whenever the Speaker assumes the office of President as a result of the death, resignation, or removal of the President and the Vice President, or under the provisions of Clause (7) of Article 107, a Presidential election shall be held in accordance with Clause (2) of this Article.*"

THE CHAIRMAN: Agreed. Hon. delegates, now we pronounce ourselves on Article 112. I put the question.

(Question put and agreed to).

THE CHAIRMAN: Article 112 stands part of the Draft Constitution. We go to 113.

MR. KAGIMU KIWANUKA: Thank you Mr. Chairman. Before we leave this Article about election of President and Vice President, -*(Interruption)*

THE CHAIRMAN: It is finished. We have already pronounced ourselves on it, we are now on 113.

MR. KAGIMU KIWANUKA: Point of clarification. Thank you, Mr. Chairman. I am seeking clarification from the Chairman of the Committee 2. Mr. Chairman, about the election of the President, as we know there were two systems which were proposed according to the Chapter preceding. There is the system whereby there is the Movement type and there is a system whereby there are political parties. Now, this system which we have discussed works when it is a Movement type, such that, the President is elected directly. Now, will it apply if it is party politics? Will it be the same? In America, I understand -

THE CHAIRMAN: What point are you trying to make now?

MR. KAGIMU KIWANUKA: The point Mr. Chairman- I am being sabotaged by the microphone. The point I am bringing forward is that, there are two systems and I don't think that this system of election is workable with multi-party politics system in that, for example in America, okay it works, because the President the Constitution gives him powers to veto Parliament. But here, if we go with this, you may find that you elect a President, for example, there are two parties, then a President stands and then you elect and then when you come to the Parliament, you find that the other party has the majority and then he gets a problem when he comes to pass policies in Parliament. I am just seeking clarification if the House is contented that this system will work in multi-parties. That is the clarification.

THE CHAIRMAN: I think what we do, is we wait until we come to the question of Parliament and once we have decided on that, then we can see whether the two tie up properly.

THE CHAIRMAN: 113.

MR. MULENGA: Mr. Chairman, Article 113 is on prerogative of mercy and the committee recommends that Clause (1), of that Article should read as

follows:” *There shall be an advisory committee on the prerogative of mercy which shall consist of:-*

- a) *The Attorney General, who shall be Chairman and,*
- b) *Six prominent citizens of Uganda appointed by the President.”*

Mr. Chairman, there is amendment on this Clause and explanatory notes are given at page 32. Mr. Chairman, I beg to move.

MR. KARUHANGA ELLY (Nyabushozi) Thank you, Mr. Chairman, I wanted clarification from Hon. Mulenga as to the basic reason about the President’s power to exercise the prerogative of mercy. I am quite happy that it is in the Constitution, and I think there are many good grounds to make sure that this takes place. But I am sure there are many people including myself, who believe that every exercise it should be directed to public interest and when it is being exercised, the public should know why certain power is being exercised in public interest. Therefore, I would like to know whether there is a provision because I cannot find it in here which requires that this principle is enshrined. And that in public interest, when the president is exercising this power, he has a way of informing the public why he took a certain decision in exercise of this prerogative of mercy. And where he takes a different view from the committee chaired by the Attorney General - I think it becomes even more imperative that the public be informed about the decisions that he has taken. So, I would like to know whether this was addressed in the committee.

THE CHAIRMAN: Prof. Kanyeihamba.

PROF. KANYEIHAMBA : Thank you Mr. Chairman. I think that the issue raised by Hon. Elly Karuhanga touching on prerogative of mercy needs to be explained very carefully because Mr. Chairman, the exercise of the prerogative of mercy comes after a person has been convicted by the courts and either sentenced to life imprisonment or to death as the case may be. In other words, the legal requirements for his punishment will have been exhausted in the courts and what remains is for the President at his discretion to exercise the prerogative of mercy. The reasons for granting the prerogative of mercy which comes in mitigation for that person who has been convicted are of a secret

nature. The reasons for that, Mr. Chairman, even these members - the Committee discussed that in fact we should name these people that they should come from certain regions and so forth. In fact, these are people who are secret. You can imagine if the public knew who these members are. You have the relative who has been sentenced to death and then you know that Elly Karuhanga is a member of the prerogative of mercy, then, you will wish to absolutely kill him if he did otherwise. So, this whole exercise only the members of the prerogative of mercy committee under the President and the Attorney General, really know the information and the details of what happens. It would be very dangerous to make this exercise public or to give reasons publicly. Mr. Chairman, I do not want to go into greater detail but there are some very sensitive issues relating to this which could be very dangerous both to the President, to everybody else if it was a constitutional requirement that the proceedings of this committee or in these reasons for granting a pardon or refusing it, should be made public. So, I wanted to give that reason that the committee definitely looked at this very carefully. And the very issue raised by Hon. Karuhanga was considered but this is the formulation that the committee came up as a result of those consideration. Thank you Sir.

THE CHAIRMAN: Is it automatic that all cases of that nature go through that committee?

PROF. KANYEIHAMBA: As far as I know Mr. Chairman, all cases involving capital punishment go to that committee. But there are occasions like the recent one involving I think the former D.E.S. of Kabale where I think the discussions is between the Attorney General and presumably the Magistrate concerned without calling the whole meeting of the committee. I believe that these are smaller offences but those which are much bigger, the Committee is always called Mr. Chairman.

THE CHAIRMAN: Hon. Bageya, do you want to seek clarification or?

MR. BAGEYA GEORGE (Kigulu North County): Thank you very much Mr. Chairman. I am quite apprehensive of sub Clause (a) where the Attorney General is the chairman of this committee. As far as I am concerned, maybe it may have eluded my knowledge, most of the capital crimes committed are investigated and dealt with through the office of the director of public prosecutions who

works directly under the Attorney General. After this person has been convicted and committed through the same office, would it be proper or is it feasible that the Attorney General becomes the chairman of again forgiving this very person after he had committed him to court?

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Thank you Mr. Chairman. It is true that DPP as of now works under the Attorney General. There is a provision in the current Constitution which we seek to amend to the effect that he may be directed by Attorney General in certain matters. But the Attorney as Chairman of Advisory Committee on the prerogative of mercy. He is not sitting as prosecutor of the person who is to be considered. Secondly, the chairmanship has always been under the Attorney General since independence and it has not in any way affected the exercise of that power or prerogative of mercy. The power of prerogative of mercy is in the Executive. As Hon. Kanyeihamba pointed out earlier, the person has already left the judicial system, he is at the mercy, if I may so, of the Executive. The Executive is the one which has prosecuted anyway! So, there is nothing odd in the Executive or a member of the Executive like Attorney General presiding over that committee which is exercising an executive function. As I have said, the practice has shown that chairmanship by the Attorney General has not in any way prejudiced the exercise of this power, Mr. Chairman.

THE CHAIRMAN: Hon. Ochyengh.

MR. OCHYENGH DAN (Kapelebyong County): Thank you Mr. Chairman. I would have also liked further clarification on the chairmanship of the Attorney General. Under circumstances where the Attorney General is also the Minister of Justice and therefore, a politician and under circumstances of say political differences where the minister a political appointee is chairing a commission trying to pardon a convict who is a member of another political party.

THE CHAIRMAN: But I really do not know whether - because we have had people appointed to the bench who belong to political parties but I have never seen them write political judgements. So that when you are exercising judicial discretion, I think other circumstances which come to play but maybe Hon. Mulenga has a better answer.

MR. MULENGA: Thank you Mr. Chairman. Let me start like this. If you have a wrong ill motivated Attorney General, then he can abuse his office and obstruct the exercise of the prerogative of mercy against opponents or what he considers to be his opponents. On that one there cannot be a guarantee that it will never happen. But then as Mr. Chairman you have observed, there are people who have enough integrity that when they go in positions of having to exercise judicial or quasi judicial authority. They ignore those petty differences and so forth. Mr. Chairman, when a person is being considered for prerogative of mercy, he has been convicted by the legal process, he is actually a convict and I think he should no longer be seen in light of his political affiliation. With regard to those convicted of capital punishment, it is compulsory that various reports are submitted, namely: that the trial judge submits a report about the case saying that although the fellow was convicted and sentenced to death, these are factors that may be considered or taken into account in considering whether or not to exercise mercy. The prosecutor is required to submit similar reports. Then, there is also requirement to enquire outside the trial case, what kind of person is this? All those are submitted. They are a requirement of the constitution, they are submitted to the prerogative of mercy committee and the committee sees them, looks at them. So, for the chairman, Attorney General to use his political considerations, that is minimised because he has a committee sitting unless the membership is entirely in his pocket. They would have to look at these and say, is this a case where mercy should be exercised? So, Mr. Chairman I think the fears being expressed are not weighty or justified.

THE CHAIRMAN: Hon. Musumba.

MR. MUSUMBA ISAAC (Buzaaya County): I thank you very much Mr. Chairman. What we are doing in this constitution, I think is to put in place a situation that is impartial and that is beyond suspicion. If you read clause (2), it says that a person shall not be qualified for appointment as a member of the committee if he is M.P. or Uganda Law Society or District Council. And when you read the explanation, it is intended to remove any source of conflict of interest whatsoever from the membership. The issue upon which I seek clarification is, why should we have the Attorney General, who will not only be a member of parliament but also a politician who is going to sit on this Commit-

tee to determine among other cases whether we should have say? A person who has been convicted of treason which is a capital offence, whether he should be granted the prerogative of mercy? In my view, let me pose one question. What would this committee suffer if we put the chairmanship in the hands of a prominent citizen one of the six without necessarily putting Attorney General who is heavily shrouded in this potential conflict of interest.

THE CHAIRMAN: Hon. members, I think we are just going to waste a lot of time. The Attorney General belongs to the Executive arm of government. He sits in Parliament in most cases because he is also Minister for Justice. It is possible to have an Attorney General who does not necessarily have to be a member of Parliament or if he is there he could be ex-officio. He is a Minister but when it comes to exercising mercy, that is the prerogative of the Executive. Now, if you are going to have a person who is not member of the Executive arm of government, taking on the role of deciding whether the executive should act, then you create a confusion. I think we are wasting a lot of time on this one. Hon. Njuba.

MR. NJUBA SAMUEL (Kyadondo East): Mr. Chairman, I just wanted to point out what we have just pointed out namely that the Attorney General is the principal Legal Adviser to the executive.

THE CHAIRMAN: Hon. Ringwagi, do you have something really serious new to add to this? I think we either decide by votes -

MR. RINGWEGI: Yes, Mr. Chairman, I only wanted to emphasise the point that if you go to somebody outside the executive, you would not only be causing confusion but you will be constituting another appeal court. The committee would not now, be exercising a mercy which is the executive function but the committee would also be seen to be as an appellant court, which may have to look at the merits of the case and then say whether or not the other court which looked through the case was correct. Therefore, we shall be duplicating matters. So, Mr. Chairman, I think the points which you brought out, should really clear the doubts that the delegates have and in any case, you cannot really dehumanise anybody from politics. Whether or not it is a prominent citizen. That prominent citizen must be having some political affiliation and when he sits there, he will not be completely devoid of his

political considerations. When he is sitting as a chairman to consider a particular case for mercy. So, Mr. Chairman, I think we should not really be bogged down so much about political considerations as far as the chairmanship of the Attorney General is concerned. I beg to move.

THE CHAIRMAN: Now, I would like to put this one to the vote. it would appear it is a matter which really Members would like to debate so that we agree whether we take it or we do not. It is recommended that there be an advisory committee on the prerogative of mercy to consist as set out, the Attorney General as chairman and then six prominent citizens of Uganda appointed by the president. I will put the question. Will those in favour of this recommendation say aye, to the contrary no.

(Question put and agreed to)

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Thank you Mr. Chairman. The Committee recommends that Clause (2) of that article reads: "A person shall not be qualified for appointment as a member of the committee if he or she is a member of Parliament, the Uganda Law society or a District Council." Mr. Chairman, again the explanation is noted on Page 32.

THE CHAIRMAN: Agreed.

(Question Put and agreed to)

THE CHAIRMAN: Next.

MR. MULENGA: Clause (3), the Committee recommends that a new Clause (3) be inserted to provide for term of office. "A member appointed under paragraph (b) of Clause (1) of this article shall serve for a period of 4 years and shall cease to be a member of the committee:

(a) If circumstances arise that would disqualify him or her from appointment

(b) If removed by the president for inability to discharge the functions of his or her office as a member of the committee or for misbehaviour.

THE CHAIRMAN: Agreed. Next.

(Question put and agreed to)

MR. MULENGA: Mr. Chairman, the committee recommends that Clause (4) should read *'The President may, on the advice of the Committee on the prerogative of mercy (a) grant to any person convicted of an offence a pardon either free or subject to lawful conditions; (b) grant to a person a respite either indefinite or for a specific period from execution of punishment imposed on him or her for an offence.*

(c) Substitute a less severe form of punishment for a punishment imposed on a person for an offence or

(d) Remit the whole or part of a punishment imposed on a person or of a penalty or forfeiture otherwise due to government on account of any offence.

THE CHAIRMAN: Agreed. Next.

(Question put and agreed to)

MR. MULENGA: It is recommended that Clause (5) reads: *"Where a person is sentenced to death for an offence, a written report of the case from the trial judge or judges or person presiding over the court or tribunal together with such other information derived from the record of the case or elsewhere as may be necessary, shall be submitted to the Advisory Committee on the Prerogative of Mercy.*

THE CHAIRMAN: Agreed. Next.

(Question put and agreed to)

MR. MULENGA: Mr. Chairman, Clause (6) is recommended to read: *"A reference in this article to conviction or imposition of punishment, sentence or forfeiture includes conviction or imposition of a punishment, penalty, sentence or forfeiture by a court martial or other military tribunal except a field court martial during the war between Uganda and another country."*

THE CHAIRMAN: Agreed.

(Question put and agreed to)

THE CHAIRMAN: Now, we pronounce ourselves on 113. I put the question. Yes, Hon. Mayombo, what is the problem?

LT. MAYOMBO NOBLE (NRA Delegate): Thank you Mr. Chairman. I am not yet satisfied

with the provisions of Clause 6 and I seek clarification from the chairman of Committee 2. Mr. Chairman, Clause 6 provides that a reference in this Article conviction of punishment to sentence or forfeiture includes conviction or imposition of a punishment, penalty, sentence or forfeiture by a court martial or other military tribunal except a field court martial during a war between Uganda and another country. Mr. Chairman, we have had problems in this country where officers in combat, for example, between the forces of the country - and say insurgency and an officer releases information about the moments and formations of his army and soldiers lose lives and the Field Court Martial has to sit or civilians lose lives. A field court has to sit and pass sentence and that sentence must be executed expeditiously to enable the continuance of the war. What happens when this provision excludes a field court martial from executing that sentence where there is an internal conflict. It seems the justification given is insufficient because it says, this exclusion is simply because one side may be legitimately right today, and it is wrong tomorrow. To me Mr. Chairman, that is unsatisfactory and is going to cause us problems in future.

THE CHAIRMAN: Hon. Kawere.

MR. KAWERE PIUS (Mukono North County): Mr. Chairman, I would have thought that the Speaker who seeks clarification ought to have understood this better, than we civilians. A field court martial acts instantly. There is no time to appeal to the committee to have the case considered. That is why we excluded this because it would be hopeless. If the decision is made and the soldier is shot there and then, what is the use of appealing. That is why we excluded it.

THE CHAIRMAN: I think he was trying to say that it should be extended to war-like situations in internal circumstances. Is that how -

LT. MAYOMBO: Thank you very much Mr. Chairman. That is what exactly I wanted to achieve.

THE CHAIRMAN: Hon. Katenta Apuuli.

MR. KATENTA APUULI (Conservative Party): Thank you Mr. Chairman. In addition to what Hon. Mayombo has said. From our experience here, and from our history, there is no way you are going to rule out a possibility of civil war and if a government is faced with civil war, by this very measure,

you are denying a field court martial taking appropriate action. That causes the death of other soldiers because that war would not be against a foreign country. I think, I would like to request the chairman to really clarify us on this matter. Thank you.

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Mr. Chairman, let me briefly state the process we went through to arrive at this amendment. Initially, there was no exemption of any case or any court from the application of this clause because the clause is saying - anybody who is punished under law, should have benefit of that prerogative of mercy. Even in Military courts. So, an amendment was introduced that in the case of Field court martial, they cannot afford to wait for the prerogative of mercy Committee to consider. The sentence must be carried out instantly. The next step was a move to consider what kind of Field court martial should be exempted from this application and a proposal was made and carried that the exemption should be restricted to when there is war between Uganda and an enemy state. And the reason that was given which Hon. Mayombo would like to take lightly is that there is a distinction between the war between Uganda and another country - an enemy country and internal conflict. The emphasis made was that in internal conflict, it is brothers and sisters fighting over how to manage themselves and therefore, when someone is convicted or bid by field court martial, there is no reason why - it is that he should be released immediately. It is that there is no reason why we should extend this exclusion from the application of this prerogative of mercy. There is no reason why this person should not also be considered for mercy. It is not that he is being exempted from punishment, it is that he should be considered for mercy and the committee was not satisfied that it would lead to loss of the internal conflict. So, that is why this was limited that in case of the external war, everybody in Uganda, every citizen, everyone fighting in that war must be under constitutional obligation, to be on the same side and if he is undermining that side, there is no reason why the executive should exercise mercy on him. So, the committee says - Okay, that one can be sentenced summarily and he does not have to be exposed or given benefit of that mercy; but in any other case, including someone convicted by Field court martial in an internal conflict, should have benefit of that prerogative of mercy. This was decided after considering that

special case of field court martial which always wants to carry out sentences of death or even imprisonment immediately. Mr. Chairman, that was the explanation.

THE CHAIRMAN: Yes, Hon. Amaza.

MAJ. AMAZA ONDOGA (NRA Delegate): Thank you Mr. Chairman. Mine is just to seek a clarification from the chairman of the committee regarding the remark he made to the submission by Hon. Mayombo that he is failing to make a distinction between internal wars and wars between countries. I would like to give him a scenario whereby I, as a company commander could find himself facing a field court martial. I can make a mistake on the field and have 100 - the one hundred soldier that I lead wiped out. Is the chairman trying to suggest that these 100 Ugandans are wiped out by fellow Ugandans or Sudanese, it makes any difference?

THE CHAIRMAN: Any other - so that he answers everything together. Hon. Ponsiano Mugenyi.

DR. MUGYENYI PONSIANO (Isingiro North): Mr. Chairman, I am also seeking further clarification whether this clause which covers judgements made by the field court martial includes civilians. Because Mr. Chairman, whereas we should look at one side of protecting our soldiers who may be at war. We should also look at the other side where people may be given in to the court martial on wrong premises. Mr. Chairman, I do remember in 1979 when the liberators from Tanzania were crossing over to Uganda, in my constituency in Isingiro, people were given up to face the court martials of the time because of petty differences, political differences within the area. So, if these people are left to face summary execution, which execution definitely is not open to the public, and we are not giving them chance to have this prerogative of mercy. Don't you think sometimes some people may be given up on wrong premises for either divulging information or being conspirators of say rebels in a particular area? So, I am really seeking clarification whether this covers civilians or it only concerns Military officers. So, in that context I would think that if it is restricted to wars between Uganda and another country, because in that case, there is urgency but for internal wars. I think there should be time for these people to be given this opportunity of prerogative of mercy.

THE CHAIRMAN: Hon. Dr. Besigye.

