



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 17TH MARCH 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda

[Pg 3388]

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Friday, 17th March, 1995

*The Assembly, met at 9.00 a.m in the
International Conference Centre, Kampala.*

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

P R A Y E R S

(The Assembly was called to order)

THE CHAIRMAN: Hon. Delegates, I am afraid we do not constitute a quorum although we have been waiting for a little while. That being the case, we have to suspend for 15 minutes and see what happens. Hon. Didi, we are now 100 and we need another 42. So we break for 15 minutes and then we come back when there is a quorum. We stand adjourned.

The Assembly adjourned for 15 minutes.

CONSIDERATION STAGE OF THE DRAFT
CONSTITUTION OF THE REPUBLIC OF
UGANDA

CHAPTER SEVEN - THE EXECUTIVE

ARTICLE - COLLECTIVE RESPONSIBILITY
OF MINISTERS.

THE CHAIRMAN: Before we start on the text, I would like to express my disappointment at today's time-keeping. We did well over the last two days and we are lapsing again. It is unfortunate that we have had to lose nearly an hour essentially because of time-making. I did indicate early in the week that we might have to institute even more stringent measures. In future, we shall have to take the names of Members present. If we fail to realise a quorum and the Members whose names appear on that list, will be the ones who will be deemed to have attended the day regardless of who comes later so that other administrative arrangements are tailored to that list. *(Applause)* Because we must perform really. So this is just a warning to Members that we should pull up our socks and maintain the good performance we have just exhibited in the last few days. Now, the clerk has called 120 but maybe Hon. Mulenga can tell us whether he is ready with 119 because we did not complete it yesterday.

MR. MULENGA JOSEPH (Democratic Party): Thank you Mr. Chairman. Mr. Chairman, I took note of your remark although I have not had time because we left rather late yesterday to consult with other Members of the committee. I think it would be appropriate to provide for a Minister's appointment ceasing with the President who appoints him ceasing, to be President. So that the one who comes in to succeed has a free hand to appoint others.

THE CHAIRMAN: But of course you must also consider a situation where for instance there is a change in the office of the President arising from circumstances other than expiry of the term. What happens? For instance in Kenya, if there is a vacancy in the office of the President for instance arising from the death of the President, the acting President if I may use the term - has three months within which to organise elections and he is not permitted or allowed to reshuffle cabinet. He works with cabinet of the previous President until after the elections have been held then the incoming president creates his own administration. So maybe we could look at the various situations we have created for changing the Presidency and see which ones affect or should affect the Ministers and which ones if possible, could be allowed to continue for various reasons. For instance, we are providing for the speaker from time to time to take over arising from inconclusive elections. Does he come in with appointment of Ministers or he retains the Ministers and then an election is held to conclude? Or is he given a free hand to appoint Ministers to work with him for six months during which elections are being conducted? These are some of the scenarios I presume one can look at and then make policy decisions.

MR. MULENGA: Then Mr. Chairman, may I ask for time so that - *(Interruption)* -

MR. CHAIRMAN: Okay, can we say it comes back on Thursday together with the others we left hanging? I think that is best. So we go to 120.

MR. MULENGA: Mr. Chairman, the committee recommends that article 120 be retained. It reads: "Ministers shall individually be accountable to the President for the administration of their Ministries and collectively be responsible for any decision made by the Cabinet." Mr. Chairman, I beg to move.

THE CHAIRMAN: Agreed. Now let us pronounce ourselves on this one. The question is that Article 120 do stand part of the Draft Constitution.

(Question put and agreed to)

MR. MULENGA: Mr. Chairman, the committee recommends that Article 121 be retained and that Clause one should read: "Parliament may, by resolution supported by more than a half of all Members of Parliament pass a vote of censure against a Minister."

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause two-

THE CHAIRMAN: Hon. Babu has got problems with the first one.

CAPT. BABU EDWARD (Kampala Central): Mr. Chairman, I would like somebody to explain, I would like clarification on this one. I would like somebody to give me a scenario how this would work so that I understand. Would it be a recommendation to the President to remove or would it be automatic?

THE CHAIRMAN: What do you mean would be a recommendation? I thought if-

CAPT. BABU: I would like somebody to clarify to me.

THE CHAIRMAN: Okay, I think as you read on, you will find the answers.

MAJOR. TUMUKUNDE HENRY (Rubabo County): Mr. Chairman, I intended to move a motion to delete Article 121.

THE CHAIRMAN: You mean if you deleted one, of course then the rest becomes nugatory?

MAJOR TUMUKUNDE: Mr. Chairman, that is implied.

THE CHAIRMAN: Is it seconded? Okay, Hon. Tumukunde, could you give your reasons why you move the motion?

MAJOR TUMUKUNDE: Mr. Chairman, I beg to move formally, Mr. Chairman that we delete Arti-