LT. COL. KIIZA BESIGYE (NRA Delegate): Mr. Chairman, I would like maybe to give some information to the committee on the composition and work of the field court martial. The Field Court Martial is not a standing court. It is a court set up from time to time for a specific duration when a force is going for combat operation and it expires with the expiry of that mission. The reason that it is set up is precisely to protect the officers and men engaged in that operation and to protect the operation itself so that - of course, once it fails, it also jeopardises the security of the men and the security subsequently of course, of the whole country. If the court martial was not operating in those difficult circumstances of combat, there are other court martial or courts martial which are ordinarily constituted to try offenders. If you can save any offender or if the situation allows you to save an offender for normal trial where he will be represented by advocates and he will bring in all sorts of evidence and so on, then those are ordinary courts martial and they are not included here. But this is a situation whereby if action is not taken immediately, then the whole operation and the persons involved in it, are in severe jeopardy. I think this is the point that was being underlined by Hon. Mayombo that the question to be looked at here is the jeopardy of people whom we have entrusted the duty of defending the nation. Unless you want to say that the army if it was decided by the Constituent Assembly - that the army shall not be deployed under any circumstance other than where there was war between Uganda and another country, then it would be clearly understandable. But where the same authority or allowance is given for the army to participate to go into operation in other circumstances other than those, I think it would be contradictory to provide that a court martial established in those circumstances should not try and execute its sentences because it is an internal operation. An internal operation and external operation, for the persons involved in that operation, has no difference at all. So, the decision we should use, if we are to determine this is whether we should allow the army to participate in other circumstances other than war between Uganda and other countries or not. If the answer is that yes, we should allow them to participate in other circumstances, I think this provision of saying during a war between 'Uganda and another country' should be deleted so that the exception is of a field court martial. I thank you Mr. Chairman.

THE CHAIRMAN: Hon. Hashaka.

MR. HASHAKA JACKSON (Kibale County): I thank you Mr. Chairman. Hon. Besigye has left it hanging. I would like to move a Motion to amend to delete the words '*between Uganda and another country*' so that the whole context reads: "A reference in this article to conviction or imposition of punishment, sentence or forfeiture includes conviction or imposition of a punishment, penalty, sentence or forfeiture by court martial or other military tribunal except a field court martial during a war." I beg to move.

THE CHAIRMAN: Why do you want to add '*during a war*' if that is what you really want? Why do you not stop at - it would then not be necessary. Just stop at '*except a field court martial.*' If that is what you really want.

MR. HASHAKA: Mr. Chairman, I wish to correct myself. I intended to end at the '*other military tribunal*' so that all the underlined words are deleted.

THE CHAIRMAN: No. The underlined words include '*except a field court martial.*' Do you want that also deleted?

MR. HASHAKA: No, '*the field court martial,*' should be included Mr. Chairman.

THE CHAIRMAN: Then you end there if that is what you want to have. Is that seconded? Okay, Hon. Kayiizi or you are just seconding. I have given the Floor to Hon. Tumukunde.

MAJ. TUMUKUNDE HENRY (Rubabo County): Mr. Chairman I wanted to just add one important information the committee. There is a presumption, that maybe this field -

THE CHAIRMAN: To the House or to the Committee.

MAJ. TUMUKUNDE: To the House of course, through the Committee, Mr. Chairman. Mr. Chairman there is presumption that this field court martial shall have to concentrate on criminals or mistakes on the other side of the conflict. The truth is that the field court martial is supposed to handle all cases. The scenario which Hon. Amaza gave is one I could give another scenario assuming the

army was operating in Nakawa during the Okello problem and Okello was one among the officers and men of which ever side of the conflict or even the side of the conflict that is supposed to be. For example, in government what would you do with Okello in those circumstances? To reinforce Hon. Dr. Besigye's view if you left Okello unpunished. There are several dangers. One of them is that the force would lose morale. The other danger is that the population would turn against the force. The other danger of course, is that maybe command would crumble. So, I would want that this House considers these views that it is very important sometimes to make very decisive moves on punishment during an operation and this is why we arm the field court martial with the powers to do prompt decisions and of course, prompt sentences, Mr. Chairman. That was my contribution.

THE CHAIRMAN: Hon. Guma.

LT. COL. GUMA (Bukanga County): Thank you very much Mr. Chairman. I think there is a bit of misunderstanding about the normal courts and court martials. Court Martials, nobody even prepares for them. They are circumstantial and you can constitute a court martial in less than five minutes and on the issue of whether the war is between Uganda and another country or internal, it does not count at all. War is war. Whether we are fighting within ourselves and you are commander and you make mistakes, you are dead. Yes. There is no debate on that because when you make a mistake in war - *(Interruption)*

THE CHAIRMAN: No, no we are having a debate. So, do not tell us that there is no debate on that.

LT. COL. GUMA: Because for instance, okay you are commanding. You have got about a battalion. For instance, you deviate from your duty, leave soldiers and they go in the village and kill people, you as a commanding officer sincerely there is nowhere you are going to run to. You neglected your duty, when I was still in the army they used to call it criminal negligence. Court Martial they are not going even to wait for one day, it must be done there and then. There is no waiting. So, all these things we have been talking about, while I appreciate your concerns, I do not think in any situation of war, there will be time for anybody to come and sit, to go and look at human rights. No,

in war there is no Amnesty International. Thanks very much Mr. Chairman.

THE CHAIRMAN: Hon. Zziwa.

MR. ZZIWA GEORGE (Kawempe North): Thank you very much Mr. Chairman. I am supporting the Motion on the Floor mainly on the ground that there are quite a number of grey areas in determining whether the war is external or internal. We have had quite a number of uprising and conflicts whereby it eventually proves that these wars are being supported or fueled by external forces. In other words, you have information given by the local people to outsiders. And if we leave this one - the article the way it is, it would definitely affect - it will definitely make our men insecure to defend the country and in fact, it might turn out to be a weapon against our army for the local people hoping that after all we still have another chance in case we are caught giving away all these secrets. This encouragement to the civilian will definitely prolong the war and make it very difficult for our men to operate. Mr. Chairman, therefore, I recommend that this last part up to the word '*field court martial*' - the words after those be deleted and that we do not put in any distinction between a war which is either from outside or a war within. Thank you Mr. Chairman.

THE CHAIRMAN: Hon. Kayiizi.

MR. KAYIIZI ASANASIO (Kassanda North): Thank you very much Mr. Chairman. I also beg to join my friends to support this amendment on simple grounds that there is no yardstick to measure or draw up a distinction between the behaviour or discipline of the fighting force both external or internal. Therefore, their levels of execution should be the same and as a matter of information, in both exercises, the arms used serve the same purpose and may be misused for the same reason. Therefore, I beg to support the Motion.

THE CHAIRMAN: Now, we have had about four or five speakers in favour of the Motion. Can hear those who are against it. Hon. Okalebo.

MR. OKALEBO HENSLEY (Bukedea County): Thank you Mr. Chairman. First of all, I wish to restate what the committee considered when we dealt with this particular subject. The difference is this. Whereas we looked at a war

between Uganda and another country as a very serious matter which would necessitate giving all power to the field court martial to carry out its decision promptly on the field and denying these people convicted a convict of this prerogative of mercy, we looked at internal conflicts differently. In the sense that assuming there is an internal conflict in one area and then the army is deployed in that area to quell that insurgency. Let us say allowing the field court martial to carry out summary executions in the field may be misused in the sense that whoever appears before the court martial and is so convicted will summarily be executed. And there is a possibility of mass killings using this provision so as to quell the conflict as soon as possible even there would be 110 justification so to kill so immediately. So, here we were saying punishment is illegal. A person can be tried, may be sentenced to imprisonment and he can be kept in custody and be given this opportunity of prerogative of mercy. That one does stop the fight. That one does not stop the operation but what we want is to reduce the rate of killing in an area where there is, say, a conflict when the army is acting saying that they have to carry out their executions summarily because there is a dispute. So, Mr. Chairman, I am one of those opposing the amendment suggesting to delete - altering this particular item as it stands. I think the exception should stand when Uganda is at war with other countries or another country. Not necessarily every internal dispute, Mr. Chairman.

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Mr. Chairman, I also would oppose this amendment. Mr. Chairman, the supporters of this amendment give the impression that if it is not adopted, then we are going to prevent the Field court martial in internal conflict taking action. That is not the case. The case is that - the field martial will take action but will not carry out a sentence of death before the person is - *(Interruption)*

THE CHAIRMAN: No, let him finish please.

MR. MULENGA: No, let me explain the import of the provision. The Field court martial will still try the person but the importance *(Interruption)*

THE CHAIRMAN: What is the point?

AN HON. DELEGATE: Mr. Chairman, is it in order for the Hon. Chairman of Committee - a distinguished lawyer who was once an Attorney

General to say that the prerogative of mercy is only for cases of death? Because the exception which is in Clause 6 is talking about conviction, even punishment, sentence, forfeiture and does not necessarily talk about death. So, even other punishments Mr. Chairman are covered under this Clause. Is he in order, therefore?

THE CHAIRMAN: No, he has clarified himself by saying he did not say that.

MR. MULENGA: No, what is more Mr. Chairman, is the impression given from the supporters like Hon. Guma when he says 'you make a mistake on the field, you are dead'. Yes, the real force behind this amendment and behind the idea that a field court martial must execute its sentences immediately is invariably about the sentence of death by hanging or shooting. Let us not mince words because otherwise there is no problem with any other punishment; it could be flogging, could be imprisonment like in civilian court. When somebody who is sentenced for life imprisonment, the sentence will start running until the mercy is exercised. So, we - *(Interruption)*

THE CHAIRMAN: Hon. Mulenga, there are a number of hands on the Floor.

MR. MULENGA: Yes, I can see them.

THE CHAIRMAN: There is clarification from Hon. Dick Nyai, then we shall come around. Hon. Dick Nyai has the Floor.

MR. DICK NYAI (Ayivu County): Point of Clarification. Thank you Mr. Chairman. I would like to find out from the chairman of Select Committee as to whether they are construing a field court martial as an equivalent to any ordinary court in which all sorts of people appear. Because my interpretation of a field court martial is that the army commanders are trying to rectify situations so as to stop their forces from losing the battle?

In the execution of that duty, the presidential prerogative of mercy does not apply at all. It cannot because you are only dealing with people who are members of the armed forces. You are not dealing with the civilian population because they are not people who belong to the army! I think it would be wrong for us in this House to imagine that a field court martial will also be held in relation to civilians in that area. I think these two should be made very clear Mr. Chairman. Thank you.

THE CHAIRMAN: Hon. Dick Nyai, that-

MR. MULENGA: Mr. Chairman, I do not know whether that was a question addressed to me or to stop me arguing.

THE CHAIRMAN: Anyway, I think, let us do it this way - Hon. Kanyeihamba, did you want to ask a question before he finishes because I think Hon. Mulenga should be winding up.

PROF. KANYEIHAMBA: Thank you Mr. Chairman. I also wish to ask the Hon. Chairman Committee II to clarify this position and it is an amplification of what Hon. Nyai has said. One of the reasons why a field court martial may be held is because a soldier or a number of them have been cowardly in a battle and it is held there and then and the idea is that they are punished immediately so that other soldiers can see what is happening. Cowardice is a very serious matter in a battle and the whole point of a court martial is that when they are convicted, they are executed there and then so that they can be an example to the other soldiers who asked to continue with the battle. Now, if that is the purpose of that court martial how then do you wait later so that the prerogative of mercy can be exercised in a cooler atmosphere because then it would have lost the whole object of this kind of field court martial. So, I wanted to see whether you would regard that as an exception to your own exception or whether you have an answer to that -

THE CHAIRMAN: I think let us hear Hon. Mulenga through first because I can see members contributing under the guise of seeking clarification and so on.

MR. MULENGA: Mr. Chairman, I will try and wind up quickly but we can see from these guided contributions that there is no clear picture to us as to what the purpose of a Field court martial is. In some - there are many offences that will take a soldier to the court martial. We have been told about cowardice or criminal negligence and so forth. The point we are making is this, the court martial - now, I have been informed that the Court Martial does not only mete out the sentence of death but also other sentences. Now, what is at issue really is not the other sentences because the other sentences are like sentences imposed by other courts which will take time to run and therefore, there would be no problem about such people being

also considered for mercy. What is at issue is carrying out the death sentence immediately. And the recommendation which I support is that person also who has been convicted and sentenced to death should be removed from the field and have opportunity to be considered for mercy. The distinction has been made and I think explained that in this case of internal conflict there is no need to carry out that death sentence immediately. It will still be there. It will be carried out if he does not get the mercy but he should not be banned from consideration for mercy. That is the import of this amendment.

THE CHAIRMAN: I think let us declare ourselves on the amendment. Hon. Hashaka has moved an amendment that in Clause 6 of 113 the words '*during a war between Uganda and another country*' be deleted so that we put a full stop after the word *martial*. I will put the question. Will those in favour of the amendment say aye, to the contrary no.

(Question put and agreed to)

THE CHAIRMAN: Now, with that amendment can we pronounce ourselves on 113. Will those in favour of 113 to stand part to the draft constitution, say aye to contrary no.

(Question put and agreed to)

THE CHAIRMAN: 114 - Hon. Mulenga.

MR. MULENGA: What about the article expressing ourselves on article as amended?

THE CHAIRMAN: Yes, we have.

MR. MULENGA: I thought the clause - Okay.

THE CHAIRMAN: No, we went on to the article itself to 113. Now, we are at 114.

MR. MULENGA: Mr. Chairman, Article 114 is on Cabinet. Mr. Chairman, the committee recommends that Clause (1) of Article 114 should read: "*There shall be a cabinet which shall consist of the president, the vice president and such a number of ministers as may appear to the president to be reasonably necessary for the efficient running of the state.*"

THE CHAIRMAN: Agreed? Hon. Mulassanyi.

MR. MULASSANYI JOHN (Rubanda West): Thank you Mr. Chairman. This article seems to be inconsistent with Article 116 and 117. 116 (4) stipulates that the number of ministers will be 21.

THE CHAIRMAN: Hon. Mulassanyi, we do not anticipate debate. We are now -

OBUA OTOA (Erute North County): Thank you very much, Mr. Chairman. Mr. Chairman, I have no serious quarrel with this Clause. Except, Mr. Chairman, I am never very comfortable with this word 'reasonably' because sometimes it tends to be too subjective and I am never sure whose reasoning we are talking about. So, why do we not simply say, as may appear, the President to be necessary for the efficient running of the State. This 'reasonably' thing - I am always having a problem with it.

THE CHAIRMAN: But I think you answered yourself when you said it is very subjective and you do not know whose reasonably it is. It is the President's.

MR. OBUA OTOA: Mr. Chairman, is it absolutely necessary to put it there?

MR. MULENGA: Mr. Chairman, it is to stress that the President should feel that it is reasonable to have such a number. It guides him to be reasonable in assessing the numbers.

Mr. Chairman, the Committee recommends Clause (2) to read: "*The functions of the Cabinet shall be to determine, formulate and implement the policy of the Government and perform such other functions as may be conferred by this Constitution or any other Law.*" The amendment there, if I may explain, the Committee thought that it is not right to say the Cabinet shall assist the President, having said that the President is part of the Cabinet.

DR. BYARUHANGA: Mr. Chairman, I am just seeking clarification on this (114)2, because my understanding of what had been given in the Draft was that the Executive Authority was vested in the President of Uganda as we did in 102. But that these Council Ministers would be there to assist the President in his excursion of this executive powers. But when we remove this word 'assist,' and I believe the Committee was right to remove it

because the President is part and parcel of this Cabinet.

So, even the Odoki Draft had made a mistake. But when we remove that word, we really change the meaning. It now appears as if we are giving the very same powers we had given to the President earlier to this Body called 'Cabinet'. Now I am seeking the following clarification. In 1967 Constitution, when you read Article 37, one is ready to believe that we have had a collegiate sort of leadership. That the executive authority of Uganda has always been in the Cabinet. But now it would appear we have removed that power from the Cabinet and given it to the President as we have already in what we passed in 102. Now, when we leave this as it is in the Report, do we not cause confusion which we have been fearing? For example, in the case of the IGG where we thought that we should not try to give the same powers to the same powers to the deputies because it would cause confusion. Let the deputies get power from the IGG. Thank you.

MR. MULENGA: Mr. Chairman, there is a difference between the executive power and formulating and implementing government policy. The former is wider. What is vested in the President is executive power. Here in this Clause the functions of the Cabinet to determine, formulate and implement the policy of the Government, is narrower than vesting executive power. So, Mr. Chairman, I think Hon. Byaruhanga is not correct to say that we are causing conflict in the two Articles.

Mr. Chairman, Clause 3 is recommended to read: "*There shall be a Secretary to the Cabinet who shall be appointed by the President in consultation with the Public Service Commission.*"

MR. KARUHANGA: Thank you, Mr. Chairman. Mr. Chairman, my clarification is from the Chairman of the Committee. I wonder whether really it is necessary for us to write in the Constitution that there shall be the Secretary to the Cabinet. I do not see need myself and I do not see the need for 3 and 4, and when you look at the past administrations, at one time the Head of Public Service was also the Secretary to Cabinet. But quite frankly, I do not see what we are trying to do here in the Constitution. Why do we not just leave these things out? Is it really absolutely necessary for us to say that there will be a Secretary who will appointed in consulta-

tion with the Public Service Commission and then go on to state what is stated before?

PROF. KABWEGYERE TARSIS (Igara West County): Thank you, Mr. Chairman. Mr. Chairman, Cabinet Government is run on the principle of secrecy. That is why Cabinet Ministers must swear the oath of secrecy and it is important that certain policies of the State do not come out until they are ready for consumption. At the same time we need somebody in the Cabinet Office who handles the business. When the Papers are submitted from the Ministries they must be received and an agenda worked out on the basis of the importance of the subjects. That is why we can have- instead of one Cabinet meeting in a week we may have three or four depending on the urgency of the matters on the ground. Now you cannot expect Ministers to do that job. The person to administer the business in the Cabinet must be provided for in a Constitution in the manner that is presented here. Otherwise, you will have somebody who has access to those documents and will not be bound by the secrecy. In fact, the Secretary to the Cabinet also takes an oath of secrecy. So, I think Hon. Karuhanga should be informed that this office is so important that it must be provided for in the manner presented in the Draft. Thank you.

MR. OBUA OTOA: Mr. Chairman, I just wanted to give a small additional information. Mr. Chairman, it has always been recognised that this is a very important office. Even the 1962 Constitution, Section 72, establishes the office of the Secretary to the Government.

This is not without significance, Mr. Chairman. I think it is recognition of the great importance attached to this office for reasons which part of which has been advanced by Prof. Kabwegyere. I thank you, Mr. Chairman.

THE CHAIRMAN: I think let us decide on this one.

MR. MULENGA: Mr. Chairman, Clause 4 is a follow up on Clause 3 and it is recommended to read: *"The Secretary to the Cabinet shall have charge of the Cabinet Office and shall be responsible in accordance with such instructions as may be given to him or her by the President for arranging the business for and keeping the Minutes of the Cabinet for conveying the decisions of the Cabinet*

to the appropriate person or authority and shall perform such other functions as the President may direct."

MR. KANYEIHAMBA: Mr. Chairman, I must declare an interest that I am a Member of this Committee but some of us argued against inclusion of this detailed part of duties.

THE CHAIRMAN: Prof. Kanyeihamba, we have already finished with Clause 4, we have already passed it.

PROF. KANYEIHAMBA: Mr. Chairman, we passed Clause (3) and I thought we were now on Clause (4).

THE CHAIRMAN: Let us now test the ground and see.

(Question as put on Clause (4), agreed to)

THE CHAIRMAN: I now put the Question that Article 114 stand part of the Draft Constitution. *(Question put and agreed to)*

Article 115.