cle 121 and my reasons are as follows Mr. Chairman. Mr. Chairman, we have already passed 120 where we have clearly said the Minister shall individually be accountable to the President for the administration of their Ministries and collectively be responsible for any decision made by the Cabinet. Mr. Chairman, therefore, we are here in short stating that once a Minister is appointed, he should have all his responsibilities monitored and judged by the head of the executive. Mr. Chairman, I know for sure we have had problems of the executive in the past, head of the executive ignoring notorious Ministers. But this does not justify, in any way Mr. Chairman, that we allow Parliament to meddle with the executive authority of the head of government. Mr. Chairman, we have a leadership code of conduct which we have put in place. I am very sure Mr. Chairman, that it will be very well managed. I am also sure Mr. Chairman, that all the Ministers will be well monitored and at most censured, sometimes investigated by this leadership code and those who will be managing it. I think with this in place, we shall be duplicating energy Mr. Chairman, to start saying now, Mr. Chairman, that Parliament can come in and start judging the executive. Mr. Chairman, I want you to imagine a situation where we shall be having majority in Parliament who do not support the president. In these circumstances I can see the President's hands totally tied up and he would not have any way of operating. Mr. Chairman, I do not think we intend to have an executive head of government who will be totally strangled with no ability to perform his duties just because Parliament has got views that are different from his. Mr. Chairman, we also know that most of our distinguished Delegates here have been emphasizing the importance of separation of powers. If that is the case, how shall we draw clear boundaries about where the President shall reach and where the Parliament shall reach? Thank God we have agreed that before the Minister is appointed, let Parliament give a word. Whatever little number of people in Parliament shall form simple majority fine but let them give a word. Having given a word Mr. Chairman, to avoid conflicts between the legislature and the executive. This is where we recommend that once Parliament has approved a Minister, let it be the responsibility of the head of the executive or the President in our case as is outlined in this constitution to manage the executive and make sure he produces results out of them. Mr. Chairman, I do not want to see a situation where a weak Minister has got the capacity to come within

our sphere or within the Parliament that is coming tomorrow and campaign against his remaining or his going. You find that we end up sometimes having a clog. He has done very well in campaigning in Parliament and the other way round. So Mr. Chairman, I beg that in this case, we allow the executive to remain with absolute authority to manage whoever shall be appointed under this executive authority. Mr. Chairman, we should allow the head of the executive to have a free hand to discipline Ministers. And if we start having two judges in the same camp, Mr. Chairman, I see a situation where we shall have a total conflict and sometimes we shall have a total collapse of the executive authority in this country. Mr. Chairman, these are my reasons and I beg to move and request this House that we delete this Article Mr. Chairman.

MR. LEANDER KOMAKEC (Aruu County):

Thank you Mr. Chairman. Mr. Chairman, I have listened very carefully to the reason why the mover of this particular motion would like to delete the provision for Parliament's right to censure Ministers. And I think the reasons he gives are really misconceived. It is misconceived in this sense that perhaps if Parliament were to have a say on how a Cabinet Minister operates or functions, he would be infringing on the rights of the President. Mr. Chairman, I think we all remember that this Assembly has already decided that in terms of the representation of the people through Parliament being superior to that of the President, it is even provided for Parliament to impeach the president. Mr. Chairman, the question -

MR. CHAIRMAN: Hon. Leander Komakec are you taking information?

MR. KOMAKEC: Yeah, I will take it.

CAPT. FRANCIS BABU : Mr. Chairman, I just want to inform the Hon. Member that if Parliament is operating under the committee system, they will have access to the operation of each Ministry therefore, the operation of that particular Minister. And will be able to recommend to that Ministry and that sectoral area of what the Parliamentary input should be. So I just want to bring this point of operating, that Parliament will be involved in the operation of the Ministries. Thank you.

MR. KOMAKEC: Mr. Chairman, the point I was making here is that it is a recognition that parlia-

ment should have a say in how the government of the country is run. So this question of separation of powers between the leadership or the President and that of Parliament is actually not true. The true functioning of the government is that the executive and Parliament collaborate in the running of the country. It is one government for which Parliament and the President are working together as well as of course the judiciary. So, it is not true that Parliament will be meddling in the powers of the President in monitoring the performance of each Ministry. So on this basis, I think since Parliament and the executive should work side by side to run government. It is only in order that Parliament should actually censure. It does not mean that they will in fact be assisting the President in censuring in actually monitoring the performance of a Minister. He will leave the Ministers completely free of Parliament. The crux of the matter is that government policy would suffer because you are divorcing the Cabinet Ministers from Parliament and I think this one is wrong. It will not work, it will make the work of the executive more difficult if you distance Parliament from the work of the various Ministries. So I think on the question that it is parliament to collaborate, work side by side with the executive on that basis alone and as being the superior representative of the people of Uganda, it is only right that Parliament should actually oversee in some ways the performance of the Ministries under the President. If the President can be impeached by Parliament, I do not see why the Ministers should be free from Parliament.

MR. TIBAMANYA URBAN (Kashari County):

Thank you very much Mr. Chairman. The Article should be retained and I have two grounds for that position. We have already passed that Parliament shall approve Ministers and it is only fair that Parliament should also retain some sort of authority over Ministers and I think it makes sense. If they were wrong when they were approving, they should still have something to say about the performance of Ministers. Secondly, in the past, we have had the position of untouchable Ministers who are above the law, sort of under the protection of a President. Ministers who are corrupt, papers have written and said you know, so and so Minister is corrupt and there is sufficient evidence and the President does not take action or take it quickly enough. It is only fair that Parliament should come in and say something about the performance of that particular Minister. I am for the retention of the Article. Thank you.

MRS. EGUNYU FIONA (Women-Kumi): Thank you Mr. Chairman. Mr. Chairman, I rise up to support the motion that Article 121 be deleted for the following reasons. Mr. Chairman, the said article does not lay down the circumstances a minister when Parliament may pass the vote of censure against any Minister. It leaves it open. There are no grounds specified hence we cannot guarantee that it will be done with justice that should be accorded to such a situation. For example, it lays down circumstances when a President may be impeached. Likewise, it would have been fair if we had laid down the grounds on which a vote of censure can be passed against the Minister. The problem I am having Mr. Chairman, arises from the fact that Ministers may be appointed from Parliament and you cannot rule out political scheming by those who are within Parliament who aspire to be Ministers. And if you have such a situation pertaining in any country, then you will have a situation where you have to remove Ministers on and off and there can be no proper continuity in government. I would also like to mention something about collective responsibility. If the Ministers are collectively responsible for the decisions made in Cabinet, then it follows that you should not censure only one individual. If you find one individual is not performing, then it means collectively, they have failed to perform. In which case, you should remove the entire cabinet. You should pass a vote of no confidence against the entire government and call for elections. Mr. Chairman, those are the reasons I am having because I must emphasize, I must emphasize that Ministers are collectively responsible and we have agreed to that. So if one is not performing, it means there is a failure in the entire Cabinet system. Mr. Chairman, those are my views. Thank you very much.