MR. MULENGA: Mr. Chairman, Article 115, the Committee recommends that Clause (I) of Article 115 reads: *"Cabinet meetings shall be summoned and presided over by the President and in his or her absence by the Vice President or in the absence of both of them by a Minister designated in writing by the President."*

THE CHAIRMAN: Agreed!

MR. MULENGA: Clause (2), Mr. Chairman, it is recommended that it reads: *"The Cabinet shall regulate the procedure of its meetings."*

THE CHAIRMAN: Agreed! We now pronounce ourselves on 115 to stand part of the Draft Constitution.

(Question put and agreed to)

Article 116

MR. MULENGA: Mr. Chairman, perhaps I should mention that the printed Report does not indicate that there are minority recommendations which are suggested *-(interruption)-*

THE CHAIRMAN: It does on Page 36.

MR. MULENGA: There is another one in respect of Clause (1). Mr. Chairman, the majority Members of the Committee recommend that Clause I of Article 116 should read: "*Cabinet shall be appointed by the President with approval of Parliament from among Members of Parliament or person qualified to be elected Members of Parliament.*" Then there is the minority recommendation which reads- this is I think led by Hon. Hashaka. It reads: "*Cabinet Ministers shall be appointed by the President from persons qualified to be elected Members of Parliament.*"

MR. HASHAKA: Mr. Chairman, me and other fellow Delegates from Committee 2 wish to move that Cabinet Ministers shall be appointed by the President from persons qualified to be elected Members of Parliament.

Mr. Chairman, the President should be at liberty without strain to appoint those who have lobbied and caught his eye after being Members of Parliament. Since we have agreed that Members of Parliament who are appointed Ministers should resign their seats in Parliament.

THE CHAIRMAN: Hon Hashaka, may be my memory fails, but I do not remember that we have agreed on something like that.

MR. HASHAKA: Mr. Chairman, we have proposed it and depending on whichever way it will go. But we feel that in case of a multi-party Government, the President would be strained to pick at least equal number of Ministers from various political parties. And in case he chooses from his Party, then problems in the Parliament start rising by even some of Members of Parliament rebelling against him, Mr. Chairman. Mr. Chairman, considering the political history of Uganda, some regimes have had untouchable Ministers who are at the same time Members of Parliament, that tend to look down upon other Members of Parliament who are not Ministers. Therefore, we feel that if the President would have the prerogative of choosing his Cabinet from the 17 million Ugandans, not really straining himself to look around from the Members of Parliament. The Parliament may not dully censor their fellow Parliamentarians for appointment as Ministers whom they know would be proud and brag around. Since their Members of Parlia-

ment would lobby around them for some development in their Constituencies and maintain their political grip on the people. Mr. Chairman, the President should be given full liberty because I would not think that Members of Parliament who have been elected to the Parliament are the only ones who are so brilliant that can have the chore of the Cabinet. We could have other Ugandans qualified to be Members of the Cabinet to be appointed Ministers not necessarily from Parliamentarians. So, Mr. Chairman, we wish to move that these Ministers should be appointed from the rest of the 17 million people not necessarily from the Parliamentarians. We wish to move, Mr. Chairman. Thank you.

MR. MULENGA: Mr. Chairman, may you allow me read a minority recommendation on Clause 3 which reads: "*A member of Parliament shall not be eligible for appointment as a Cabinet Minister.*"

DR. KINYATA STANLEY (Kinkizi East County): Mr. Chairman, I am leading a consortium of minority which opposes that amendment to the effect that we would like the President to appoint Ministers from Members of Parliament and outside the Parliament and to retain the other Article. So, I do not know whether if you pass this one, shall I have the time to move my amendment?

THE CHAIRMAN: The position is this, let us first discuss this. If this one passes, too bad for you. If it does not pass, then we shall go to the recommendation which we can then amend.

MR. BEN WACHA (Oyam North County): Mr. Chairman, I am seeking clarification from Hon. Hashaka. The basis of his amendment seems to be that the President should be free to appoint his Ministers from all the 17 million Ugandans. Now, I wonder what the difference is between his amendment and what is proposed here because this also pre-supposes that the President in being free to appoint from Members of Parliament all- also from outside Parliament. He is in fact free to choose his Ministers from all the 17 million people of Uganda. So, I want clarification on that.

MR. ATWOKI AMBROSE (Youth-Northern): I thank you very much, Mr. Chairman. Mr. Chairman, I want the Chairman of Committee 2 to clear the doubt in mind. Because when I read their recommendation, it says that Cabinet Ministers

shall be appointed by the President with the approval of Parliament from among Members of Parliament or persons qualified to be elected Members of Parliament. My quarrel is that how can Members of Parliament approve themselves to become Ministers? Would it be fair?

THE CHAIRMAN: No, but I think let us first of all clear the question of the text. The recommendation from the Committee by majority reads: "*Cabinet Ministers shall be appointed by the President with the approval of Parliament from among Members of Parliament or persons qualified to be elected Members of Parliament.*" Hon. Hashaka's Motion reads: "*Cabinet Ministers shall be appointed by the President from persons qualified to be elected Members of Parliament.*" The only difference between the two is this. One, Hon. Hashaka does not intend to subject the appointment to the approval of Parliament. And two, Hon. Hashaka leaves out the question of appointment from among Members of Parliament. If you remove the question of Members of Parliament and approval, the rest is actually the same. That Motion is actually the same as the other one except for those two. So, the method of approach would have been by way amendment to delete the reference to *approval* also to delete the reference to *appointment* from Members of Parliament.

MR. MBABAZI AMAMA (Kinkizi West County): Mr. Chairman, in light of your clarification, would it not therefore, be correct to handle - because your deletion is presumed. You are saying that if this Motion by Hashaka is approved then the effect will be that you will have deleted reference to 'approval by Parliament' mainly? Now, but if one had a direct Motion to delete, would you not deal with that first?

THE CHAIRMAN: Well, you see we are dealing with this one because it came to us as a minority report. And we have set ourselves procedure that where we have a minority report which we would negate. The minority view, should it be carried, then we proceed with it first so that we do not have to do the two.

MR. DICK NYAI: Mr. Chairman, I am a little bit worried about some small thing. The majority recommendation has the generality. The generality is that of persons qualified to be elected Members of Parliament.

Having used that generality, I then move on to a particularity of Members of Parliament. Now, if Members of Parliament are contained among persons qualified to be elected Members, is there a particular reason to the Committee sort of particularising one as opposed to particularising doctors or professional engineers?

Secondly, I would like to beg through you, Mr. Chairman, as to the reasons which Hon. Hashaka has not told us, why he does not want the presidency nominations for Cabinet to be approved by Parliament.

THE CHAIRMAN: Let Hon. Mulenga help us here.

MR. MULENGA: Mr. Chairman, I do not know whether Hon. Dick Nyai takes this deliberately to dramatise. He said we start by generality and then particularising. But the reverse is true. We start by particularising and then give generality. This is how it reads: "*Cabinet Ministers shall be appointed by the President with the approval of Parliament from among Members of Parliament.*" I take that to be particularising. Then take, "...persons qualified to be elected Members of Parliament," that is generalising. Now, Mr. Chairman, more to the substance, I think this is for clarity. We adopted it from the Draft because it was clear. You can see how there is some doubt as to what Hon. Hashaka's amendment means when he says, '*from persons qualified to be elected Members of Parliament.*' His intention is hidden. That is why I thought it was right to clear it by reading to you the other minority recommendation. So, my view, Mr. Chairman, in answer to Hon. Dick Nyai is that there is nothing wrong with this Draft. It is clear. It first sets out that the President may pick from Parliament. But he may also pick from outside, from among people who are qualified. I see nothing wrong with this.

THE CHAIRMAN: I think it would have been better written that Members of Cabinet shall be appointed by the President with approval of Parliament from persons qualified to be elected Members of Parliament including Members of Parliament.

MR. MULENGA: Well, I would not refuse that as an alternative because it carries both.

LT. COL. KIIZABESIGYE: Mr. Chairman, I am party to this minority report therefore, I should

declare my interest first. I would first of all like to invite Hon. Mulenga, our Chairman, of Committee 2 to look at the Minutes again. Because in my own notes I actually have it recorded that we did delete that expression of *from among Members of Parliament* for the precise reasons that the Hon. Chairman has given. Those words are definitely superfluous. All Members of Parliament are persons qualified to be elected Members of Parliament and the Clause, I think, stands on its own without the intentions of subsequent Motions of whether Members of Parliament should be Cabinet Ministers or not and should be seen in that light. Subsequently we shall debate on a separate Motion whether Members of Parliament should be Cabinet Ministers or not and we shall give reasons for and against at that state. But I think the import in Clause 1 is to remove the approval by Parliament, and it is to that Motion, Mr. Chairman, that I would like to contribute.

I personally view that this inclusion of approval by Parliament is unnecessary and in fact can be dangerous. Mr. Chairman, we have created organs of the State, the Executive, the Legislature and the Judiciary. In fact Hon. Members will recall that when we were taken to a seminar of some kind of constitutional engineering, but the main theme of that seminar was precisely to provide for separation of powers and clarity of functions of the various organs. We have already expressed ourselves on where the executive powers of Uganda lie. We have vested all the Executive Powers of Uganda into the Presidency and I do not think that we would at any time regret that decision. I would like, Mr. Chairman, that the country having done so, holds the Presidency responsible for the affairs of the executive. I would not like the situation where by subsequently the Executive says that this occurred because Parliament did this, failed to approve or approved things which I did not like. I would like the President to exercise the Executive Powers squarely and be held responsible for them. I would also like subsequently to provide for a strong Parliament which can exercise its powers and be held responsible for them. Of course we are not saying that this separation can never be total. And that is why I think subsequently - Parliament is given authority to regulate the activities of the Executive through such measures as impeachment should the executive take such measures that contravene the Constitution or the laws of Uganda.

AN HON. DELEGATE: Mr. Chairman, my clarification which I wanted to obtain from the Hon.

Member holding the Floor is that we have said. Power belongs to the people. We have also said that the appointment of a Vice President who is much higher in rank than a Minister is by approval of Parliament. Somewhere before we approved that appointment of the Governor of Bank of Uganda will be by Parliament. What is so special about refusing powers to the people to approve a Cabinet Minister?

THE CHAIRMAN: I think what we should do is that if we want to argue we should wait until the other one has finished.

LT.COL.KIIZA BESIGYE: Mr. Chairman, maybe before I continue let me specifically respond to the point he raises of why approval of the Vice President. The only valid reason that I find why the Vice President should be approved by Parliament is because of that possibility that the Vice President can act as President. He is likely to take the powers of the Executive. It is the reason why he should be screened and possibly even elected and so on. It is because he is likely to hold the powers that we have vested in the presidency. But the executive powers we have vested in the presidency and it is the presidency that we should hold responsible for the exercise of those powers directly not allowing room whereby anything that happens the presidency will again say, there was a problem in Parliament. Therefore, Mr. Chairman, for those reasons and more which I may not have time to go into, I support the minority report that the Cabinet Ministers shall be appointed by the President from among persons qualified to be elected Members of Parliament. Thank you, Mr. Chairman.

MR. WANENDEYA WILLIAM (Budairi East): Point of Order. Mr. Chairman, here we have established a presidential type of Government. The President takes his nomination to Parliament or whatever legislature. Whereas when it is purely Parliamentary type of government like in Britain, Mr. Chairman, the Head of Government approves his Ministers without re-course to Parliamentary procedures. Would it therefore, Mr. Chairman, be in order for us to debate the two when we have already said that the President will subject the Vice President to approval by Parliament and here at the same we are going to debate a Motion where the approval is not or may not be subjected to Parliament?

THE CHAIRMAN: Yes, we are in order!

MR. MBABAZI: Mr. Chairman, my point of order really relates to procedure because according to the procedure that was pronounced which we have been following, we debate the minority report first. But once we pronounce ourselves on the minority report, if it is approved, then that automatically negates the majority report. But the point I raised earlier is, if I find that in both the minority and majority report there is something that I want deleted, I am barred once we pronounce ourselves on the minority report from raising that Motion. So, how does one go about it? Specifically, I had it in mind, if I can give the example here. Both minority and majority reports propose that Ministers can be appointed from persons qualified to be elected Members of Parliament. My Motion is that, that should be deleted. So, how shall I raise that Motion after we have pronounced ourselves on this?

THE CHAIRMAN: You see, the process is quite simple. We set up a Committee. The Committee debated the matter. There are two views. The majority view is what we have here by way of report. But there was a minority view who felt that they should bring it here. Had they had the numbers in the Committee they would have won and their view would have been the recommendation. Maybe the one we would have adapted. But they were not the numbers, they lost. But they came here by virtue of the rules which say you take a minority report together to be discussed at the same time as you submit the majority report. Now, of course if the minority view comes to the Plenary, and those who were in the minority in the Committee are able to convince the Plenary such that the Plenary by numbers is on their side, there is no point saying, yes you are right, but let us also go back and look at what the majority said because that is not necessary. The only way you can go about it is this, once we accept to debate the minority report, you can move Motions amending the minority report to reach the position which you would like to have. In this case, you can amend this one, either you pick some words from the majority view and put here together with those you want to remove and then we come up with whatever formulation you think is acceptable to you by using your right to propose amendments to the minority report until we pronounce ourselves on it finally.

MR. SSENDAULA GERALD (Bukoto South): Mr. Chairman, I oppose the minority report. I am also a Member of Committee 2 and we extensively discussed this matter until we reached the agreement that we shall submit both the majority and minority reports. Here I oppose the minority report on the grounds that one, we need approval of Parliament because we want to distribute the accountability of what goes. When we talk about approval of Parliament, it means that we are creating transparency. Let the President elected come before the Committee of the House which is responsible for appointments, names of those people from whom he wants to appoint Ministers. Now that gives an opportunity for even that President to get to know issues, matters he may not have known before thinking that so and so is suitable, which Members of the Committee may be able to know and then expose them to that President. *(Applause)* So, it is very vital that if we are going to create transparency that approval is very necessary.

Next, I also wish to say here that it is important whether we understand it the way you have been interpreting this matter that we are talking of appointing across the Board in general and in particular. The message that we wanted to send home is that the person to be appointed, the Minister should be that one who is at that calibre. Who is at that level of being a Member of Parliament. That is the message that we wanted to convey. It can be adjusted in that number one because this is English. But for purpose of drafting we can convey that message in the English that is acceptable. But the message we wanted to carry home was that the person to be appointed Minister should be that one of the level of being the Member of Parliament. Because ultimately he will either be a Member of Parliament, which we shall come to later, or he may not necessary be a Member of Parliament but will be expected from time to time to appear before Parliament. Thank you, Mr. Chairman.

MR. TIGWEZIRE: Mr. Chairman, it appears to me that we are losing a point from what Hon. Hashaka has moved because the general feeling even from a Constituency is that people seem to say if you are already a Member of Parliament you should not be appointed a Minister. They want to separate these roles because there is a general feeling that people's views are compromised once their representative is appointed a member. The minority report seems to suggest to me that they

want somebody who can qualify to be a Member of Parliament to be appointed, but not necessarily that one who is already a Member of Parliament unless Hon. Hashaka can clarify to me what he really meant when he introduced his Motion Mr. Hashaka.

THE CHAIRMAN: Hon. Hashaka, take notice you will clarify later.

MR. ATAMVAKU ZUBAIRI (Arua Municipality): Mr. Chairman, I oppose this minority report for one thing. The attempt at denying Parliament the opportunity the right to approve Government appointments is unfortunate for the welfare of this country. Mr. Chairman, taking the submission of Hon. Besigye as my first premise, he says that if Parliament is to approve Cabinet appointments made by the President, there is the danger of the President moving responsibilities on the Parliament. But I think that is far from being reasonable and cannot hold for long. Mr. Chairman, we are aware that whenever in a democratic policy, Government fails the electorate enjoys a closer proximity to the Legislature than the Cabinet. So that in event of a failure on the part of the Government the electorate is to blame the Parliament. They may ask, 'We sent you to the House, what did you do about this?' Because both politically and institutionally, the Executive is rather at a distant position vis-a-vis the popular electorate. Because of this, it does not make sense for the people of Uganda to elect their representatives to the Parliament and yet these people do not have any say by way of qualifying those persons appointed by the President to the Executive positions such as the Cabinet.

Mr. Chairman, therefore, if that amendment goes through, it will be to give the President carte blanche to run the country as if it were his private Estate. He will appoint his classmates, his friends, based on criteria not known to the people of Uganda. I think we shall be over privatising the State. Thank you.

MR. OGWEL LOOTE (Moroto Municipality): Mr. Chairman, I stand to oppose the minority report for the simple reasons. One, now if these appointments of these Ministers by the President is not subjected to the approval of Parliament, that means always the corrupt Ministers will always go away without being checked upon. You already know, Mr. Chairman and Hon. Delegates, there is already established culture of corruption in our

society and if the people of Uganda are making a lot of noise and their Parliament has a voice of the people of this country, and is not given the right to see who is going to manage the affairs of the people. Then who will check if the Parliament is not given the power to approve?

Secondly, Mr. Chairman, as somebody has already said, the appointment can easily also be directed to particular interests of the individual elected President. It can be tribal, political ideology, it can be as somebody said, it can be also on the friends, colleagues, old girls and old boys. Ones in Makerere or Dar-es-Salaam whatever the case may be. Now, we must know this, somebody said the President is going to manage the people of Uganda, what about Ministers? Ministers also when they are appointed, they are given the responsibility of managing the human and natural resources of this country. So, the Parliament has be subjected to the approval of these appointments. Thank you.

MRS BIKORWENDA IDA (Women-Bundibugyo): Mr. Chairman, I stand to oppose the minority report. I have full remarks to make. Mr. Chairman, if the appointed Ministers are not approved by Parliament, it will not create good working relationship between the Executive and Legislature. The Parliament will be working with a foreign body in between and then it will again give the president a chance to elect his friends who might have lost in general elections. Because when the voters decide not to give someone votes, they might be having some good reasons, which reasons would be carried up to Parliament during the screening or during the approval of the Members of Cabinet. Therefore, if he decides to work on his own, he will be creating frequent censorship of Minister. So, to avoid the frequent censorship, the Parliament should be responsible for approval of these ministers. And again it might raise the frequency of the President being impeached. So to avoid and create transparency Parliament should approve the ministers. Thank you, Mr. Chairman,

THE CHAIRMAN: We have heard four against the Motion. Can I hear those for the Motion.

MR. SABIITI JACK (Rukiga County): Mr. Chairman, I am assuming that the amendment reads that Cabinet Ministers shall be appointed by the President from among Members of Parliament - I mean from among persons qualified to be elected

Members of Parliament. Mr. Chairman, in Article 102, this Assembly vested in the President the executive authority. We said that this person should shoulder all the executive powers. We have Article 104 given specific duties to the President that is to address Parliament and account the Nation what you have done or what you will be doing. Mr. Chairman, in order for the President to fulfil his duties well, and to deliver as expected he should have a free hand to choose his Cabinet from cross-section of the population. Mr. Chairman, we have not as of now decided on what type of political system we are going to have. But I will assume that if we are to have a movement system of government may be yes, if we have to have it as a continuous system of government, I would certainly say yes, Parliament should approve. But if we are to say may be in future we may have political parties or political party system it will be difficult for Parliament. Because Mr Chairman a party or a political system will have a programme, and in order for that party or that political system to implement its programme, certainly the head of the executive must be given a lee way- must be given a chance to choose men and women he thinks will help him to do his duties. Mr. Chairman I therefore, feel that this minority amendment is important and should be well entrenched in the constitution. The President should be given powers to choose his Cabinet. Thank you, Mr. Chairman.

MR. MUSUMBA ISAAC: Thank you, Mr. chairman. Mr. Chairman, I have been perturbed by the extent to which we seated here are trivial, to legislate for importance of the President. Mr. Chairman, I am envisaging a situation where the 17 million people plus have decided that X should be the President. And we are also saying that in spite of the fact that the country has given him mandate to lead, he may not be able to have a free hand in determination of the team with which he is going to work. It is possible, Mr. Chairman, to have Parliament frustrate the President by refusal of giving approval to those people that the President may want to work with as a first option. Mr. Chairman, it is possible after election for the President to bring a list of names of the people with whom he has been working towards for instance his election, and he determines. He thinks that X has got a lot of resources and ability to mobilize people or to deliver and he wants to appoint him as a Cabinet Minister. And, because Members of Parliament either have never heard of him because it is impos-

sible or think that it should not be him for reasons best known to themselves, they may deny approval from the President- to the President to have that person appointed. Now if as consequence there from, the President fails or ends up working with a person of otherwise second choice, it might impair his performance. Mr. Chairman, its on those grounds that I appeal to Members to allow the President to perform by giving the President a free hand in determining what team he wants to deal with at a Cabinet level. Thank you.

MR. LUKUMU FRED (Buliisa County): Thank you, Mr. Chairman. Mr. Chairman, I strongly support the Motion moved by the minority report. Mr. Chairman, I do not want a situation where shall make-turn our Parliament into the public service commission. Mr. Chairman, if we consider the importance of the Cabinet to the President and the allegiance the Cabinet must have to the President, we would be tying the hands of the President and making his work difficult if we subject his appointment to Members of the Cabinet to Parliamentary approval. Mr. Chairman, as for the fear- Mr. Chairman, Hon. Jack Sabiiti has already indicated that it would be very difficult for approval by parliament of Members of Cabinet in a situation where there is a multi-party system. Mr. Chairman, we should not lose sight of the fact that, we do not have any definite criteria on which Parliament will base approve the appointments made by the President. There could be malice to the extent that the President would find it difficult to make appointments to Cabinet that would be effective in running- in exercising his executive functions. Mr. Chairman, as for fears that the President may make appointments -poor appointments there is a provision at a later stage in this chapter whereby Parliament can censor ministers who may not perform to the expectation. For example if they are found to be corrupt as has been feared by most Members that the President would make appointments of corrupt members, of society to be in executives. I think that would be catered for under the censorship provision in this very chapter. So I do not think the fears- would like to allay the fears of Hon. Members who believe that unless Parliament approves the appointment of ministers this is likely to be there. This is already provided for. Mr. Chairman, as I said earlier, the criteria for approval by parliament is not really clearly indicated and I do not think anybody could make it clear. Do we base it on religion ethnicity wealthy political affiliation what

really do we consider? Or do we say regional balance all these, Mr. Chairman, are so subjective and therefore, very difficult for anyone to come up with very clear and reliable basis on which we can say Parliament can base the approval. Since Mr. Chairman, we know very well that the President as the Chief Executive of the State in his appointment of ministers he will also make appointments of those people who would really help him strengthen his position carry out his function of the executive effectively. I do not think the President given this width of choice national wide that he would make that mistake of making appointment that would embarrass him or that would make it difficult for him to perform his duties effectively. And as regards regional imbalance which may be the fear of most Members, we know very well that this is a President who will have been elected by the entire nation. As the need for him to balance his appointment, it is unthinkable that he could forget any region. Mr. Chairman as regards appointments from within - from among Member of Parliament as you advised earlier, I think that one will deal with at a later stage. Otherwise, Mr. Chairman, I wish to strongly support the minority report that rejects any attempt by parliament to be turned into a public service commission to the extent that it would make work of the - making a strong team for the president difficult. Thank you.

MR. AMAMA MBABAZI: Thank you, Mr. Chairman. Mr. Chairman, I wish to move an amendment to this effect: delete the words '*persons qualified to be elected Members of Parliament,*' and insert after the word, '*the President*' the words, '*With the approval of Parliament.*' So that the new Clause as I propose it now, reads as follows: "*Cabinet Ministers shall be appointed by the President with the approval of Parliament from among Members of Parliament.*" I beg to move.

HON. DELEGATES: No, no, no.

THE CHAIRMAN: I see no seconder. Order, order. First of all let us try to know what we are trying to debate. The effect of the amendment would this, if this amendment was to be carried it would amend essentially in two areas. One it will introduce the requirement for President to approve - sorry with Parliament to approve. And two, would narrow down the area of choice from everybody eligible to be elected, Member of parliament to Members of Parliament. Because as it was before

it covered both it now it would cover Presidential - sorry Parliamentary approval. It will introduce parliamentary approval but narrow down the catchment area to Members of Parliament. That is the effect of the Motions now whether you do not agree with it or you do, you indicate by taking the Floor shouting is not part of our methods according to our rules.

MR. AMAMA MBABAZI: Mr. Chairman, there are several reasons in support of my proposed amendment *-(interruption)-*

MR. NDEGE JOHN (Luuka County): Mr. Chairman, when the Hon. Delegate on the Floor introduced his amendment we were still discussing the minority report and those who were supporting the minority report. Now we have gone away from the minority report, we are discussing a completely new situation. Shouldn't we pronounce ourselves on the minority report and then discuss his amendment Sir?

THE CHAIRMAN: The minority report is before us by way of a Motion because our rules say we take our decisions on basis of a Motion. The Motion is that the minority report be adopted, and if it did, it wipes out the other one. But it does not stop us from amending that Motion which is before us and this is what he is seeking to do. You can defeat the proposed amendment because it is only touching parts not negating the whole of it. The appointing authority and the question, it is only introducing the question of Parliamentary approval and then narrowing down to the question of only Parliament. Now we discuss that and dispose of it then we can come to the Motion. Okay.

MR. AMAMA MBABAZI: Thank you very much, Mr. Chairman. One reason for my proposed amendment is that approval of Parliament is I think very important. Many of the reasons in support of this have been given by Members in the course of the debate on the minority report. But I wish to emphasize the point that really if you have a Cabinet you want the country to feel that this Cabinet addresses all the interests of the country, that all the interests of the country are represented in the executive arm of government. And the only way you can achieve this is to give a stamp of approval by the representatives of the people which is Parliament. Mr. Chairman I know this is very important because as you know it has been practiced

recently or currently its being practiced, and I think it gives to many interests in this country the sense of belonging. But I do not want to labour this point because it appears to me to be quite clear.

MR. MUSHHEMEZA ELIJAH (Sheema South County): Point of information. I would like to inform Hon. Amama Mbabazi that when we were debating the minority report, points in favour and against his current Motion were given. I would like to inform him to request the Chair to put the question so as to avoid wasting time. Thank you, Mr. Chairman.

THE CHAIRMAN: Courtesy requires that as a mover let him first of all finish introducing his Motion then you can move a Motion that a question be put as a separate question. Otherwise it would be rude to give the person Floor to introduce the Motion and then you cut it short before he gives his reasons, and you say let us go on and vote on it even if you have not told us why you want to introduce that Motion.

MR. AMAMA MBABAZI: Mr. Chairman thank you very much. I am sure that my brother Hon. Mushemeza will appreciate the benefit of patience as time passes. Mr. Chairman, I was saying that approval by Parliament, I think is, really a very reasonable demand and I cannot see any reasonable ground why Parliament should be precluded from having a hand in the formation of the executive arm of government. But, Mr. Chairman, my main point therefore, is on the second aspect in my amendment which is to restrict appointment of Cabinet ministers to people who have been elected to Parliament. Mr. Chairman, I have several reasons for this. The first reason is that I think all leaders at any level must have some primary legitimacy, I think it is not right to give the President - you see we are talking about a system that combines all sorts of systems. If we had a Presidential system like in America where you have a President who has equal powers to Parliament then I could understand that its alright for the President to pick from outside Parliament or if he picks from Parliament those who are outside Parliament to go completely in the executive arm of government. But ours is obviously hybrid of the two systems, and that is why we insist on approval at all levels of governors, of other people the Vice President and now I propose even ministers. This is because we need a high breed-(*interruption*)-

AN HON. DELEGATE: Point of clarification. Mr. Chairman, I would like to get clarification from the mover since he is requiring that the President picks from only elected Members of Parliament why he wants the people's choice to now be screened by the same Parliament? I find a contradiction in terms of requiring appointment only from Parliament and then those Members of Parliament to be approved by parliament.

MR. AMAMA MBABAZI: Mr. Chairman, I thought I had given that answer but there is no harm in repeating it. The idea of approval especially, specifically in regard to that point is that you want to make sure that national interests are well represented in the executive arm of government. And that really the best organ that can ensure that is Parliament. So you want to give a stamp of approval of the country in the composition of the executive arm of government. That is the point. But what I was saying just now, Mr. Chairman, is that I think leaders should have some primary legitimacy and I think there is nothing that is more of a legitimacy than being elected by your people. The President of course, has been give executive powers, but executive powers have been given to the President to exercise together with others under him, he has the Cabinet, he has the public service and all the other arms of the executive branch of government. And I believe that the people who should be heading all these departments all these various fields of work by the executive arm should have a certain amount of legitimacy they should have been elected by a section of our people.

Secondly, I want to invite Members to look at the security of tenure of those who are in politics. Being minister, as you may know, I think is the most insecure job. Because you never know when you will go. So, Mr. Chairman, I think it is a good idea it gives a certain level of permanency if someone goes in politics and has some kind of time frame that gives him an idea for how long he is likely to serve. I think it is important that those who are elected and become ministers know that even if they lost that job they can continue in politics by reverting to the position to which the people sent them i.e Parliament, and I think this is very critical.

Thirdly, in our kind of situation many people who are elected obviously are elected on political programmes or platforms. But I do believe that many of them aspire to hold senior government positions.

So if there are no prospects of people being elected or appointed from Parliament to government, we may run the danger of not attracting the most able people to run for Parliament. And I do not know how it would be done whether for example, if I aspired to be a minister, I would have to get the assurance, a guarantee from my presidential candidate that when elected he will appoint me a minister. First of all am not sure that he will be elected and secondly, even when he or she is elected, am not sure whether he will appoint me or not. But I am certain that if I am elected to Parliament even if I am not appointed I will go and represent the views of my people, I will represent the political platform, on which I stood and think that is the essence of politics. I therefore, on those grounds, Mr. Chairman, appeal to my Colleagues in this House to support my amendment that Parliament approves the appointment of Cabinet Ministers and that these Ministers should be only appointed from among Members of Parliament. Thank you.

THE CHAIRMAN: Let me summarise the position first. When you take it from the starting point of the majority report, the issues arising are actually two. From that point up to the minority report and up to the present amendment which is on the Floor. Two issues are really the ones that we have to resolve. We all agreed that there will be a Cabinet. Two, that the President will appoint that Cabinet okay. But we are not agreed whether there should be Parliamentary approval or not and that cut through all the argument that is taking place - all the argument that have taken place here. The second we are not agreed on is where should they come from. Should they be from the general population including Members of Parliament, or should they be only Members of Parliament? So for us to resolve these matters, I would like us to - since we agree, one, on the rest of the wording of the Motion, and we disagree and we divide on two. And we have debated then extensively, I would like us to pronounce ourselves on one (1) and then on the next. First of we have to decide who should Parliament approve or Parliament should not approve. So that we agree on that one then we go on the next one. Should they be from Parliament, or from generally both in and outside Parliament? Then we shall have solved the matter. *(Applause)* Now I want to put the question on whether there should be Parliamentary approval or not. There are those who say Parliament should approve and there are those who say the President should have a free hand.

(Question put and agreed to)

THE CHAIRMAN: Now we resolved the matter. The second question now, the ayes had it there must be Parliamentary approval, that one we agreed on now. Now the next one is where should they come from. From Parliament or from either Parliament - from both outside and inside Parliament - *(Interjections)* - order, order, do not see anything that we can discuss over this one. We have a very simple question. The other one was Parliamentary approval or not, we said yes, On this one is, should they come from Parliament only or from both parliament and outside Parliament. So we vote on that. Should the President in appointing Ministers of Cabinet appoint from Members of Parliament only, or from both Parliament and outside Parliament. I now put the question.

(Question put and negated)

THE CHAIRMAN: So the matter has been resolved as follows: That the President will appoint Cabinet with the approval of Parliament and in doing so may choose from Parliament and from without Parliament. That resolved the matter. Now that has resolved the question of Clause (1), I think at this juncture having successfully tackled a very important subject and given that the chairman has had the benefit of going in and out as Members have been doing, I will therefore, adjourn for lunch and we resume promptly at 2.30 we stand adjourned. Thank you.

The Assembly adjourned and resumed at 2.30 p.m

THE CHAIRMAN: When we adjourned we had just disposed of Clause (1) of Article 116. We are to go on to two and three. I will give the Floor to Hon. Mulenga.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, the committee recommends that a new clause (2) be inserted in this Article to read as follows: "All Cabinet Ministers shall be ex-officio Members of Parliament but shall not have the right to vote on any issue requiring a vote in Parliament." Mr. Chairman, I beg to move.

THE CHAIRMAN: Order. I see there is a minority report here.

MR. MULENGA: No, Mr. Chairman, there is no minority report on that one. The minority report is on clause (3).

THE CHAIRMAN: At least on page 36 that is what appears.

MR. MULENGA: Sorry. Mr. Chairman, I had got the impression when I got the two amendments that I read to you this morning as minority recommendations that they were substituting for what appears on top of page 36. But seeing the hand of Hon. Kinyata I remember that he would like - he had been included in this minority report for deleting clause (2). So there is a minority report for deletion of clause (2) and the leader of that minority is Hon. Kinyata.

THE CHAIRMAN: Hon. Kinyata you want to consider your minority report on (2)?

DR. KINYATA: Yes. Mr. Chairman, thank you very much. If you look on (2) and (3) clauses, these clauses are related and we have minority people on the committee conceded to take them together and we thought that these two clauses which are new when we debated in the committee we found that the clauses were carried by only two Members, the majority. So we wish to propose Mr. Chairman that these two clauses (2) and (3) be deleted. We wish to propose.

THE CHAIRMAN: I may remind Members that before we went for lunch we approved two things, one that the President will appoint subject to approval of Parliament Ministers of Cabinet and (2) that he may appoint either from Parliament or from outside Parliament but outside Parliament are those people who are eligible to be elected to Parliament. Now, the formulations in (2) and (3) are saying if they were to be carried, if I understand them, was that Cabinet Ministers shall be ex-officio Members of Parliament but shall have no right to vote in Parliament. And (3) goes on to say that since we approved appointment from Parliament as well, to say that a Member of Parliament who is appointed Minister vacates his seat in Parliament. Now, Dr. Kinyata's minority report is that we delete these two provisions. So what I want to know from Dr. Kinyata is, does he say we just delete, or delete and replace?

DR. KINYATA: Mr. Chairman, Hon. Delegates, if you could allow me to put up reasons why we do

consider that these two new clauses (2) and (3) be deleted and then we retain the original Draft then I would forward my arguments why?

THE CHAIRMAN: Which original Draft do you retain?

DR. KINYATA: I am talking of the clauses in Odoki's Draft.

THE CHAIRMAN: No, but what appears in Odoki's report is talking about the number of Ministers and that appears also on page 36 of the recommendation - as a recommendation. The other one is responsibility for Ministers, that is also there No.5.

DR. KINYATA: Mr. Chairman I am moving to delete, I am not substituting it for anything. I want these clauses to be deleted and we become silent about it.

THE CHAIRMAN: Then what about those people who are appointed Ministers from outside.

DR. KINYATA: That one I am going to argue about it, we would like to allow them to be ministers but ex-officio of Parliament. (*Interruption*) No, no.

THE CHAIRMAN: So, you will be replacing something, that is what I was driving at.

DR. KINYATA: Mr. Chairman, if you could allow me to give my argument.

THE CHAIRMAN: Okay, the minority report has seconders and so let us give Dr. Kinyata the chance to present his Motion on the minority report.

DR. KINYATA: Thank you very much, Mr. Chairman. I want to remind Hon. Members that the Constitution we are making is neither a Presidential system nor a complete parliamentary system. We are making a hybrid type of the Constitution combining certain good ideas from presidential and parliamentary systems. So one to stand here and you speak completely on the presidential system or on parliamentary system you would have gone wrong. Mr. Chairman, in a presidential system Ministers are not Members of legislature. Whereas in a parliamentary system they are and they can participate in legislative matters but we are saying we are not making one single system here. We do

accept that the President should be allowed to appoint some Ministers from outside Parliament and that these Ministers once appointed do become ex-officio Members of Parliament. Those are the ones appointed as Ministers from outside Parliament but those who are appointed from Parliament they should remain Members of Parliament representing their constituencies. Mr. Chairman, according to the report of the Uganda Constitutional Commission, page 339, the majority of the people of Uganda supported Ministers being members of legislature. I refer you to page 339 of the Report. In their view, Mr. Chairman, power and authority should be derived from the people through their representatives in Parliament. They argue that there is no way parliament can operate efficiently and effectively without the involvement of the executive members. The Commission also quotes a problem case in Ghana in 1979 when they passed a clause like the one you are considering, Mr. Chairman, and then when they started operating the constitution the whole programme of government even the parliament was paralysed. They had recently to go back and amend the article as we are talking now. So, Mr. Chairman, we know our society is still - you know, we are in a weak civic society and these civic societies we should not be rigid between the separation of powers from Executive and the Legislature. A rigid adherence to separation of powers can therefore only apply in a full presidential system, the absolute separation of powers cannot operate in a hybrid type of system which we are going to put up in this Constitution. Mr. Chairman, if the President appoints many Ministers from Members of Parliament and then these Ministers resign their constituencies, it would be unduly expensive to have to go through by-elections to elect other Members of Parliament. Mr. Chairman, somewhere else in this Chapter we have recommended that the President appoints a maximum of a cabinet of twenty-one and other Ministers also twenty-one, that makes forty-two. Supposing, Mr. Chairman, tomorrow the President says okay, since I have been allowed to appoint people from within and outside the Parliament let me take thirty or thirty five Ministers from Parliament and I take twelve or seven from outside. That would mean having a by-elections in Uganda for about thirty to forty people then you bring all those people to Parliament remembering, Mr. Chairman, the people who have been appointed Ministers, we are recommending that they become ex-officio of Parliament then you are bringing in new Members

of Parliament. I am wondering how big Hon. Delegates we would like our Parliament to be because the size of Parliament would be too big and too expensive to maintain. It will certainly be well over 300 Members of Parliament. In Odoki's Report the people of Uganda preferred a small well maintained and efficient Parliament. If we leave the constituencies, for example, as they are now, 214, Mr. Chairman, plus the Army 10 members, Women 39, the Youth 4, Trade Union 2, Disabled 1. And then I hear some people who want to even make some new amendments for the President to nominate some people to Parliament. Then you add on new additional Members of Parliament to replace those who have been appointed Ministers, our Parliament is going to be too huge, too big to be maintained by Uganda. Mr. Chairman, conversely where a Member of Parliament appointed a Minister vacates his seat and another is elected there are two people now in the constituency. What I call two giants in the same constituency and these are likely to cause conflicts especially so towards elections. One has got to drop out. I can give you an example of the Swedish Constitution where this system you are talking about is practiced and when a Member of Parliament who was appointed a Minister is dropped through a reshuffle he goes back to his constituency and the other one who has been appointed or elected by the people to replace the one goes back and he is dropped completely. Is that the system you want to include here in Uganda? Now, Mr. Chairman, a Minister without individual constituency would be detached from the people who voted him as the number one in his constituency. Now, you are divorcing him from the constituency which liked him and voted him as the number one. Mr. Chairman, a constituency whose Member of Parliament is appointed a Minister would also be deprived of its best choice for representation purposes. Because, Mr. Chairman, all of us were voted here on merit and the people liked you, they voted you as number one. You can imagine if you are appointed a Minister tomorrow, they have to go back and get the residual people behind and come to replace you. Now you are forcing people to fall back to the second or third choice which may not be their own liking. Mr. Chairman, a Member of Parliament who accepts such appointment and then he is later dropped in a reshuffle would be unfairly disadvantaged as he or she would be - she has no constituency to fall back to unlike that one I have mentioned in Sweden. And another point, Mr. Chairman, a Member of Parliament who accepts

such appointment and he is later dropped in a reshuffle may be in future refuse being appointed in fear of losing their constituencies. Hence forcing the President not to appoint Ministers from Parliament and which Parliament I know would be composed of the best brains in the country. So, Mr. Chairman, I know some people are going to argue that the Member of Parliament who becomes a Minister will have double loyalty. He will serve the government and then he has to serve his constituency in case there is a policy which these people do not want. He will not be on the side of the people but of the government but everywhere, Mr. Chairman, even if you include Britain, Members of Parliament do become Ministers and they remain representing their people. Mr. Chairman, I know people who are going to say okay some Ministers do not visit their constituencies, their constituencies are languishing alone. They do not see the Ministers, Ministers are visiting here and there or they are in the cabinet or they are on government routines. But Mr. Chairman even Members of Parliament who are not ministers a lot of them I see they never go back to their constituencies. I have seen a lot of them who spend months and years without going back to their constituencies. So, Mr. Chairman, with those few things my colleagues will add on, we beg to oppose the insertion of these two clauses. I will request Members to support me that these two clauses be deleted. I beg to move.