MR. CHEBET MAIKUT (Kween County): Mr. Chairman, I would like strongly to oppose the amendment by Hon. Tumukunde on few simple grounds. First of all, I am aware that in many African countries, a number of Ministers in such countries are very much insensitive to issues raised against them. Mr. Chairman, I am yet going to learn of any other Ministers in a number of these countries who have voluntarily resigned on matters of either principle or on matters of allegations raised against in their respective portfolios. On those grounds Mr. Chairman, in my view, we have to provide for a mechanism of not divesting the performances and activities of the Ministers from

the legislative arm of the State. In that view Mr. Chairman, we have provided under Article 120 that Ministers are individually responsible to the President. But let me take or remind Hon. Delegates of few examples that we have seen in a number of countries, where allegations have been put and in many cases with clear evidence against certain Ministers. What has happened? A clear example is under Binasisa regime Mr. Chairman. A number of allegations were put against some Ministers and the President was insensitive. No action was taken. Under Obote two, the same situation prevailed and in neighbouring countries like Tanzania for example, a Minister recently had to be dismissed for pointing out what seemed to be a fact by the majority of that population of that country. Now, given such circumstances, I think it will be prudent for us that we give the legislative arm of the State some kind of responsibility to look at the performances of such Ministers. So in short Mr. Chairman, I would like to strongly recommend that we retain the recommendation enshrined in Article 121 of the committee's report. Thank you very much Mr. Chairman.

PROF. KANYEIHAMBA GEORGE (Rubanda East County): Thank you Mr. Chairman. I would like to support the amendment to delete this clause. Mr. Chairman, I think that we should bear in mind that Parliament has the residual power to make recommendations to the president on any issue whatsoever and if you look this, the way it is worded, this is a mere recommendation. We are not saying that the President is obliged when the minister has been censured to remove him. He should take appropriate action in the matter, we are not spelling out. I remember when this matter was debated in committee two, the Members were against recommending that the president shall remove the Minister. And therefore, the matter Mr. Chairman, is a mere recommendation and I think that it would be dangerous-

THE CHAIRMAN: Hon. Kanyeihamba, there is a point of order.

MR. TIRUSASIRA DIFASI (Bugabula North): Mr. Chairman Sir, is it in order for the Hon. Member on the Floor to support the deletion when he was a Member of the committee and he has not filed a minority report? Is he in order?

THE CHAIRMAN: The Chair would be in diffi-

culty to rule on that one because I do not have the voting pattern in your committee to know whether he voted for or against this particular provision. So he may be being consistent with his position in the committee. So he is entitled to proceed.

PROF. KANYEIHAMBA: Thank you Mr. Chairman for your protection. I think Mr. Chairman, that to allow this kind of clause in this constitution would be opening a pandora's box. It is true that there have been allegations against individual Ministers. Some of us who have been very close to Government are aware that when on asking for evidence, no evidence seems to come forward and therefore, in many cases, it was witch-hunting. Sometimes Ministers were being challenged, sometimes for doing their duty but a duty which may not have been pleasing to some sections of society. And if you allow this kind of clause to appear in the constitution, then really motions of censure will abound in Parliament and we shall be diverting from the business of the government to attacking individual Ministers. Mr. Chairman, we have said that it is the responsibility of the President to appoint obviously competent Ministers with the approval of Parliament. We have given the role of approval to Parliament and then we have not said that the President shall dismiss Ministers with the approval of Parliament which I think is very wise. Therefore, the discretion of the President to examine his or her Ministers, their performance, should not be fettered by a clause of this kind. Secondly, to do what is proposed in this clause - *(interruption)*-

MR. ROBERT KITARIKO (Democratic Party): Point of information. Can the speaker tell me why the leadership code of conduct has not been put into effect? Because it was passed a long time ago. Parliament has failed to implement it.

PROF. KANYEIHAMBA: Well, I do not know whether I should really answer that because for example, our constitution has provided for effective Presidents but in the past we have not had them. Shall we now stop providing for a Presidency? So really we should not attack a system simply because those who are put in charge of implementing it have failed us. Instead we should ensure that the people we elect - the people we appoint are competent to do what the constitution provides.

CAPT. BABU: Point of information. Mr. Chairman, I just want to inform the Hon. Member on the

Floor that the NRC passed the leadership code and the Statute. And furthermore, the phase of appointing the people to implement the leadership code has already been finished and a little bit further, the money which is required to run that system is a lot of money and for the first time, it is going to be put in the budget. We have not had a chance to run that model because it is, a very big model. It is not as simple as saying that you start it tomorrow. It has to be run over a period of time and now, with the new committee in place, and the budget having been approved, we hope that it is going to be effective.