THE CHAIRMAN: Now, let us first of all know what we are talking about then we can decide. The Member is moving, one, for deletion of clause (2) as it appears in the committee's report. He is also, moving for the deletion of Clause (3) although when I questioned him he said he would like to leave something there to do with those people who are not Members who could be appointed Ministers. So that they become ex-officio Members. To help him we cannot take the two together. It would be necessary for him to amend rather than delete clause (3) if he wants to achieve what he is seeking for.

DR. KINYATA: Okay. I can amend it.

THE CHAIRMAN: Now, since we have been going clause by clause we can debate generally but when it comes to pronunciation we decide whether (2) should be deleted or should not.

MR. DICK NYAI: Thank you very much. Mr. Chairman, we had a similar situation when Hon.

Katenta Apuuli moved for a deletion. And I remember, Mr. Chairman, you ruled that for clauses which were not in the original Draft we can not proceed to delete but we can deal and dispose of them as the case may be if we support the Motion and it passes that is the case. If we defeat it then it is automatically deleted. So I do not think, Mr. Chairman, that we should be talking about a Motion of deletion rather than talking about the substantive Motion of the minority report on here.

THE CHAIRMAN: And what was the minority report. The minority report was that they did not want to hear anything about this so how, do we go about it?

MR. DICK NYAI: Yes and then they convinced ourselves why we should not support the majority position because we cannot delete what is not in the substantive Draft.

THE CHAIRMAN: No, we have two Drafts. The Odoki Draft and there is a report of the committee in which they are recommending that we adopt these new provisions. These people are saying actually we should not accept the recommendation from the committee for the reasons they have just given and so what we do, whatever language used in this case, we are just deciding the fate of these two provisions. Hon. Ben Wacha you wanted some clarification?

MR. BEN WACHA: Thank you, Mr. Chairman, Sir, I want a small clarification from you because, Sir, I want to support the deletion of this clause (2). But I want to go ahead and substitute another clause for it. Now, I do not know how can move from here, whether I can now go ahead and do it or you will give me a chance later on because - (*interruption*)

THE CHAIRMAN: Would what you intend to insert be directly against them or would it be just modifying what is in the report or what.

MR. BEN WACHA: The principle will be fundamentally different because I do not think what is reflected in this clause is what should be reflected there. I think Clause (2) and (3) put together are contradictory and do not reflect what we should have reflected.

DR. KABERUKA WILLIAM (Ndorwa County West): Thank you very much, Mr. Chairman. Considering the Article which we passed this morn-

ing and also what the minority report seeks to do. I would like first of all to state that I also, I am of the view that Members of Parliament appointed to the post of a Minister should remain Members of Parliament. But I also realise that the clause which we passed to bring in Members to cabinet from outside the Parliament. And there is no where we have catered for then at least to be part of the Parliament of which the policies they are going to execute. So I would move, Mr. Chairman, that we provide a clause which makes - I mean that clause (2) as it stands in the spirit of the minority report be amended to read that: "Ministers appointed from outside the Parliament shall become ex-officio Members of Parliament." I beg to move.

LT. COL. KIIZA BESIGYE : Mr. Chairman, I would like to draw the attention of the House to the provisions of Article 122. The provisions of that Article says that the Vice President who could also not be a Member of Parliament. Of course the Attorney General or a Minister who is not a Member of Parliament is entitled to participate in the proceedings of Parliament and except that they shall not be entitled to hold any office when they are in Parliament. I think this provision - (*interjection*)

THE CHAIRMAN: He is informing the House. Let him inform us first. When you have two conflicting information you just confuse. I think let him inform you first.

LT. COL. KIIZA BESIGYE: Since we have the Vice President who may not be a Member of Parliament and the Attorney General. So I do not think there is need to provide afresh for it except to transfer if the need be the provisions of Article 122 to 116.

MR. AMAMA MBABAZI: Mr. Chairman-

THE CHAIRMAN: No, Actually let us go back to a more flexible method of work really. If we go on tying ourselves to the technical rules of minority report and majority we just confuse ourselves. So we can frame a question. If a Member of Parliament is appointed Minister in pursuance of what we have already approved should that person remain a Member of Parliament or not. We answer that. Then we go on and we say if a person is not a Member of Parliament and he is appointed a Minister does he become ex-officio Member of Parliament or not and if so, does he have a right to vote?

MR. BAGENA ANTHONY (Bufumbira County East): Thank you, Mr. Chairman. After you have given that very good clarifying example I think the Members will very easily come to the decision and support the recommendation of the committee. Because the principles they are really trying to protect which all along we have maintained are very clear. A Member of Parliament who becomes a Cabinet Minister becomes a Member of the Executive. We have been saying we want to separate the powers of the legislature from those of the Executive. Consequently there is no way you can bridge the gap and make a Cabinet Minister a Member of Parliament after you really maintain this principle. Secondly, there is likely to develop a conflict of interest if you do not separate a Minister from being a member of Parliament. when you become a Minister you are a national Minister. As a Parliamentarian you are specifically (*Interruption*)

THE CHAIRMAN: Order, order. Give him a chance. Let him advance his arguments. Some of you are hiding under the guise of information and clarification to make statements. So let him advance his argument.

MR. BAGENA: Mr. Chairman, it is true whatever may happen in any part of Uganda may be a matter of national interest. That is true but there are situations where as the Minister you will be required to act as a national Minister. Sometimes, in contradiction to what your specific constituency requirements would demand and when that case does arise and you still have the role to explain your action to your constituency vis a viz what you took in the national interest it may be a problem. So, Mr. Chairman, I think the principle of separation of powers is too sacred just to do away with just because some of us would want to occupy two positions in Parliament and in the Cabinet. Therefore I would like to support the committee recommendation that once you are made a Cabinet Minister you move from Parliament you become a member of the Executive and you do not remain a Member of the Legislature. Thank you, Mr. Chairman.

MR. WASSWALULE (Rubaga Division North): Thank you very much, Mr. Chairman. The position which I support is the one which would not include Clause (2) but would include Clause (3). I go for Cabinet Ministers not being Members of Parliament.

ment and also not even being ex-officio Members of Parliament. Now, when you come to separation of powers you have got to look at the Parliament and these Cabinet Ministers and what is it that influences this Separation of powers? It is not that they can vote but it is the fact that their presence is there and their daily contact with these Members of Parliament and that is basically what we want to reduce. So by reducing their presence you reduce their influence, their being around in the corridors of power, their being around offering people jobs and things like that. So as I said Clause (2) I would rather that is out and Clause (3) remains. Now, this would also discourage Members of Parliament from aspiring for Ministerial posts and during the aspiration for these posts they would compromise their positions by making a ministerial appointment less attractive to a Member of Parliament. It means that Members of Parliament are likely to be more independent than hitherto they have been. When a Minister who loses his post as a Member of Parliament is dropped as a Minister and falls into oblivion, that by itself makes being a Minister less attractive to a Member of Parliament. Now I want to consider whether or not I will give up my seat and go and serve the national cause or I will remain and serve my electorate. And it is important by divesting these two because a Minister is bound by collective responsibility. There is a potential conflict of interest between what a Minister may be required to do as a Cabinet Minister through this collective responsibility and what the interest of his electorates may be. That is why it is very important to draw that demarcation between the two. So, Mr. Chairman, as I said I would support for Clause (2) to be dropped. Ministers can go to Parliament when they have to defend their Motions. Ministers can go to Parliament when they are invited to substantiate certain points. Otherwise they can go to the public gallery like everybody else. Thank you very much, Mr. Chairman.

DR. KAWANGA SSEMOGERERE (Busiro County South): Mr. Chairman, I endorse the principle behind the committee's majority recommendation. Mr. Chairman, from the experience that we have had I think it is quite clear that we have progressed sufficiently politically in this country now to separate as far as possible the powers of the legislature and of the Executive. It is going to help in levelling the playing field between the different Members of Parliament if the Ministers are not sitting Members representing particular constitu-

encies. There is no doubt that the temptation is great for a sitting Member of Parliament who is a Minister to look more favourably to the area where he comes from and if he remains both the Minister and also a Member of a particular constituency that temptation is going to increase. When one looks at the cases we have had so far of corruption even in the Ministries, that temptation will be very clear that you tend to look to your area. To support that area more than others. Now, taking into account the principles which have been stressed in this C.A, we have I think that - *(Interjection)* Okay, looking over our own experiences even the points that have been stressed in this C.A, Mr. Chairman, we have found the need to avoid conflicts of interests - *(Interruption)*.

THE CHAIRMAN: Let him finish. No you people have been hiding behind information points to make speeches. Please go ahead.

MR. KAWANGA SSEMOGERERE: I want to make it very easy for others to respond, I want just to summarise the main reasons for my supporting that once you are made a Minister you should resign the seat for which you were elected. There are really four main points. One is that when it comes to government policy to cater for the Minister's constituency and the constituencies of the part for which he belongs - we should avoid that. Secondly, the principle of separation of powers, thirdly to avoid conflict of interests and lastly patronage which leads into corruption. If we are being honest and we look back at the time when the C.A elections were being campaigned for. There was a lot of evidence of this pressure on Members of Parliament and many of them yielding and looking only to their constituencies but using government funds to support these kinds of problems which we have gone through. And we are now looking for a Constitution for posterity, we should try to avoid more temptations in for the future. Definitely there are risks when one becomes a Minister that under this arrangement he may lose, he may not have a chance to sit in Parliament. But those are risks which we must take all the time. You take a decision, you make a choice one way or the other. I support the majority recommendation.

DR. MATEKE PHILEMON (Bufumbira South): Mr. Chairman, we are trying to establish democracy in this country. And we are saying although we have got a hybrid system as indicated

in the Odoki Report, we must have separation of powers. Because if you concentrate Legislative and Executive Powers, in the hands of one organ or one arm of the State, we shall be promoting the tyranny of the Executive. So the presence of Members of the Executive in Parliament with a voting right would be undermining this very important principle of separation of powers. Secondly, Mr. Chairman, Ministers who are Members of Parliament at the same time will not have time to concentrate on their constituencies. *(interruption)*

THE CHAIRMAN: Order, order. Will you give Hon. Mateke a chance to air his views and could the Hon. Member for Nakaseke stop interrupting?

DR. MATEKE: I am speaking with a lot of experience. So let us give the Ministers time to concentrate on their ministries and then we allow Members of Parliament to concentrate on their constituencies and on other national issues. The presence of Ministers in Parliament, Mr. Chairman, would undermine the supremacy of Parliament in legislative matters. Because of collective responsibility if a cabinet wants to introduce unpopular measures definitely those Ministers in Parliament with a voting right will have to undermine that supremacy. So on that basis, Mr. Chairman, I support the majority report.

MR. KATENTA APUULI (Conservative Party): Thank you, Mr. Chairman. Mr. Chairman, Hon. Delegates, we have already pronounced ourselves in the first clause of Article 116 and said that a President can appoint Ministers from outside Parliament. That therefore puts us into a position of making a choice, either we shall have to allow nominated Members of Parliament or Members of Parliament who are ex-officio Members. We have to make that choice. Now having made whatever choice we make we want to determine whether people who are appointed as Ministers continue to be Members of Parliament on full time basis or they should not be Members of Parliament on a full time basis. We have also to go further and determine whether if one gets appointed a Minister he has to make a choice whether he stays in Parliament as an M.P. or goes to Parliament as an ex-officio Member but belongs to Cabinet. Now, in this matter, how does one make his determination and on what basis would one make such a determination? In my view Hon. Delegates is that you cannot eat your cake and have it. Having therefore made the decision in

Clause (1) it is imperative that we shall have to provide for ex-officio Members of Parliament who become Ministers who were not Members of Parliament already. Secondly, those who want to serve as Cabinet Ministers should make a personal determination whether they want to be Members of Parliament or to be outside Parliament. Therefore that brings me to the point as to which side of the issues I stand. In my view if you are appointed a Member of the Cabinet you should resign your seat. If you do not wish to resign your seat then do not accept the Cabinet post. It is a choice you can make, it is not imposed. It is not necessary for you to be an effective parliamentarian and be a Minister at the same time. You do not have to be a Member of the Cabinet to serve your constituency. If anything, working as a Member of the Cabinet puts you in a position of contradiction with your role as an M.P. for a number of reasons. First of all, there are-we have provided that there will be a certain number of Ministers. There are not enough Ministries to go round the districts. Therefore you are going to serve fairly all the districts of Uganda if you should not belong to any specific area. Experience has shown that those areas that have got cabinet ministers - *(interruption)* Experience has shown that being a cabinet Minister at the same time a Parliamentarian with a constituency puts you into temptation for corruption because you are tempted to serve the nation at the same time smuggle something for your constituency. Sometimes you do that by using unfair means. Hon. Delegates, Ministers who are also Members of Cabinet exert undue influence on matters. Instead of taking objective decisions they take decisions that favour their own constituencies. Since this is a matter of choice there is no compulsion on you to become a Cabinet Minister. You do not have to be a Cabinet Minister to become an influential Member of Parliament. In all fairness people who decide to become Members of Cabinet should resign from their constituencies. It is a risk that you should be prepared to take. If Parliament is looking for objective influence on the Executive you can not be a judge in your own cause. If Ministers whom you are going to make accountable to Parliament are also your own Members you can not objectively judge them. Secondly, when Members of Cabinet are also Parliamentarians they will tend to influence policy in a manner that favours themselves. Therefore, I would like to appeal to Hon. Delegates that since we have already pronounced ourselves in 116(1) that Members of Cabinet can be picked from outside Parlia-

ment it would be only fair that Clause (2) and Clause (3) do stand part of this Constitution. I thank you, Mr. Chairman.

MR. BASOGA NSADHU (Busiki County) Thank you Mr. Chairman. I am quite happy with the ovation I have received. I want to make a few remarks. Mr. Chairman, in the Article that we have just pronounced ourselves on the yard-stick for a Member of Parliament. I mean for a Cabinet Minister are the qualities of somebody who has passed through an electoral college and has qualified to be a Member of Parliament. That is the yard-stick we are using. We are saying that the President will select the Cabinet Ministers from among Members of Parliament or somebody who qualifies to be a Member of Parliament. Somebody who could contest and is voted on by any electorates has been proved hard material enough to work as a Cabinet Minister. That is the yard-stick, the basis of which I want to develop my argument. Mr. Chairman, we have seen careers being developed. I have not yet learnt of a career of a Minister but I have learnt of a career of somebody being a politician and we even have veteran politicians. So there is no special quality other than the one of a tested person through a career of politics and the only way one excels himself or proves himself as somebody who is interested is his capacity to constantly contest elections and lose or win. Now, Mr. Chairman, if somebody has contested an election and he has won, he has defeated a number of people who may also be veteran politicians. Then somebody is then elevated to carry on further responsibility in Africa today. Mr. Chairman, where our heads of state and with due respect to those who say we have matured, they carry out their reshuffles by radio announcements as and when they want and our people are not allowed to reshuffle their Members of Parliament by radio announcements. The electorate is only allowed to elect a member of Parliament as we shall have said after five years. So if somebody has become a Member of Parliament and had been elevated to that post of a Minister and he is dropped by a radio announcement after one month, it has ruined his career. Even the person that he defeated in his own constituency - *(Interruption)* - I accept the information Mr. Chairman.

THE CHAIRMAN: No, let him go on. I have found that Members are hiding behind information to make speeches so you go ahead.

MR. BASOGA NSADHU: Okay, Mr. Chairman. I am about to summarise. Mr. Chairman, that is the problem that we shall be in. Of course, it is a personal choice. But what is going to happen is that with due respect to all the people that we have into the country, we shall have a small category of people wanting to be Ministers. And I would like to suggest Mr. Chairman that the Hon. Members reconsider their stand and reject Clause (2) and (3). Thank you very much.

DR. MUSANA SOPHY (Buikwe County North): Thank you very much, Mr. Chairman. I rise to support the Motion as it stands, as the committee reported for two reasons. I do not go by the extreme position that Ministers should go to the gallery. I would maintain that they remain ex-officio. Because by being ex-officio they will be given the opportunity to present Bills to Parliament which will become law since we have given Parliament so much power but they should not be in a position to vote so as to influence whatever policies go through Parliament. Secondly, I do not think being a minister is a career so there is nothing like saying when a Minister is dropped his career is ruined because somebody does not need special training to become a Minister. In any case, I think a constituency - because by the first person becoming a Minister then they will have a chance to present someone else who can serve them and let the first person serve as a Minister. With those two reasons, Mr. Chairman, I support the Motion as moved by the committee.

THE CHAIRMAN: Hon. Delegates I have heard four Members speak against the proposition. The proposition was - the question was should Members of Parliament who are appointed Ministers remain Members of Parliament in their own right or they should vacate their seats and become ex-officio Members. I have heard of the four or five who have spoken against the proposition there was one fundamental proposition about the gallery but otherwise the rest were saying they should vacate their seats and become ex-officio members. I have heard one Member supporting the other side that they should return their seats - two if you add the Mover. Now, I want to hear those who are for the proposition that they should retain their seats.

MISS KALIKWANI IRENE (Kamuli Women): Thank you, Mr. Chairman. Mr. Chairman, I would like to oppose the proposition that

Members of Parliament who are appointed Cabinet Ministers should vacate their seats. One Member has already told us that the test of a person's quality as a politician is through the people. Now, if a Member has passed through that test and elected into Parliament it means he enjoys the confidence of the people. And if he has been again identified at another level as a capable man or woman to serve as a Cabinet Minister, surely we need those services. We need that kind of high calibre in Parliament. If we ask them to vacate their seats we have two options, either we shall have second rate Ministers because people of quality would prefer to remain Members of Parliament and serve their people. Because that is the mandate they have or become Ministers and forget to be answerable to their electorate. I think both alternatives are dangerous and we should avoid them. Mr. Chairman, therefore, I beg to strongly oppose that proposition.