MR. SSEKWEYAMA ANTHONY (Mawokota South): Mr. Chairman, thank you. I would like Hon. Kanyeihamba to clarify to me this point. Given the points that some speakers against the deletion have advanced, that in the past Presidents ignoring wrong-doings of certain Ministers or even covering them up. Mr. Chairman, supposing there was a proven case of wrong-doing for example, corruption, and Parliament would not have the power as to censure such a Minister. Would then the President vicariously take responsibility so that the mistakes of one Minister can cause for example, his impeachment? Otherwise, how are we going to censure or to hold the Minister responsible for his own mistakes within his own Ministry? So what I can see is that if we go by the principle of collective responsibility, then it means that the Parliament would have the power to initiate impeachment proceedings not so much because of the mistakes or the wrong doing of the President but of one man, his Minister. So I want to be clarified Mr. Chairman, on that point.

PROF. KANYEIHAMBA: I thank the Hon. Member who has sought clarification. But mostly I thank him for his contribution which I think does to some extent support the point I am making. That where an individual Minister makes errors for which this clause was intended, then obviously if the matter is brought to the President, it should be the President to act. And if he fails to act, then that could be one of the misdemeanors that could be brought against the President for not acting presidentially when a Minister has failed to perform his duties. In other words, it is the President who is responsible for the executive. He has got his troops of Ministers under him. Should any of those troops misbehave, then the responsibility is that of the President, as ultimately it is also the collective

responsibility of Cabinet. I believe that this way, we shall maintain the separation of the executive from the legislature and let the legislature censure the government as a whole rather than become a hound in trying to point out individual Ministers. Mr. Chairman, I beg to support very strongly the amendment moved by Hon. Tumukunde. I thank you Sir.

MR. ELYAU MIKE (Kalaki County): Thank you Mr. Chairman. Mr. Chairman, we have been asking ourselves as to who is corrupt in this country. Some people blame Ministers, Ministers blame even Members of Parliament. But I think this clue here is purely a supervisory signal. It does not mean that we shall let down our Ministers. This is to make them work effectively. It is part of accountability. That is why this thing has been put in the draft and if you read the report of the Odoki Commission, people have been complaining that Ministers are not honest. So I think this is allowed so that our Ministers are brought to task for the sake of efficiency. Because if we leave it to the President alone, he cannot run the Ministers and then satisfy himself with their activities. Some Ministers make messes from the villages. Where will the President see that? So I think we should allow this one as a temporary measure for making people in the Ministry effective and very honest to their country. I thank you. I retain the draft.

PROF. TARSIS KABWEGYERE (Igara West County): Thank you Mr. Chairman. Mr. Chairman, I also support the amendment. Mr. Chairman, there seems to be a tendency or an implication that Parliament is going to be made up of angels, who will oversee the standards of performance and will be in a position to direct the executive—those bad guys will be kept in checks. I do not think Mr. Chairman, looking at society generally that the elected parliamentarians are going to be a special breed of human beings different from the rest of society. In fact, they will be very representative of that society. That is point number one. Secondly, Mr. Chairman, there is a tendency to think that separation of powers is the same thing as incompatibility of powers. Mr. Chairman, if we are looking at Parliament as an organ of the State and we are looking at the executive as also an organ of the State, we must see how the two work together. Mr. Chairman, I see the President having all the information about what goes on in Parliament. Some of us seem to think or speak as if we do not know the

procedure in Parliament. In Parliament, Members are free to ask questions of the Minister, questions of policy, questions of performance, even questions of personality. Members of Parliament are free to raise questions and the Ministers can either answer verbally or in writing. A President worth his name will take note of the performance of his Minister in that regard. If a Minister is performing very poorly, in Parliament in answering questions, in doing his job as reflected through his answers, then the President is in a position to take the necessary action in the next reshuffle. I believe Mr. Chairman, the legitimacy of the government must not be seen in piecemeal. If you have 21 Ministers as proposed and one Minister is censured and thrown out, does that government still have legitimacy at all? It does not because we are not talking of the legitimacy or the success of one individual. There is what is called collective responsibility. If Parliament succeeds in censuring a Minister, the President has himself been censured and if a Minister is dismissed on the basis of a censure—*(Interjection)* no, let me finish the information. When we are talking of collective responsibility, we are talking of even an individual Minister. If an individual Minister performs badly, even other Colleagues of his are affected by that, let alone the appointing authority, the President. So let us be clear that if you want to move a motion of censure, let it be against the whole government using the individual Minister whose performance has gone below standard. But the moment you think that you can identify one individual and the rest can continue, you have a problem because the legitimacy is not piecemeal. Lastly, I would want to emphasize very, very clearly that separation of powers is not the same thing as incompatibility. Many of us are even beginning to re-think this whole question of approval. Suppose a President presents 20 names and Parliament only approves one and he goes back. He brings 21 or 20, they approve two. You could have a situation Mr. Chairman, where a President is completely paralysed and Parliament will be there laughing and the government and State will be in jeopardy.

THE CHAIRMAN: You are now debating a different issue which we finished.

PROF. KABWEGYERE: No, Mr. Chairman, it is not a different issue. I am looking at the issues in relation to the whole of question of legitimacy and workability of a constitution and indeed the machinery of State.

MR. KITAKA-GAWERA (Bbale County): Thank you very much indeed Mr. Chairman. Mr. Chairman, I vehemently disapprove the amendment for removal of Article 121 for the following reasons. One, in view of the cancer of corruption that is eating up not only Uganda but most of African and Third world countries, it is necessary to retain this article. Two, despite the warning and public outcry in the papers regarding corruption, some Ministers have remained incorrigibly callous and have not resigned despite the fact that they have been warned and proved wrong about their evil-doing. Article 121 Mr. Chairman, is a kick at the back. This will keep Ministers on their toes so that they guard themselves against wrong doing because they know that at a certain stage when they have wronged, they will be censured. I therefore urge my colleagues who would not like to ensure that this satanic dealings are put to an end that they support that this article should be retained. Thank you very much indeed Mr. Chairman.