THE CHAIRMAN: Those who are supporting the proposition that they should remain.

MRS. KABIRISI LUBERENGA (Women - Bushenyi): Mr. Chairman, I rise to oppose the notion that M.P's who become Ministers should vacate their seats. Mr. Chairman, my concern is if you are going to be forced to vacate your seat when you become a Minister it means we are actually going to end up with mediocre Ministers. What one should consider is why does one actually stand? One stands in my view because you have decided to make politics your career and that is a fact. If you have decided to give up everything else and take on politics as your career and you go to the people whom we have given the powers to rule this nation and they elect you to become their M.P. and you come to Parliament and then you are identified to go to a higher level to serve the nation. If you give up your seat that means actually that you are destroying yourself politically because what is going to happen is that after a few months you are going to be dropped as a minister then what happens next? Parliament is for five years. As somebody has pointed out there is no period demarcated for how long you can be a Minister. So if I am going to a Ministerial post is going to mean that I lose my seat for the next five years then I will not accept. So what we are going to have is that you are going to have people who are serious politicians refusing the ministerial posts. If you take that risk and you give up your seat and after five years you go back and say I am back now can you elect me? If I was somebody

voting I would not give you my vote because you let me down the last time I chose you to go and represent me. Secondly, there has been on the Floor a view that M.P's who become Ministers become inefficient but then somewhere in this Draft there is a right of recall. If you put there somebody, he becomes a Minister and the people who are supposed to be served by that M.P. feel that he is not efficient they can recall him or her. So, why should we make the people's choice - saying, you elected the right person, thank you very much, but now that we have given him or her a ministerial post, you lose her as your M.P. Let us leave the people with the power to choose the people that they want to lead them, and we do not force them to give up that position.

Mr. Chairman, with those few remarks, I would like to urge the Members of this Assembly to support the idea that if you have been given an honour to become a minister for however long, you should retain your seat and keep serving your people. Thank you, Mr. Chairman.

THE CHAIRMAN: Now, those for that proposition.

MR. KIGAYE-BILLYAWO (Budaka County): Mr. Chairman, thank you very much for the chance. Mr. Chairman, what is killing us is political greed and political ambition, and also we should be aware that we have got a lot of human resources which we can utilise. In every area we have enough resources out of which people can choose their leaders. Mr. Chairman, if we were to be very strict here, some Members who are ministers, and we looked at their records. They would not be here if we are to be very strict because they are heavily committed with the ministerial duties and they hardly attend CA meetings. They have no time to attend to other duties at the time when they are working as minister. Mr. Chairman, I would like to assure the delegates that, if you were to take the records in the NRC, you will see that if someone is a First Deputy Prime Minister, if someone is a C.A. delegate and at the same time a minister. How efficient is that fellow to represent his people in the Parliament? He does not even have anytime he can spare to represent his people in Parliament! Mr. Chairman, let us not pretend. Let us give people a chance and when you have become a minister to elect someone else to represent their views effectively in Parliament. How can you, if you are a minister of Foreign

Affairs, for instance, you are outside this country for a month, for two months, and yet your people are suffering! I support the idea that when you are appointed a minister you should forthwith stop to become a Member of Parliament, but you can become an ex-official. Thank you very much.

THE CHAIRMAN: Hon. Delegates, Hon. Kigaye although he was condemning others, he cheated the Chairman by coming under the guise of supporting the other side. Now, I am looking for those who are supporting the proposition.

DR. SPECIOZA KAZIBWE (Kigulu South): Thank you, Mr. Chairman. Mr. Chairman, I want to first of all start by saying that in running governments and affairs of the people, I feel that the principle of collective responsibility should prevail. Mr. Chairman, I envisage a Parliament after the passing of this provision where members of cabinet or government, be they full cabinet minister or deputy minister, if we stop them from sitting in Parliament, if they had been elected, I envisage empty front benches. What am I saying, Mr. Chairman? The primary responsibility of any politician is to always feel that they are accountable to the people who elected them (*Applause*)- not the people or the person who appoints them. Mr. Chairman, one of the reasons we have been having problems is that the governments we have had prior to the elections brought more people to Parliament- is because you get a President. He appoints ministers, which ministers would have never gone through the sieve of the people, which said ministers become, actually, not accountable to the people at any time (*Applause*).

Mr. Chairman, -(*Interjection*)- can you allow me to advance my point. I have not given anybody any point of information. If you listen a bit further you will be clarified further.

THE CHAIRMAN: I think Members by now they will have known the attitude of the Chair to points of information today. Because they were misused in the morning, and also yesterday by Members pretending to give point of information. Then under that guise they make their full contributions. I think we have to reduce on that. So, I will allow the Member on the Floor to continue advancing her points. Please go ahead.

DR. KAZIBWE: Mr. Chairman, this morning we passed a provision which was allowing the Presi-

dent to pick on people from outside Parliament to be minister, and from inside Parliament to be minister. What was the rationale behind this? It was not that we only wanted him or her to pick on people that are technical, but we allow the President to pick on Member of Parliament so that he or she gets a mix of experience. At any one time during cabinet to be able to effectively come up with policies and programmes that are people sensitive. Mr. Chairman, the moment you divorce the responsibility of a minister collectively as a cabinet minister and you divorce their responsibility from the responsibility of Parliament, you are coming up with two fronts where ministers can come up with their programmes. They are collectively responsible as cabinet, as government and you have a different set of people's representatives who also come up with their decisions. At the end of the day we shall get bottlenecks in implementation, we shall get bottlenecks in the delivery of services to the people. Mr. Chairman, I am looking for a time when Ugandans will realise that being a minister is because you are serving the nation. Notwithstanding that you have also been seen, if you are made a minister from Parliament- you are being seen as a person who is sensitive to the needs of the people. And we need that kind of person to continuously be tapped just like Members of Parliament in knowing that the feeling of the people in Parliament - the Members of Parliament who are not ministers are also known to this minister who has also retained their constituency. Mr. Chairman, Members have argued that when you become a cabinet minister you are too busy to look after the affairs of your constituency. I have known many Members of Parliament, Mr. Chairman, who are not cabinet ministers, who are not deputy minister, and yet their performance in their constituencies is worse -(*Applause*)- and some of them even sit in Parliament and they do not contribute anything. So, they are deficient in Parliament and they are deficient in their constituencies. Mr. Chairman, on the question of the issue of it being too much. I will try to become a bit more Christian and talk about the Bible where people were given different numbers of talents. Some were given five and other were given three, others two. That is the history of humanity. To those that more is given more is expected. If you are given the responsibility of being a minister on top of being a Member of Parliament, it means you have been chosen by your people to serve more. So, more is expected of you. Mr. Chairman, I would like to envisage an area where if Member of Parliament becomes a minister, this minister is not only think-

ing about the appointing authority, and saying yes. Yes, when you are a Member of Parliament, according to some of our experience, we have been ministers and Members of Parliament, but we can afford to say no I will not sign this. I will not sign that, because not only am I a minister, but I am accountable to the people of this country, I am a Member of Parliament, and I know that at the end of the day not only will I not have my status reduced but my image will be enhanced in the eyes of the people of the country.

So, Mr. Chairman, I would like to plead with Members here, that in becoming a minister you are not looking for an extra job. You are doing a service to the country. When you become a minister you are not paid double! In fact, I wish Hon. Members could ask the Chairman of our privileges committee whether as a minister he is better off financially now or when he was a Member of Parliament. I would really love to know that. So, I would like to plead with the members to respect the will of the people when they choose somebody who is able to be a minister and they reject the provision or the recommendation by the committee. Thank you very much, Mr. Chairman.

MR. LUBOWA MOSES (Budiopo County): Thank you very much, Mr. Chairman. Mr. Chairman, and Hon. Members, I am totally opposed to the opinion expressed in clauses 2 and 3 which is an indication that the majority of that committee really were in for that. I base my argument on the fact that with the experience I have had as somebody who has undergone an exercise of elections in Parliament and also in CA. As a representative of the constituency, I have never believed that the desires of my constituency should also conflict with the national cause. As a representative of the people, I prefer coming in with the spirit of give and take, this entails the fact that I am meant to explain the cause of my people to the nation and the cause of the nation to my people. When you become minister, I believe you get the advantage of becoming more nationalistic than before and thinking beyond your constituency. I personally believe the Buganda cases of say 1964, 1962 and then the outcomes of the 1963 Constitution did not simply affect Buganda but affected the entire nation. For that matter if I were a representative from say Budiopo County and Kamuli, I would think basically of solutions that will not only help not Kamuli, alone but solutions that will help Uganda out of problems. If one was to talk of Federo, for instance,

it is another example as *-(Interjection)-* as has been expressed by a certain Hon. Member. We are so unfortunate that we have some Members here who came with rigid decisions and did not come with a spirit of give and take. And whatever is being discussed here has certain other fora like the Federal issue, you could really take it to be something national, the problem should be solved here - *(Interruption)*

THE CHAIRMAN: No, please, could you discuss the Motion? Do not divert to other issues which are not before us yet.

MR. LUBOWA: Okay, Mr. Chairman, the fears that a Parliamentarian appointed to a ministerial post would divert the national resources to his constituency will not count much. Because it could even be worse with that one who is appointed minister and under obligation to resign his seat. He can reap the advantages of being a minister and at the same time try to fight off whoever will have come it to replace him, that one can even be more disastrous. Mr. Chairman, the question of efficiency and inefficiency. We have here examples, if you are talking of inefficiency on the side of a Parliamentarian who is appointed minister, I really do not know. Just a few months ago, I heard the people of Busiki jubilated just because their representative was appointed minister and they have a lot of hope in him, the Busiki minister. So, I do not think you can talk of inefficiency of somebody who is appointed to ministerial post and his people still have a lot of faith in him. That thing will not work. And the case of efficiency on the side of a Parliamentarian appointed as minister, I do not think for somebody at that level- I do not think he would simply abandon his constituency for the sake of being minister. I think it serves the purpose that whoever the constituency elected, I think, is somebody nationalistic and recognised by the entire nation. Mr. Chairman, just recently we had elections, as has been expressed by the Hon. Member from Kigulu. There was a yardstick used just recently when we entered the contest for CA elections. We had ministers entering the arena and non-ministers entering the arena. The results indicated that some ministers failed to make it and non-ministers also failed to make it. In other words it does not count whether you are a minister or not. I, therefore, sum up by indicating that clause 2 and 3 are really unnecessary and should be replaced by certain other provisions other than what we have here. Thank you very much.

THE CHAIRMAN: We have heard five speakers on either side. This is a matter where I have noticed from my survey of the field that we are not likely to get a good answer on the voices. So, we are going to divide. The proposition is this, we are deciding on the question whether a Member of Parliament who is appointed a minister as we approved in the earlier provision, remain a Member of Parliament or he should vacate his seat and become an ex-official member. Those who say that he should resign his seat as a Member of Parliament and also be a minister should go to the Chairman's right. Those who say that he should vacate his seat and become ex-officio member should go to the Chairman's left. Those who have no views on the matter should come in the middle here.

Order. Now the results of the division, and the Chairman was right that it could have been very difficult to tell on the voices. There were 215 Members in the chamber at the time of the division, and the proposition was the one arising from the minority report. The summary I gave you was that of the minority report, that a person appointed a minister should retain his constituency and be a Member of Parliament. That is in summary. There are those who were saying no, that was the minority report and we are dealing with the minority report first and determine the fate of it before we go back to Hon. Mulenga in respect of - agreed.

HON. DELEGATES: Yes.

THE CHAIRMAN: Now, the result of the division is as follows. Those supporting the view of the minority report were 102, those against the view of the minority report were 113 (*Applause*). Now, since the minority report view is less than half the members, the view of the minority report is lost. So, now because we went to a division we cannot assume that the simple majority is sufficient to carry the other side. So, what we have to do is to go back to the majority report as it appears in the committee's report. But given the numbers as they are, if we voted again we would be beginning our journey towards a referendum. Because for this view also to carry, what is in the majority they will need two thirds of the members present now and more. Now, 113 is not two thirds of 215, it is less. So if I was to call a vote now, unless there has been a lot of conversion between the time you voted and now, you would end into a deadlock. They will get more than half the members present but less than

two-thirds and, therefore, it will be a contentious matter. And it being a contentious matter we would be beginning our journey towards a referendum on the issue. Now, to avoid going to - having to vote and bring ourselves to a situation where - unless we withdraw the Motion, begin walking towards a referendum. In my view this matter should be stood over, and let the members consult-talk among yourselves. We could start now by talking, alternatively we stand it over, you consult among yourselves and we revisit it, knowing fully well - of course, someone could come with a compromise formulations along the way. Alternatively we can send it back to the committee for further consideration. Because it is also sometimes very difficult for - now, how are you going to consult now? Hon. Atwoma Tiberio.

MR. OKENY TIBERIO (Chua County): Mr. Chairman, with due respect to your ruling or suggestion given to this House, that we should stand over this matter. I think this has been a matter that has been fully discussed now and it is so fresh in our minds, and still we have the time. I think, Mr. Chairman, it is will do for this nation that this matter should be settled now.

MR. KATUREEBE BART: Thank you, Mr. Chairman. I would support your idea that we refer this matter back to the committee and other members who would wish to move amendments. That would, maybe, polish it up and so on, could do so that it comes back here in a better shape. In the meantime we stand it over and we move on with other provisions.

MR. MULINDWA BIRIMUMAASO (Bukoto West): Thank you, Mr. Chairman. I agree with you because this debate is a debate on three fronts. It is a debate that must attract reason in consideration with what is ideal. It is a debate that must attract reality and considering our experience, it is a debate that also must consider self interest! So, Hon. Chairman, I concur with you that let us sober down to concentrate on those three and decide after some time. Thank you.

DR. MAGEZI DAUDI (Jinja Municipality East): Mr. Chairman, I thank you. Mr. Chairman and distinguished Delegates, I notice that when this Motion is put the position of the majority report vis-a-vis the Odoki draft, the Nos, if we take the 102 will be requiring a simple majority to throw out the

proposition of the majority report. That is my first observation.

Secondly *-(Interruption)*.

THE CHAIRMAN: Sorry, can I get that properly?

DR. MAGEZI: If you were to put the position of the majority report that 2 and 3 or article 116 be part of the Constitution, the NOs require a simple majority to throw out the majority report, and we stick to what is in the Odoki Commission. Notwithstanding what we have gone through, we are now saying if a matter appears to be contentious we should shelve it for the time being. The matter which is not provided for in our rules of procedure for the Constituency Assembly

THE CHAIRMAN: Which rule particularly are you referring to?

DR. MAGEZI: There is no provision that a matter if it appears to be contentious you can shelve it for the time being and continue with other matters -

THE CHAIRMAN: Can you read rule 45?

DR. MAGEZI: Yes, that is the matter. You see, I am trying to avoid a situation which will put us under question marks which you cannot justify to the electorate. Unless we are referring this matter back to the committee to re-examine and then recommend to the plenary, which we have done before, what we are trying to do is to say let people lobby and this lobby can be taken when we have already voted. There is a provision for consultations after a vote has been taken. I would beg you that we proceed in accordance with our rules we have adopted, unless those rules have been amended to cater for this. Otherwise we are going to be accused of rigging this Constitution.

MR. MUSUMBA: Thank you very much, Mr. Chairman. The Chair has already ruled under Rule number 45, which provides very clearly that such event and such ruling the decision of the Chairman on the matter is final. Mr. Chairman, therefore, is it procedurally correct to go on revisiting the matter upon which you have already made a ruling? Mr. Chairman, I beg that we follow rule 45, the matter is ruled upon as you have done, and we proceed with other things.

THE CHAIRMAN: No, I am trying to find what the general view in the House is. Should we refer the matter to the committee so that it is re-considered and they come back to us on it? Or should we leave it for general consultation? This is where I have been - Hon. Kanyeihamba, can I hear from you please?

PROF. KANYEIHAMBA: I thank you, Mr. Chairman. I think that the matter is very clear. Your ruling, which I believe is in accordance with Rule 45 is in order. Because, Mr. Chairman, what we have heard a majority report which is not the substance of the Odoki report. In other words, it is a departure from the Draft Constitution itself. So, we had three situations. We had a situation where we have the Draft Constitution making certain provisions. In fact, in silence as to whether ministers should be Members of Parliament or not. It is silent on that one. That is one position which we can still adopt. Then Select Committee 2 went and made these recommendations which we have not dealt with yet, at least, as far as voting is concerned. Against that recommendation there was a minority report which we have dealt with and we have disposed of with. It does not say in the rules that once you have disposed of minority report you must immediately vote on majority report. There is no such provision in our rules. So, I do not know why people are insisting that we must do it now. It is not in the rules. What is in our rules is that where a matter is not provided for specifically in the rules - which this kind of minority report is *-(Inaudible.)* - then the Chairman will rule on that matter and his ruling will be final. So, Mr. Chairman, when we come back after some consultation among ourselves, we shall address ourselves to the majority recommendation from Select Committee 2. Should that be indecisive then we have the final alternative of going back to the original draft which is the basis of our debate, and we can address ourselves on that. It is only after those scenarios have failed that the idea of saying now we go and consult and go for a referendum will arise. I thank you, Mr. Chairman.

THE CHAIRMAN: But I think Members are under a mistaken view that we only begin matching towards a referendum if we are dealing with the substance in the Odoki text, that is not correct. Because our rules say, on matters concerning the Draft Constitution or any amendments to it. What the committee was proposing are amendments to the Draft and that too can lead us down to that

procedure until we reach a referendum. But what now we have to decide is quite simple and I think the Chairman rules on it, but I only wanted to hear from Members so that I am guided. In my view, we can - of course, we could have done one thing, we could have gone ahead and voted, and seeing these numbers we would have not had an answer. Because this being an amendment to the text it is a matter of substance, and not a matter of procedure. Therefore, we would require two-thirds to affirm the position from the committee. If we took these figures they would get more than half, the numbers here present, but less than two-thirds. In terms of Rule 27 we would be headed for a deadlock. And so in my view well it is not good for us to begin a process towards a referendum when we could avoid it. So, what we should do is to send this matter back to the committee. Let them go and discuss it in the committee, if they reaffirm their positions and because of consultation taking place it may be possible for this to find an answer on the Floor here when we revisit that matter.

MR. ADYEBO COSMAS (Kwania County): Thank you, Mr. Chairman. I am a member of the committee that made this recommendation, and that is why I had to sit and listen to the Hon. Members in the plenary today who are not members of committee 2. Mr. Chairman, we have just come from voting and we were 215. But now to take the matter back to us when we are about 50, I think you are giving us a further punishment. I would propose and maintain your earlier position that let this matter be stayed on, we make consultations and at an appropriate time we come back to the plenary together. But to take it back to the committee which has already done its job, I think it is just going to be unfair a bit. Because there is nothing I can see, I do not think I will do better than what we have already done. This is my point of view Mr. Chairman, with all due respect.

DR. OKULLO-EPAK (Oyam County South): Thank you, Mr. Chairman. I wanted to benefit, maybe, from you and from Hon. Kanyeihamba's remarks. That there is no provision in our rules of procedure which obliges us, after voting on a minority report to move straight to vote on the majority report. Mr. Chairman we may wish to recall that when we dealt with the elections of President under Article 106, Clause 2 (a) there was a minority report. We proceeded to vote by division on that minority report and the votes were 99 for,

110 against and the minority report was lost. We immediately proceeded from there to make decision on the majority report and it was lost by simple majority by consensus. Mr. Chairman, in view of the remarks made by Hon. Kanyeihamba that there is no provision in our rules which obliges us to move straight to vote and, therefore, we could easily decide to sleep over this matter. Because I was consulting my neighbour here whether there is any serious difference between the decision we made on that paragraph and the one we have just done now. Whether we could not treat the article under consideration in exactly the same manner we dealt with Clause 2 of Article 106 (a) on which had similar situation. There was a minority report, debated, made a decision on it by division. After we finished the division we came back, Mr. Chairman, and I believe you put the question and a decision was made by consensus. What is the typical difference between this particular situation with that one, Mr. Chairman, if you may oblige me and give me clarification. I thank you.