MR. SEBALU KENNEDY (Youth- Central Region): Thank you very much Mr. Chairman. I rise to support the motion as moved by the Hon. Member from Rubabo. Mr. Chairman, elsewhere, we have already agreed that the President has to be elected by universal adult suffrage and for that matter, he has got the mandate of all Ugandans. Then he goes ahead to appoint his Ministers as his work team to be able to execute his policies. So it would be wrong and it would hamper his work if he finds that some of his Ministers are not performing. For that action to be taken, elsewhere we believe that the President works very closely with his Ministers and therefore he has got the ability to monitor their operations without losing sight of what is coming from the public like the papers and also Parliament. So he is the ultimate legitimate person to take action where need arises however, Parliament can make him informed. Secondly, the President is the appointing authority. And it would only be logical that the appointing authority supervises his subjects and takes the responsibility of disappointing them. Secondly, the role of Parliament is already catered for because we have already involved Parliament in approving. So if Parliament has already taken part in approving, when it comes to execution because at the end of the day, when the President fails or succeeds, he is the one to take responsibility of what has come out of his Cabinet. And in that case, we should not underestimate the ability of our leaders. Well in the

past, this has been abused but then we should not use that as a reason to justify. The Presidents we are going to have in future are all going, to be the same whereby they will not be able to see that some Ministers are not performing or they are embarrassing them or they are behaving in a way that is unbecoming. So we should also take into consideration that the President himself wants a good team to work with. A team that will be able to deliver and within reason he can be able to, tell that his Minister is not performing. But if you bring in this aspect of censorship, already some Members of Parliament are hopeful and you will find a situation of double dealing and hypocrisy and the whole operation of government is hampered by those undercutting. So for that reason Mr. Chairman, I pray that the House gets reason in this and we leave the President to handle his cabinet and be able to perform so that when he fails we blame him and the entire blame goes on him, without him saying that but I could have performed but Parliament bogged me down. So Mr. Chairman, I support that we delete this clause.

MR. BIDANDI- SSALI (Nakawa Division): Thank you Mr. Chairman. I do believe that the Constitution we are making now is for the future, not for now. Mr. Chairman, I would like to oppose the amendment-*(Applause)*- on the ground that we have already I think decided that the appointment of Ministers will be subject to the approval of Parliament. If the President picks upon Bidandi for example, he has considered every aspect of Bidandi and he is convinced that he is okay. The name is taken to Parliament, Parliament at that time censures the name actually and then finds that no, because of a, b, c, we are not going to approve. In other words, at that moment of appointment, the two have differed. The President has a different view but Parliament has also a different view. Most probably views that the president had not taken into account and the President is obliged to have another name. Now, when a Minister is appointed by the President, approved by Parliament, they are together. But as time goes on, things develop. Now, after two years or so, especially when there is a tendency of degeneration, of performance, the President may not be aware. He may still think that the Minister is okay, he is doing well and so on. But later on -

THE CHAIRMAN: Hon. Bidandi Ssali, Hon. Sserwanga-Lwanga wants to be clarified or to clarify you. I do not know.

MR. BIDANDI SSALI: Does he want to be clarified or to clarify?

THE CHAIRMAN: He is seeking clarification from you.

LT. COL. SSERWANGA-LWANGA (NRA Delegate): Point of clarification. Mr. Chairman, I am seeking clarification from Hon. Bidandi. When he talks of approval by Parliament of Ministers, does he want to say that every office we have subjected to approval of Parliament, Parliament will also come in the removal? And they will keep on monitoring what these other people are performing like the judges, like the Inspector General of Government, like the Vice President? What will be the role of Parliament in, the performance of those other offices we have subjected to approval by Parliament?

MR. BIDANDI-SSALI: Mr. Chairman, Sir, the subject under discussion is the recommendation from the Committee regarding Ministers and that is exactly what I am debating. *(Applause)*. Mr. Chairman, I was trying to advance a point that after some time, a Minister can develop certain tendencies, behaviour in society or whatever the case may be, which would have been ground for Parliament not to approve. But now they have developed and therefore, they are good cause for Parliament to say no, Mr. President, no. This person in our view does not deserve to be a Minister any longer because of a, b and c. So the mere fact that we subject the name to approval and approval is given on certain premises. Now I think we should allow Parliament when they discover that their approval is now no longer tenable because of what has developed, I think Parliament should continue or should be given a chance to censure. Mr. Chairman, Hon. Professor has said that there is a tendency of thinking that Members of Parliament are angels. In the context of the democracy we are trying to talk about and as long as we have said that the people are supreme, we are saying people are angels in this respect. And therefore, their representatives, the people they have been elected themselves to perform such duties. They do perform such duties as angels in that context. Otherwise I do not see any other angel. Mr. Chairman, this question of collective responsibility, I think let us be clear. If I go and drink my head off as a Minister, really the Minister of Education there should not be responsible for my behaviour. *(Applause)*. Now collective responsi-

bility refers to the execution of duties of State. Now there, there is collective responsibility and we have provided I think, for the Parliament to censure the President for that collective responsibility, failure of government. But for my own failure in behaviour and other matters, I think there are times when a Minister is accountable to his actions as an individual. The basis of which should be I think the reason why Parliament should be free to censure. Thank you Mr. Chairman.

CAPT. BABU: Mr. Chairman, thank you very much. I support the amendment and I support it for the following reasons. One, Mr. Chairman, the reasons which are being given. I am very sympathetic that there are people who have formed an impression that when a newspaper or a few people point their fingers in a particular individual who happens to be a Minister, that man is already guilty. I think if we want to establish law and order, even when -

THE CHAIRMAN: Hon. Babu are you taking information from Hon. Bateganya?

CAPT. BABU: No, I was going to ask for an Hon. Member who is holding a meeting somewhere there to allow us to also submit. I will take the information.

MR. BATEGANYA DICK (Bukooli Central): Thank you very much, Mr. Chairman and Hon. Babu for leaving the Floor. I would like to give Hon. Babu this information. On Clause 6 of the same clause we are debating, of the same article we are debating, a Minister that is the subject of the censure is given a chance to explain. So I do not think it is really important to base on hearsay. He will be given a chance to explain. Thank you.

CAPT. BABU: Mr. Chairman, I thank the Hon. Member for the information. There has been in recent times even proof that some malicious rumours - some malicious pointers on Ministers have been carried out. And more or less the whole society has believed that Minister did whatever he did. We are finding out now that our justice which is being strengthened is beginning to prove to the whole world that these were malicious rumours. They are even now paying out money to some of these Ministers for these malicious rumours. Now when you create a situation where somebody you say is corrupt and then they come and -

MAJ. GEN. TINYEFUZA (NRA Delegate): Thank you Mr. Chairman and Hon. Babu. Mr. Chairman I am a bit interested in as far as the contributor says, that much is based on malicious propaganda about Ministers. I would like to ask Hon. Babu, can you clarify to me if you think that the recommendation of the recent Commission of Inquiry about the hunger in the east where Ministers were implicated to have not performed specifically Hon. Adyebo, Hon. Sekitoleko and Hon. Ejalu. And others like Hon. Sekitoleko were promoted! Now were those rumours? I want you to clarify to me. *(Applause)*.

CAPT. BABU: Unfortunately, I am not an authority on that report but one thing I would say, all the names he has mentioned right now, most of them are no longer Ministers in this government. And therefore, the names he has mentioned now are no longer holding responsible Ministries in this government. Whatever the argument might be, the point is, if that was the basis, I do not have- or I am not an authority, that is what I am trying to say. But from the little bit he has just mentioned, it is not Parliament that brought out this report and we must get this point very clear. Because you see, there is this tendency and this is the unfortunate bit. I have been a Member of NRC where a Minister has come to present a government position and because that government position was unpopular, that Minister became unpopular at that time. Imagine if that Minister was censured because of his stand of collective responsibility, what then happens? To me, the vote should be against the government, not an individual for his performance. Therefore, that is why when people talk about individual behaviour, we come in with a new aspect of the code of conduct because the code of conduct takes the individual responsibility of a Minister. How that Minister should behave outside the collective responsibility. And furthermore, a Minister is not like a President. He is under the law. If he commits an offence, he is tried like any other citizen and he can be taken to court. Therefore, at the end of the day, the arguments of his individual responsibility become different. But if you put in now Parliament, you create another problem because if the Minister is wrongly accused and this is where the problem is. If he is wrongly accused and that particular moment, there is a euphoria and you carry out a census, you find out later on that you are wrong. Then justice has been abused. And this is where -

MR. KARUHANGA ELLY (Nyabushozi): Thank you Mr. Chairman. I wanted to inform Hon. Babu some two points.

THE CHAIRMAN: Could you speak through the microphone please.

MR. KARUHANGA: I wanted to inform Hon. Babu holding the Floor and thank him for allowing me to give him information. Mr. Chairman, Parliament can summon any official in public office including Ministers to attend their committees to answer specific issues that Parliament wishes to be explained to them depending on performance, character, behaviour or anything that Parliament deems necessary. In that exercise of scrutiny, Parliament is free to make comments as it wishes. The Press would be present as a watchdog to also expose the Minister in question. But to give Parliament more power to direct the appointing authority, to dismiss the Minister when in fact -

THE CHAIRMAN: Now you are contributing, you are not-

MR. KARUHANGA: No, that is one information. The second part of the information is, Mr. Chairman, is that if you have a strong willed Minister. - *(Interruption)*

THE CHAIRMAN: That is now contribution and I think I will have - *(Interruption)*

MR. KARUHANGA: I think you are also censuring my information, Mr. Chairman. *(laughter)*.

THE CHAIRMAN: Yes. And I am entitled to, because...

MR. KARUHANGA: Will I, be given a chance to contribute?

THE CHAIRMAN: Hon. Ben Wacha, yours should be information strictly, not contribution.

MR. BEN WACHA (Oyam North County): Point of information. Thank you, Mr. Chairman. Sir, Hon. Babu says that if it happens that the information on which the vote of censure is based happens to be wrong, then, justice will have been abused. Mr. Chairman sir, I want to inform Hon. Babu and the House, that this Clause was very carefully formulated. The vote of censure is a

serious indicator to the President that something is fundamentally wrong on his Minister. But what should happen after that is left to the President and what the President can do, will vary according to the circumstances. It might be - *(Interruption)*

THE CHAIRMAN: You are also going into the same direction as - *(interruption)*

MR. BEN WACHA: I was just indicating what the various options are.

THE CHAIRMAN: No, no, that is a contribution, because you said you are going to inform him, but from my assessment, you are making a substantive contribution on the argument. Hon. Babu, will you wind up, please?