THE CHAIRMAN: Yes, Hon. Okullo-Epak, you are raising a valid question. We did proceed away to pronounce ourselves on the matter of the majority. But it appeared to the Chair at that time, that on a basis of consensus it was possible that we could pass it and the feelings may not be as strong as I can see them on these two. So that if I was, for instance, to call a vote now on the majority view. And I declare on the voices that AYES have it, and 51 members stand up here, I will be forced to go to a division. If I go to a division I would get 113 for the Motion and 102 against it and, therefore beginning my journey towards a referendum. That is all I am trying to avoid. Because I cannot be sure that my calling the vote could not validly be challenged in accordance with our rules. The rules say if a Chairman calls on the voices and is challenged by a number of 51, then he has no choice but to order a division. And I am anxious to avoid ordering a division on the matter when I look at these numbers here, because we would be deadlocked exactly within the meaning of rule 27. And that being the case we would now be required to begin matching towards a referendum unless the Motion is withdrawn.

MR. ABU MAYANJA (Busujju County): Mr. Chairman, in that case it seems to me that you are quite clear on that view. It is a reasonable view. You have the power and the authority and the responsi-

bility to this House to make a ruling. You have made a ruling, there are provisions for debating rules by the Chair, therefore, you rule and we shall follow what you are ruling.

THE CHAIRMAN: Anyway, the position now is this. I can see us arguing on what to do, I think, we have had enough from the Floor. What we do is this. We stand over the recommendations at Clauses 2 and 3, of the majority report. We can go on to 4, 5, and 6 because they are not dependent on 2 and 3, and then at some future time allowing for consultation - because I can see some members of the committee are not keen to have the matter back. We shall have the matter brought back and then we shall debate it again and made a decision. I will not call on Hon. Mulenga with respect to recommendations 4, 5, and 6.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, the committee recommends without any minority view, that Clause (4) be as follows: *"The total number of cabinet ministers shall not exceed 21 except with the approval of Parliament."*

MR. WANENDEYA WILLIAM: Thank you very much, Mr. Chairman. I would like the Chairman of the committee to inform us or to inform this august House, as to how they arrived at the figure of 21. Mr. Chairman, the point in raising this matter is that a country like the United States of America with bigger resources, they have fewer cabinet ministers - they have 12 of them. Therefore, Mr. Chairman, unless we could get this information maybe, we could think of reducing the numbers so that we can reduce the amount of expenditure we incur on ministers. I thank you, Mr. Chairman.

MR. ONEGI OBEL (Jonam County): Thank you, Mr. Chairman. I have had the feeling all along that sometimes we discuss issues from the draft as if our attentions are directed at the day. But if we are making a Constitution which we have claimed should stand the test of time, then this kind of restriction of 21 cabinet ministers, or ministries, is uncalled for. Because, Mr. Chairman, a leader or Parliament of any country has reasons to decide the manpower forming the government. That means that at certain moments and times the number of ministries could be reduced as well as could be increased, as the need of the country will dictate. I am talking here about flexibility and creation of

room to answer needs that arise in any particular time. Mr. Chairman, a question has been asked. Is the number 21 a scientific figure arrived at after some scientific experiment or research? The answer is none - *(Interjections)*.

THE CHAIRMAN: No, no, let him finish, the Chairman will answer.

MR. ONEGI OBEL: The economy at the moment would look incapable of even handling 21 ministries. In fact, if you asked me, Mr. Chairman, I could come down to 14 without any reason at all. Someone else could go to 30 again without reasons other than with the ambition to become a minister. It could be that someone wants a bigger number so that chances might fall his way and he becomes a member of the cabinet. But that is not scientific enough. So, I am simply concluding by saying that we leave numbers open so that we do not impose unnecessary restrictions in the Constitution, because later on, if a situation should arise that we need 22, that means going to Parliament to amend the Constitution. And how many times are you going to amend? That is a situation which I think can be handled by Parliament. Thank you, Mr. Chairman.

MR. NDEGE: Point of clarification. Thank you, Mr. Chairman. I just wanted a small clarification in 1.4 where we have already pronounced. We have already said that the President will have a cabinet and he reasonably thinks fit. So, we have already pronounced ourselves on that one. Now, would that not conflict with what we have already pronounced?

MR. BIDANDI SSALI: Point of order. Mr. Chairman, in view of what we have already passed under 114 to the effect that - no, not 114 - *(Interjections)* - there shall be a Cabinet which shall consist of the President, the Vice President and such a number of ministers as may appear to the President to be reasonably necessary for the efficient running of the State. In view of that, is it in order for us now to state the number when we know that this is already passed? And in view of the fact that whatever number will be approved by the Parliament, are we in order to now go into specifying the number of ministers in light of this earlier decision?

THE CHAIRMAN: Of course, proper drafting would have been that there shall be a Cabinet which shall consist of the President, the Vice President

and subject to section so and so, article so and so, such number of minister, as may appear to the President reasonably justifiable so that -

AN HON. DELEGATE: But we have already passed this one!

THE CHAIRMAN: That is what I am saying the drafting should be, the rest can be a question of fitting in, if we accept that in principle, but let us hear from the Chairman of the committee first.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I would implore the Hon. Delegates to look at the wording. The wording is: "*The total number of Cabinet minister shall not exceed 21, except with the approval of Parliament.*" (*Interruption*).

THE CHAIRMAN: But Hon. Mulenga, I think that one is not properly worded. If you look at 114 it says "*There shall be a Cabinet which shall consist of the President...*" He is not a Cabinet minister, is he? The Vice President and such number of ministers. Then here we say the total number of cabinet ministers. Are we referring to the President as well if we talk of 21? Are we referring to the Vice President as well? Because 114 seems to be a distinction.

MR. MULENGA: Mr. Chairman, we can always polish up the drafting, but cabinet minister is an office specifically created in this draft. And President is also created in the same, and Vice President, so that I would not have thought anyone would think cabinet ministers in this context include President and Vice President. But the point I wanted to stress, Mr. Chairman, is this that in the Odoki report, contrary to what Hon. Onegi Obel asserted, the report is very clear as to why they recommended the figure. And it was based on some research by an earlier body, I think called, Public Service Review Commission and so forth. They relied heavily on that report, and have justified the figure. But they have not made the figure of cabinet - they have said it should not exceed. So, the President has the discretion to appoint less! What Select Committee 2 did was to add another opening in the event that circumstances require a larger number than 21. In that event the President should make a presentation to Parliament for approval, that is what is added. We say: '*A total number of Cabinet ministers shall not exceed 21 except with the approval of Parlia-*

ment.' So, either way, it is not really fixed. It is intended to guide the President so that he is not tempted to go too far like has happened in the past. So, Mr. Chairman, answering Hon. Wanendeya I would say the figure is not fixed at 21 it could be less. Answering Hon. Onegi Obel, yes, the President, has a discretion to operate within what is reasonable but he should not exceed 21. And if he thinks it is reasonable to exceed 21 he should seek approval of Parliament, that is the import of this.

THE CHAIRMAN: Okay, now the position is quite clear. There is conflict between 114.1 and this one, from the explanation. The President is told you must have a number you consider reasonably justifiable for you to work. If you think six are okay, fine. But you can go up to 21, but if in your view the reasonable number should 28 then do not just do it alone. Go to Parliament first and get the number of 28.

MR. SSEBAANA-KIZITO: Mr. Chairman, I believe that one of the reasons why the committee thought it fit to limit the number of ministers is to economise on the expenses. But it is true that whereas we have cabinet minister we also have minister of state, deputy ministers, assistant ministers, and nothing has been said about these. Is this not the right time - (*Interruption*).

THE CHAIRMAN: Hon. Ssebaana-Kizito you are anticipating discussion. I think the majority view is that we take 4 as it stands. Agreed? Hon. Mulenga to the next one.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, it is recommended that clause (5) be in the following terms: "*A Cabinet Minister shall have responsibility for such functions of government as the President may from time to time assign to him or her.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Lastly, Mr. Chairman, clause (6). It is recommended that clause (6) reads as follows: "*A minister shall not hold any office of profit or emolument likely to compromise his or her office.*"

THE CHAIRMAN: Agreed. Now, Hon. Delegates, we cannot pronounce ourselves on Article 116 because we have stood over a recommendation

with regard to Clauses 2 and 3. Now, for the purposes of guiding our work I would like to suggest that this matter which has been stood over be brought up again next Wednesday so that we finalise 116. Whatever other business will be there -no, I think I would rather prefer Thursday, it comes back on Thursday, a full week -*(Interjections.)*- No, let us make it Thursday when the ministers are here. So, it should be brought back and the Clerk should take note. This matter should appear on the Agenda of Thursday, those particular provisions of 116. Now, Hon. Delegates, let us do 117. Hon. Mulenga.

MR. MULENGA: Mr. Chairman Select Committee 2 recommends the following for Article 117. That Clause (1) be amended to read as follows: *"The President may with the approval of Parliament appoint other ministers to assist cabinet ministers in the performance of their function."* Perhaps here, Mr. Chairman, I should point out that we removed the deputy ministers and other titles. On Clause (2), the committee recommends that Clause (2) be amended to read: *"Subject to the provisions of the Article, Clauses 1 and 2 of Article 116 shall apply"* I presume this will have to wait also-

THE CHAIRMAN: This one should wait until we have decided on those two, Clause (3).

MR. MULENGA: Mr. Chairman, it is recommended that Clause (3) be amended to read: *"The total number of ministers as appointed under this article shall not exceed 21 except with the approval of Parliament."*

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause (4): *"A minister referred to in this article shall have responsibility for such function of government as the President may from time to time assign to him or her and in the absence of the cabinet minister in his or her ministry, shall perform the functions of the cabinet minister."*

THE CHAIRMAN: Now, does that tie up properly with 1?

MR. NYAI: Thank you very much, Mr. Chairman. My problem here is if you are providing for the President with the approval of Parliament to appoint other minister to assist cabinet ministers in the performance of their functions, then you go to

clause 4 and say that the President shall tell them what to do, and not the ministers whom they are supposed to be assisting. I think we are raising a question of conflict of who is boss. And I do not think it is in the interest of Uganda that this Assembly should put into our Constitution something which is so obviously ambivalent. Maybe, the Chairman could explain why he wants the ministers who are appointed to assist the cabinet ministers to be directly responsible to President rather than to the Cabinet ministers.

MR. MULENGA: Mr. Chairman, first of all, it is not I who wants but it is the Select Committee which wants. But in answer to the question, I would give the background to the formulation of this clause. In the past the experience has shown that when deputy ministers or whatever name they are given, are left to the discretion of the substantive minister, they tend to be left in the dark. To the extent that evidence was given as well that in the last few years the President has had to step in and give some indication on what the Deputy and Minister of State would do. In other words, the idea was that such a minister should not be left to the whims of his boss as Hon. Dick Nyai calls him. Mr. Chairman, where it says that President may appoint other ministers to assist cabinet minister, it is to specify that they are to do jobs for purposes of assisting the substantive minister. But in this one it is being specified that they will be given schedule of work - they will be assigned. Instead of looking for some other Minister in another ministry to come and hold portfolio, when you have a minister in that Ministry. There is no reason why that minister should not act in the place of the Cabinet minister, to the extent of even attending, Cabinet meetings. That is the purport of this amendment.

MR. KINTU MUSOKE (Kalungu East): Mr. Chairman, while I am a Member of the Committee, and I am in agreement with a elaborate explanation given by our Chairman. But to me I think, as long as the president appoints the Minister, and appoints the other Ministers, the appointing authority is the one who should assign responsibility. Just by the fact that, he appoints them. He should be the one to assign responsibility. And therefore, it is automatic that, it should be the president to assign, not any other.

THE CHAIRMAN: I think the two explanations are quite adequate, but they can create confusion.

I think what I was driving at when I asked that question was not that, other Ministers should not be specified in the areas in which they should work. But the way they were awarded, it is as if they are independent of each other. That one, the president appoints them and say, you will assist the minister, then he can turn around and give him another assignment, the way it is written now. Whereas it could be written in such a way, that, the president may with approval of parliament appoint other ministers to assist Cabinet Ministers in the performance of their functions. And the President may in respect of the person so appointed assign them specific areas in which they may assist. Where you are saying, he can in fact say, you are a Minister of State for Works, although there is a Minister of Works, Transport and Communications. And you are a Minister of State for Communication. Or may just appoint you, Minister of State for Works, Transport and Communications, then you sit down with your Minister and you share out the responsibilities. But if he thinks he should assign it so that you leave him, to choose either generally, a Minister of State or to appoint specifically, the minister of state.

They are married in such a way that - they bring out that, if it is the view of the House; anyway. Hon. Mulenga, what do you say?

MR. MULENGA: Mr. Chairman, I was trying to quickly see whether I could *-(interruption)-*

THE CHAIRMAN: Okay, let me while you are doing that -

MR. KAYIZZI: Point of clarification. I would like to be clarified from the Chairman of the Committee, the difference between Clause 4 of Article 116, and Clause 3 of 117, and their intentions.

THE CHAIRMAN: Okay.

DR. BYARUHANGA FABIUS (Kitagwenda County): Thank you, Mr. Chairman. And thank you for the advice you have given us, over Clause 4. But I would want to add that, what really requires to be brought out, is where this Minister we have created in 117, reports to. Because, as it is now in 4, one gets the feeling that, this minister, whether we call him junior minister, reports directly to the president without reporting through his Cabinet Minister.

THE CHAIRMAN: Okay, I think Chairman is trying to formulate something.

MR. NEKYON ADOKO (Maruzi County): Mr. Chairman, this topic is a crucial matter in the management of the Central Government. It is true that, some Ministers, some Cabinet Ministers, when given deputies by whatever name called, may not give them sufficient work to do. I have heard accusations that, some Cabinet Ministers want to do everything, and keep out their deputies completely out of circulation in the Ministry. But I want the Chairman to consider the following scenario. If you say, that this Minister of State is appointed to assist the Minister in the Cabinet, and then somebody else assigns him duty from outside, without the consent of the Minister in the Cabinet. How can you now say, he is assisting that minister? He has got his own schedule and the Cabinet minister has got his own schedule. And schedules come directly from the president. There is no question of assistance there. They are now, completely in different spheres of influence. And I have got to say, experiences shown that, you can have a president who because it is close socially to the Minister of State, will assign more responsibility to the Minister of State, then to the Cabinet Minister. So, the Cabinet Minister hangs above as a window dresser or a figurehead. But he can always hang because we are providing a constitution that the President will assign the functions. So, on what basis do you resign? You have given the president to assign and he has assigned, more to the minister of state, than to the Cabinet minister. There is no basis for resignation. So, I believe that, if we want to keep smooth running, of the Ministry, the provision should read that: "*The Cabinet, Minister will assign to the Minister of State such functions as he wishes with the approval of the president.*" Because if the president wants to know whether the Minister of State has got work, he can ask the Cabinet Minister whether he assigns duties to that minister of state. And he can specify them, or he can write to the president saying, I am proposed to give to my minister of state the following schedule, and the president says, this is okay. Then the work can go smoothly because the final responsibility rests on the Cabinet Minister. But if there is no control over the functions of the Minister of State, then he can be responsible for nothing.

MR. KABUGO MESUSERA (Nakaseke County): Thank you, very much, Mr. Chairman. I belong to committee 2. And it took us quite some-

time debating on this issue. And by the time we reached this conclusion, we had already received constructive evidence that, some of these Cabinet Ministers are too difficult, and they do not want to assign specific duties to their immediate assistants. In this case, we felt that, once the president appoints the minister of state, and later that comforts into such power, should as well be clear, spell out the schedule of duties. Such a Minister has to perform in his ministry where his minister of state is being sent. In this case, Mr. Chairman, there is nothing wrong that in Committee 2 to say that, they made a mistake or to leave this as the president to assign specific duties to such minister.

MR. BIDANDI SSALI: Mr. Chairman, I would request, Hon. Members to be a little bit careful here, not to take a decision, on the basis that, some Ministers do not give responsibilities to their assistants or they do. But rather to imagine a situation where for example currently - just as an example, not that we are constitutionalising the present situation. Today there are Ministers of State in the ministry of Agriculture, who were appointed as such, specifically responsible for area (a) and area (b). Now, there should be a question mark now with that appointment, whether when I am appointed Minister of State responsible for Animal Industry in the execution of my duties as such to whom, I am responsible? Is it the Minister of Agriculture or is it the President? The Minister of Agriculture has her responsibility, now, I have specifically been allocated my own area. Now, I have been allocated, my own area. Now, although at the moment maybe politically to be understood, but when it comes to real point of contention. There could be a problem between the minister and the minister of state, say, this is not your area. Mr. Minister, this is my area as per my appointment. There is also a situation today where for example in the Ministry of Local Government. There is a Minister of State Local Government. Which means, that the minister of Local Government sits with his Minister of State, and they agree on schedule, regardless of whether the president is aware or not. I am stating what is on the ground. Now, this is where also, there could be a possibility of the two working as a team, or the two not working as a team. Now, if the two are not working as a team, and they are considering this separation of powers as we were talking about them, is it the intention of parliament to tell the minister that, you must give the minister responsibility. It is the intention of Parliament to say, Mr.

President make sure that the assistant Minister has responsibility as given in particular responsibility. Or is it the general policy of parliament to say, Mr. Chairman, you have asked for permission to appoint assistant minister, we give you that permission. And the deployment is really up to the president to say, for you go and assist the minister of this and that. In short, Mr. Chairman, I am saying, that, let parliament or let the constitution, stop at giving the authority to the president when he wants. Because that is what he will say. The president may. Now, as soon as he realises that - he needs that, 'may appoint' in fact 4, although he has 21 full ministers, he may appoint 3. So whenever he feels that, he needs that, and parliament approves, let him deploy them, as and when, just as he feels necessary. Whether the President asks the minister to assign the minister of state or assistant minister duties, or whether the president assigns those particular responsibilities, in particular minister. I think let us be a bit open to the president, rather than constitutionalising it here.

MR. KITARIKO ROBERT (Democratic Party): Thank you, Mr. Chairman. I believe Mr. Chairman, the person responsible for policy formulation, determination, in the ministry, is the Minister of Cabinet rank. Other Ministers working under him, submit all their views, for policy formulation, it is the minister who takes them to Cabinet for determination. You cannot have two ministers doing the same - policy differently. The Ministers of State, merely assist, in some area of policy for convenience sake, but they cannot go to Cabinet separately, to take a paper for determination policy. So, really I believe that, one minister is the overall in charge. Others assisting to efficiently carry out the functions of the ministry allocated to them.