CAPT. BABU: Mr. Chairman, as I was winding up, I would like to thank the Hon. Members for their contribution and I want to thank them, I was coming to the standing committees. We are going to give Parliament powers for standing committees and if these standing committees are in operation and they work very well, they will be able to censure the Minister, even without making this a Constitutional provision. The point is, we had problems with our past, and some of us are basing some of our arguments on wanting to hang people who have committed mistakes in the past, by using this Constitution. I would like us therefore, Mr. Chairman, to come up and create a situation whereby we will give the powers where they are due and not even reduce all the powers of the appointing authorities of these Ministers. And we should also leave the executive arm of Government to commit these mistakes, to even allow the people who elected them to use these mistakes against that particular Government. Because to me, if the Parliament is going to usurp the powers of the President, even on this particular issue, it will be reducing his power a little bit further. And he will not have enough control over these Ministers, because they can use the Parliament to fight him. Thank you very much.

THE CHAIRMAN: Hon. delegates, I think we have had enough arguments for and against this Motion. I will now put the question. The point at issue is that Clause 1, of Article 121, be deleted so that Parliament has no power to move a Motion of censure on a Minister, that is the Motion on the Floor.

(Question put and negatived)

THE CHAIRMAN: The numbers do not justify division. Order, Order. Let us now go to Clause 2.

MR. MULENGA: Thank you, Mr. Chairman. Mr. Chairman, I want to make an observation that as the delegates contributed on Clause 1, I got a feeling that perhaps we ought to have provided grounds on which such censure should be moved and at an appropriate time, we could consider the - *(interruption)*

THE CHAIRMAN: Order, Hon. delegates. We are making so much of a racket that we can hardly hear the Chairman of Committee 2.

MR. MULENGA: Mr. Chairman, I was making an observation that, before I go to Clause 2, from the contributions given on Clause 1, I felt that perhaps it might have been a better idea to specify grounds on which censure Motion could be done. And perhaps at an appropriate time we could reconsider and revisit for that purpose only.

THE CHAIRMAN: The Chairman of Committee 2, is saying that it is a valid observation that grounds were not set out upon which a Motion of censure could be based. I think if we agree in principle, that a Clause be introduced setting out the grounds, the Chairman and his committee can come forward with grounds next Thursday.

MR. MULENGA: Mr. Chairman, Clause 2, it is recommended that Clause 2 reads: "*Upon a vote of censure being passed against a Minister, the President shall, unless the Minister resigns his or her office, take appropriate action in the matter.*"

THE CHAIRMAN: Okay, next.

MR. MULENGA: Clause 3. It is recommended that proceedings for Clause 3 reads: "*Proceedings for censure of a Minister shall be initiated by petition to the President through the Speaker, signed by not less than one third of all members of Parliament, giving notice that they are dissatisfied with the conduct or performance of the Minister and intend to move a Motion of censure and setting out particulars of the grounds in support of the Motion.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause 4. Mr. Chairman, it is recommended that Clause 4 provides: "*The President shall upon receipt of the petition, cause a copy of it to be given to the Minister in question.*"

THE CHAIRMAN: Yes, next.

MR. MULENGA: Mr. Chairman, Clause 5. It is recommended that Clause 5 reads: "*Motion for the resolution of censure shall not be debated until the expiry of 30 days after the petition was sent to the President.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause 6. It is recommended that Clause 6 reads: "*A minister in respect of whom a vote of censure is debated under Clause 5 of this Article is entitled during the debate to be heard in his or her defence.*"

THE CHAIRMAN: Hon. Delegates, we shall declare ourselves on this Article when we receive the Clause setting out the grounds as we agreed.

PROF. KANYEIHAMBA: Mr. Chairman, in light of the provisions of Clause 3, which I do not know whether the Chairman had seen. Surely, I think Clause 3 does provide the grounds for censure! Do we- are those not sufficient grounds for us to be able to pronounce ourselves on this Article? So, I propose, Mr. Chairman, that the grounds for censure of the Minister are contained in Clause 3. I move that we can express ourselves on this Article without having to bother the Chairman of Committee 2 to call another meeting. Thank you, Mr. Chairman.

THE CHAIRMAN: No, I think we agreed that we need- on the recommendation of the Chairman we agreed that it is appropriate to set out grounds in the Constitution itself one which the allegation can be related to. As it is now, you can say anything.

PROF. KANYEIHAMBA: Mr. Chairman, Clause 3 says that the grounds are specific. It says that it would- that the members who are signatories to petition are dissatisfied with the conduct or performance of the Minister and that they would set out grounds why they are dissatisfied. I thought that the Chairman in this Constitution, can we go further than that, Mr. Chairman?

MR. MULENGA: Mr. Chairman, while I appreciate that in Constitution, you do not want to go to much detail, but when you are providing for a substantive matter like this, there should be adequate guidance. Not generalise almost vague provision-like, unless we are to qualify it by saying that Parliament shall specify. Otherwise, when you talk about dissatisfied with the conduct, in what? Conduct that he does not go to church? That- you know, it is too open. It must related to his job. So, Mr. Chairman, I say it perhaps we did not advert sufficiently that issue to provide - *(Interruption)*

THE CHAIRMAN: I think we have already agreed that on Thursday the Chairman will come with the grounds. I do not think we have to re-open debate on this one. Agreed? Hon. Mulenga, we go to the next, 122.

MR. MULENGA: Mr. Chairman, the committee recommends that Article 122 of the Draft be deleted and the reason is in a way, first of all, as you have noted here. We felt that this is related to membership of the legislature. The Article provides for - in the draft provides for membership of the Vice President and any Minister that is not an elected member of Parliament, to be ex-officio member. So, this is in relation to membership of the legislature it could be more appropriately transferred to the legislature. But also of course, it is linked with the Clauses that we differed decision on until next Thursday.