MR. KWERONDA RUHEMBA (Kajara County): Mr. Chairman, when we were proposing the proposition in question, we were mindful that, the president is not going to appoint a another minister in a ministry for the sake of appointing. That he will have found out either from the Minister or from other sources that there is too much work in that ministry for that minister who is really a cabinet minister. And therefore, he will even select a minister who has got some kind of knowledge related to that ministry. Therefore, you will assign him a duty to perform, but which duty you will perform in consultation with the Cabinet Minister. Such that, if there is a paper to write, Cabinet Paper

to write concerning that area, where he has been assigned, that paper can be written in consultation. But even since this Minister of State is able now to go to Cabinet, he could even go in consultation with Cabinet Minister and he defends that paper, since he will be much more conversant in that particular area where he was appointed than the Cabinet Minister. So, Mr. Chairman, we did not intend to create any conflict in the Ministry, but we said that, it will create efficiency in the ministry. Therefore, while the Minister of State does things in consultation with the Cabinet Minister, he is still responsible for that sector where he was appointed. So, the president can actually spell out the duties which this minister of state will perform while he is appointed in. But what we may need, Mr. Chairman, is to clear the ground by saying that, he shall do that job, in consultation with his minister. Thank you very much.

DR. MIYINGO KEZIMBIRA (Bukoto Mid-West): Thank you, very much, Mr. Chairman. Mr. Chairman, I think this Clause which has been put with a correction which you put in, I think should be maintained. It is a worthwhile clause. The president, with the appointing authority of both the substantive minister and the minister of state or deputy minister will quite be aware of the capability of both people. And the need within the ministry will also be known both to the substantive minister and the president. And therefore, the appointment of another minister to assist say substantive minister, will be directed at that area, where probably someone of professional know how is required. And therefore, it is correct that, the president should assign, the duty in an area which is lacking in that particular ministry. Mr. Chairman, the appointment of a deputy or a minister of state, does not mean that, this minister is not responsible to the substantive minister. In fact, in all cases, he has to be responsible to the substantive minister he has or she has to report to her or him. The fact brought up by Hon. Bidandi Ssali is that, maybe this minister will be responsible to the president direct. I think does not arise. We have presidential advisors in particular areas, where they are knowledgeable. These report direct of the president.

But the Deputy Ministers must first of all, consult with the substantive ministers, you know, within their ministry. And if any advice, then is required the president should be directed to a substantive minister. There is a tendency, Mr. Chairman, that a

Minister of state could be appointed in a ministry and then he is left without really work to do. He is left to do very little and feels also too much subordinated despite the fact that, he came to do a job there. So, a particular schedule given to him I think will enable him to do his duty, but at the same time, he must be responsible- she must be responsible with a substantive minister. Thank you very much, Mr. Chairman.

AN HON. MEMBER: Point of clarification. Thank you, very much, Mr. Chairman. I would like to seek clarification. I have got all the reasons advanced, but still on the ground we could leave room for problems. Assuming the minister of state is assigned specific duties, then the substantive minister also assigns him some duties outside the specific area. Let me look at a situation of the Ministry of Agriculture, which has animal husbandry and also agriculture. Now, there is a Minister, there is a full minister, and then the minister of state say in charge of veterinary. But then, for one reason or the other, the substantive minister wants to assign him some duties to go to some area which is hit by hunger or something like that. And if this minister says no, I have my specific work schedule, it has nothing to do with that. How do you go about the situation like that?

THE CHAIRMAN: Hon. Ziwa, you had your hand up, and then Hon. Mulenga you will come in to answer these issues, so that we finalise.

MR. ZZIWA: Thank you, Mr. Chairman. Mr. Chairman, as I have said before, I am a Member of Select Committee 2. And I am trying to summarize what the members of Committee 2 had in mind, when formulating these articles. First of all, Committee 2, wanted to have an assistant Minister who could come in and help the substantive minister to do some of his schedules, to do some of his work. But at the same time, the committee had a fear, having had explanations and experiences from some Members that in some cases, the substantive minister, would refrain from giving the assistant minister some work. In other words, try to make him redundant. This one, we thought, would be cured by having the assistant ministers appointed by the president and given a schedule of work by the president himself. Of course, taking into account that, the president knew exactly what was in the Ministry. And in other words, we wanted him to give him a slice of the work which the substantive

minister would do. But at the same time, not losing sight of the fact that, the assistant Minister, was responsible to be substantive minister. That is one point. The second point we had was, to make sure that, this Minister enjoys or shares in the work of the substantive minister he could stand in for the Minister when he is away. In other words, he could take his own schedule of work as well as the work of the substantive Minister in case the minister is not available. And that one, we proved by saying that, the assistant Minister, be given the opportunity even to attend Cabinet in case the substantive minister was not around. And then the third point, Mr. Chairman, was that, the assistant minister could be recalled and do some other work, apart from the work, within the ministry. That is what we had in mind when we said, that the president may from time to time assign such a minister other duties. On the point raised by Hon. Bidandi Ssali, we also had that one, whereby you have a Minister of State in the President's office. And we said, to whom is he responsible? And we had the answer from one of the committee members that, minister of state is the responsibility of the responsible minister, and not responsible to the other minister, where he is assigned some work. So, Mr. Chairman, with those, 3 very distinct views, we set up to find a solution to cater for the possible coordination and division of work. Thank you, Mr. Chairman.

THE CHAIRMAN: I think before the Chairman of the Committee comes in. If the Members are desirous of retaining the two things as I want to retain that, the president can in his discretion assign specific responsibilities, to Ministers other than Cabinet ministers, in the ministries to which they are appointed. And two, that they may sit in Cabinet when the substantive minister is not there. That formulation actually, can be achieved very simply by retaining 4 but deleting word *government* and substituting the word *ministry* or the word *ministry* to *which is appointed* and then the rest can remain as it is. So that, you are saying, a minister referred to in this article, shall have responsibility for such functions in the ministry to which is appointed as the president may from time to time assign to him or her, and in his absence-I am sorry. And in the absence of the Cabinet Minister, in his or her ministry, should be in that ministry shall perform the functions of the Cabinet Minister. So that, we make it clear. The appointment is in the ministry to which he is appointed. Then leave it for the president to say, he can appoint him, specifically or

he can appoint him with a duty to generally assist the minister concerned. But if we use the word *government*, it would appear that, the president can as it is now appoint the minister of state in one ministry to have other responsibilities in another ministry.

MR. HASHAKA: Point of clarification. Thank you, Mr. Chairman. I am seeking clarification as to whether the change from government to ministry still helps the minister to assign some duties to the minister of state within the same ministry. I am seeking for clarity, Mr. Chairman.

THE CHAIRMAN: You see, if you take the Ministry of Agriculture, Animal Industry and Fisheries, there are two ministers of state as I understand. There is one Minister in charge of anti-nomadism, and ranches something restructuring. Then there is minister of state responsible for livestock marketing and diseases, I think. But there is also a person appointed a minister for Agriculture, Animal industry and Fisheries. Now, these are ministers with focus, these are ministers of state with a focus.

But in normal operation. The minister can ask them to do other things in the ministry of agriculture. But if you were to read one, as it has been approved. Because they are appointed essentially to assist, but they are saying that, the president may specify the areas of their assistance. What we are trying to do is, looking for wording that brings that out. But they are saying that, the president may specify the areas of their assistance. I think Hon. Mulenga may have now, reached that stage. But before you do, Hon. Dick Nyai, since you are a scribe maybe you have - No, we shall hear from Hon. Mulenga when he comes.

MR. NYAI: Thank you, Mr. Chairman. I think there is only one other area I am still very unclear about. I think Mr. Chairman, the Committee wanted to resolve the issue of where there are ministers of state and the substantive Cabinet Ministers are so hostile to them, that they do not want to assign them, any duties. And I think this is where we are getting the catch in this matter. Now, would it be useful for us to put in the constitution the formulation where the president in consultation with the Cabinet Minister, agree on what the Minister of state who is supposed to assist this Cabinet should do. Because basically, that is now, in area of a Cabinet Minister

trying to protect his tuft. And if the minister of state's tuft is described by the president, he can also say, after all, my responsibilities were given by the president. Who are you to tell me to do otherwise? I think this kind of formulation, may be dangerous. If the Committee can throw light on-maybe, we may get a little clarity on what we want.

THE CHAIRMAN: Hon. Hashaka, what do you want to clarify, before I give the Floor to Hon. Mulenga.

MR. HASHAKA: No, Mr. Chairman, that is what was itching me, because in the Committee, we realised that, the substantive ministers were leaving Deputy Ministers or those ministers under them, really almost redundant - jobless. They were just throwing them boons of responsibilities where they cannot-which they cannot do. They were just taking them, more or less as their boys. So, this is why we are specific on this formulation, Mr. Chairman.

THE CHAIRMAN: Did the Committee also, interview Cabinet Ministers?

MR. HASHAKA: Well, we had them. So, we knew what they were saying.

THE CHAIRMAN: It would appear the evidence was one sided.

MR. WANENDEYA: Point of clarification. Thank you, Mr. Chairman. Mr. Chairman, is it necessary - I want the Chairman of the Committee to clarify to us, to include this in our constitution. Because the overall responsibility of appointment and assigning duties remains with the president. And as far as our constitution goes, I understand that, Ministers of state can automatically deputize for substantive ministers when the Cabinet minister is away. And that is why, we have done away with deputy ministers. Would therefore, the Chairman of the Committee clarify to us. I thank you, Mr. Chairman.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I will start with Hon. Kayizzi. I think he was asking whether there is a difference between Clause 4 of Article 117, and Clause 3 of - (interjection)-

THE CHAIRMAN: Would you please speak up - because we are straining to hear you.

MR. MULENGA: Okay, what I said, which you did not hear is no longer necessary because Hon. Kayizzi says, he now understands. So, Mr. Chairman, he is suggesting that, the president should consult the substantive minister or Cabinet Minister when assigning duties to other ministers. I think this would be objectionable, the appointing authority cannot consult subordinate when assigning duties. Later in Article 120, it is stipulated that, the ministers shall individually be accountable to the president. So, each minister whether Cabinet or Minister of state is accountable to his appointing authority. Strictly speaking. The suggestion that the President should consult the minister seems to be perhaps brought about by the use of the word 'assist'. And some delegates seem to think that, this is really an assistant to the cabinet minister and the latter is the boss. But the true situation is that, the President appoints a team of ministers to assist him. Some of them will have full responsibility of ministries. Then there will be others given, as Mr. Chairman you have said, either general functions of assisting a Cabinet Minister or specific duties to be carried out in that ministry.

MR. BIDANDI SSALI: Point of clarification. Mr. Chairman, I am trying to follow, but I would like a clarification from the Chairman. When he is basing his argument on the Ministers individually being responsibly accountable to the president. For the Minister's administration of the ministries. I would like to know how, minister of state for agriculture is the minister of agriculture. And the two ministers of state agriculture, are accountable to the president, for the administration of the Ministry of Agriculture. How does it come about in the arguments he is making?

THE CHAIRMAN: Maybe there is evidence from a Member who has some knowledge elsewhere.

DR. MIYINGO KEZIMBIRA: Thank you, Mr. Chairman. Mr. Chairman, actually, I do not see the conflict especially when the duties are specified. Because in the ministry ourselves we have what we have called a top management team or meetings, whereby each of us works in his own area or schedule as given to him. And then, on top of that, the substantive minister has also given areas where we are supposed to co-ordinate. And over all, in fact all of us are responsible for all the ministry in general, that, if something clocked up, as Minister

of state although I am responsible specifically, for animal production, animal health and marketing. I cannot fail to act on something which concerns crops, if that is brought to my desk. But in total together as the 3 ministers, will then sit together and harmonize the administration and the policy of the entire ministry without conflict. So, I think really, there is no conflict at all, if you are working in harmony. Yes, but then, the possibility of not working in harmony if duties are not really specific. The main duties of the ministry are not specifically spelt out for each of you, are more likely, than if they are spelt out. I think experience has shown this, that is why the Committee had to take this decision.

THE CHAIRMAN: We were now receiving responses, but I can see, this is provoking. I think Hon. Miyingo Kezimbira has quite clearly explained what should happen.

MR. MULENGA: So, can I continue?

THE CHAIRMAN: Yes please.

MR. MULENGA: Mr. Chairman, the other point I will comment on is this. Why do we not leave it to the President, without putting functions in the constitution. Mr. Chairman, when one goes carefully through the constitution, as drafted or any other constitution, it is normal that, when you create an office, you either state the functions or you prescribe who shall determine the functions. In this case, we are saying in respect of the minister that, they shall get their responsibilities assigned to them, by the President. This is the reason for spelling out power. The departure from the draft was to state, that even in respect of these other ministers, the President should instead of leaving it in the air, make it clear. So that there would be no uncertainty whether it is the President who does it, whether it is the cabinet minister to do it. And I think there is no harm in this. Mr. Chairman, I would like to take advantage with gratitude of the dual suggestion that Clause (4), be further amended to read: *"The minister referred to in this article shall have responsibility for such functions in the ministry of which he is appointed as the President may from time to time assign to him or her and in the absence of the Cabinet minister shall perform the functions of the Cabinet minister."*

DR. KIYONGA CRISPUS (Bukonzo West County): Point of clarification. Thank you, very

much, Mr. Chairman. We have been using the live example of the Ministry of Agriculture, Animal Industry and fisheries. There we have two ministers of state, so if we formulate it exactly like the Chairman, of Committee two has stated, in practice we will have problem. Because it means once the substantive is out, then both of them, by that formulation become ministers of cabinet.

THE CHAIRMAN: Hon. Miyingo Kezimbira, do you have the answer to that?

DR. MIYINGO KEZIMBIRA: Mr. Chairman, the president on - gave him an explanation, and that explanation I think came from the fact that, the House has decided on changing the title from Deputy Ministers to Ministers of state. And the title, deputy ministers tended to subordinate these ministers. And changing to the minister of state and all the ministers swearing in as Cabinet Ministers, made them eligible to hold the Cabinet portfolio. But then, this was again indicated clearly, that if a substantive minister was absent, one of the Ministers of state would follow in a determined line that, one of them would be the one to become, the acting or the one responsible to Cabinet. The Cabinet Minister, and then the other one, would only act if the first state minister was absent. So, there is no conflict at all, this is quite indicated.

THE CHAIRMAN: No, but you see, it can be refined this way that, a minister referred to in this article has respect for such functions of the ministry to which he is appointed, as the president may from time to time, assign to him or her. And in the absence of the Cabinet Minister, shall perform such functions of the Cabinet Minister, as the president, directs. Agreed? Okay, let me put the question on 4 - I now put the question. Clause 4, as reformulated, stands accepted.

(Question put and agreed to)

Clause 5.

MR. MULENGA: Thank you, Mr. Chairman. The Committee recommends that, Clause (5) be in the following terms. Clause 6 of Article 116 applies to the minister referred to in Clause (1) of this article.

THE CHAIRMAN: Now, Hon. Delegates, we cannot declare ourselves on 117, because we skipped

2. Because of standing over the other ones in 116. This one also shall come up on Thursday of next week for consideration. We can do 118. Mr. Mulenga 118, we do not hear you.

MR. MULENGA: Article 118 is very short, there is no amendment. It reads: "*A minister shall before assuming the duties of office, take and subscribe the oath of allegiance and the oath of Ministers prescribed by law.*"

THE CHAIRMAN; Agreed! Let us declare ourselves on 118. I put the question that, Article 118 stand part of the Draft Constitution.

(Question put and agreed to)

Article 119

MR. MULENGA: Mr. Chairman, Article 119, is also a short one and reads: "*The office of minister shall become vacant if his or her appointment is revoked by the president, he or she resigns from office, or he or she becomes disqualified to be a Member of Parliament, or he or she dies.*"

THE CHAIRMAN: Agreed.

MR. SENTEZA KAJUBI: Thank you very much, Mr. Chairman. When I look through this list, Mr. Chairman, I find that, there is a provision which is also missing. Because with the president, we provided that, if he is physically or mentally unable to perform the duties of a president. But here I do not see, any reference to such inability.

THE CHAIRMAN: No, I think this one is a bit complicated. We better come back to it. I do not think the question of mental or physical incapacity of a minister should be spelt here. Because it is really the appointing authority that could decide whether the person should continue or not. But what I think we have not looked at, I do not know whether it is really relevant. Is, does the minister's appointment end with the vacation of office, by the president who appointed. Does it state here when the person ceases to be a president who appointed that particular minister, does it also not close the other minister? That is why I thought that, we should look at it and see how we can polish this one now. So, I would suggest that the Chairman, and his committee take some of the points now going to be raised, so that they come back with some formulation of this one.

MR. OBUA OTOA: Thank you, Mr. Chairman. Article 119(c). I think it cannot stand at the moment Mr. Chairman. Because we have not yet pronounced ourselves on whether or not, Ministers should be Members of parliament or not. But here the 'c' saying, he or she becomes disqualified to be a Member of Parliament. And yet we have not yet pronounced ourselves in one way or the other about that matter.

THE CHAIRMAN: Okay. No. The other one is coming on Thursday. But we shall see whether not we are just getting those who need to assist for writings that are not here. But not arguing the - there is someone seeking information here, and Hon. Wanendeya, are you seeking information? I just wanted to know who is seeking information.

MR. KINTU MUSOKE: Point of information. I just want to give information that, in considering this point, we said that, people who are going to be appointed ministers shall have the qualifications of being Members of parliament whether they are there or not. Therefore, that answers the question.

THE CHAIRMAN: Okay.

MR. LUBOWA: Thank you very much, Mr. Chairman. We have already passed a provision that, somebody to become a minister is that one qualified to be. So, in this case, if that individual, is a Member of parliament disqualified from parliament, then he does not qualify to be a minister.

THE CHAIRMAN: Yes, that is true. Yes, we passed that one.

MR. HASHAKA: Point of order. Thank you Mr. Chairman. Mr. Chairman, is it in order to keep discussing very useful clauses especially touching the future administration of this country without the quorum of the House.

THE CHAIRMAN: The Chairman is satisfied that, there is a quorum.

MR. BAGEYA: Mr. Chairman, when we were talking about somebody who is qualified to be a minister. We said, he has got to be a person who qualifies to be a Member of Parliament, not withstanding, whether you are elected as a Member of Parliament. How does this *-(Interjection)-*

THE CHAIRMAN: That point was made by Hon. Lubowa. So, actually you are repeating.

MR. SEBAANA KIZITO: Mr. Chairman, it is provided here that, a person will continue in his post as a minister unless the appointment has been revoked by the president. It does not indicate what form that revoking should take. Because we know, these days, at least now, appointments are announced on the Radio and you only hear, that your portfolio, has been given to somebody else. Therefore, there is no revocation - what form should revocation take.

THE CHAIRMAN: Okay, the Hon. Chairman of the Committee will take that into account, whether it will be by Radio or by Newspapers.

MR. WANENDEYA: Thank you, Chairman. I would like the Chairman of the Committee and perhaps clarify where somebody is ambassador extra-ordinary while at the same time, he is minister and therefore, why would he be inserted. Because he is in New York and he comes here or in London he comes here to attend to some of those Cabinet meetings. I thank you, Mr. Chairman.

THE CHAIRMAN: Okay, are you talking about councillor or ministers or because that is a title within a foreign service.

MR. WANENDEYA: It is not that, for instance, Mr. Chairman, Shafique Arain was a minister in the Cabinet, well he was a minister for the council that may be *-(interjection)-*

AN HON. DELEGATE: Is he in order to raise an issue about a post which we have not created in this constitution. There is no such post in this constitution, and is he in order to raise it for discussion?

THE CHAIRMAN: Hon. Wanendeya is giving us a hypothetical situation because we do not have it now. What I would like to do now is to, turn this one over, and leave it to the Chairman, we shall discuss that when he comes back in his formulation. And as I pointed out, whether it is possible to write that, the office of the minister becomes vacant when another president assumes office, so that we give him a new cabinet. Hon. Delegates, we stand adjourned with that we come to the end of today's proceedings. We stand adjourned to 9.00 a.m clock tomorrow morning. Thank you.

The Council rose at 5.30 p.m. and adjourned until Friday, the 17th of March 1995, at 9.00 p.m