THE CHAIRMAN: The recommendation is that 122 as it appears in the text, be deleted and therefore, there is in its place another formulation. Hon. Mulenga. Sorry, before that Hon. Bageya. Are you talking about the deletion of the other article?

MR. BAGEYA GEORGE (Kigulu North): Mr. Chairman, I do not think we shall be in order, Mr. Chairman, to make a decision on this particular Article, when it actually hinges on Article 116 which stood over.

THE CHAIRMAN: But that is what the Chairman has just said.

MR. MULENGA: Mr. Chairman, the committee recommends that a new Article 122 be with regard to the Attorney General and should read in Clause 1 as follows: "*There shall be an Attorney General who shall be a Cabinet Minister appointed by the President, with the approval of Parliament.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause 2." *A person shall not be qualified to be appointed as Attorney General unless he or she is qualified to practice as an advocate of the High Court and has so practiced or gained the necessary experience of not less than 10 years.*"

THE CHAIRMAN: Agreed next.

MR. MULENGA: Clause 3." *The Attorney General shall be the Principal Legal Adviser of government.*"

Clause 4." *Functions of the Attorney General shall include the following.*

a) *to give legal advice and legal services to the Government on any subject*

b) *to draw and peruse Agreements, Contracts, Treaties, Conventions and documents by whatever name called to which the Government is a party or in respect of which the Government has an interest.*

c) *to represent the Government in courts or in any other legal proceedings to which the Government is a party; and -*

d) *to perform such other functions as may be assigned to him or her by the President or by law.*

Clause 5." *Except in such cases and subject to such conditions as Parliament may by law prescribe, no agreement, contract, treaty, convention or document by whatever name called, to which the Government is a party or in respect of which the Government has an interest shall be concluded without legal advice from the Attorney General.*"

MR. MAYANJA ABUBAKER (Busujju County): Mr. Chairman, I would be grateful if the Chairman of the committee will give me some kind of- some indication of circumstances or situations where it might be necessary for agreements to entered into by the Government without taking legal advice of their legal adviser.

(Interruptions)

MR. MAYANJA: Mr. Chairman, it so often happens that the Attorney General gives legal advice in Cabinet verbally and he does not even go to what is

recorded in the minutes of the Cabinet. So, it is really not practical to make - it is not necessary, he gives it verbally, it may be reduced to Cabinet by the Secretariat.

MR. PAUL ETYANG (Tororo County): Mr. Chairman, I had also raised my hand on the point raised by Hon. Ssebaana Kizito. I know you have reacted to it on the basis of your experience. But I think on the basis of the practical experience in the country here, so far it has been a practical requirement that when you receive a document such as are listed here, contracts, treaties, conventions, or whatever name called. That it is advisable - in fact there is I think a circular. To the effect that you have got to receive from the Attorney General's Chambers a testimony in writing that, that particular treaty has been cleared and by the Attorney General's Chambers. Now, that we have listed it here, it might be worthwhile to make it absolutely clear that the advise given here, has got to be documented.

THE CHAIRMAN: But I think the Hon. Member for Busujju did give a vivid example. Most of Government decisions are taken in meetings. And I can choose to come there with a legal document advising on a matter which has been given to you to advise on before. But as you go along in the meeting, situations can arise where you give your opinion to that meeting and it appears only in the minutes. Now, that is not a written opinion from the Attorney General, it is advice by the Attorney General verbally.

MR. ETYANG: Mr. Chairman, I was really having in mind situations that happen outside the meetings as such. Although the one he alluded to was in respect of Cabinet proceedings, which as he has also said, are recorded. But these are things which are listed here. A written contract, a written treaty, a written convention, a written document by whatever name. That is my understanding of this particular provision.

THE CHAIRMAN: Anyway, it will be answered.

LT. COL. KIIZA BESIGYE (NRA Delegate): Mr. Chairman, I also wanted to support the inclusion of written advise. Because the areas in which it relates are specific and do not preclude the giving of advice in meetings on any matter. But on matters of concluding an agreement between Uganda and any other party or a contract or treaty or convention

or documents of that nature. I think it is imperative that there should be written advice before the conclusion. It may be discussed in a meeting and the advice may be tendered at that level. But before the final conclusion of that meeting, I think it is necessary for record that advice is reduced into written form and filed by the respective Ministries. I think leaving it to the minutes and even minutes here is not mandatory, it may be even on a phone that you give advice and somebody concludes the contract and that brings problems. And then it is a word against his and so on and so forth. I think that situation should be avoided in these particular instances of concluding treaties, conventions or contracts and documents of that nature. That was my view, Mr. Chairman.

THE CHAIRMAN: Before I give the Floor to the Hon. Kanyeihamba, if we go into having it as a mandatory requirement to write advice on every contractual arrangement that Uganda has to enter. Okay, it is desirable and we say parliament can give exceptions. But assume that Parliament has not yet been approached to give exceptions. Then you have a situation where an accounting officer is seeking to take on services like repair of a car or even issue a Local purchase order and that is a contract - creating a contractual situation. Does he need some reasonable opinion before he goes to enter into that sort of arrangement?

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. In support of Hon. Ssebaana Kizito's requirement that it should be written, I think the guiding words are: *should not be concluded*. That this where the legal advice is concerned. The circumstance given by Hon. Abu Mayanja is correct. But that is when the negotiations are continuing, Cabinet is seeking clarification from the Attorney General and so forth. Ultimately, when need comes to sign the Treaty, that is to conclude it, to conclude the contract, then in fact, many countries and other parties will require the Attorney General to reduce whatever advice was given, in writing. They will not sign unless the Attorney General has given his written advice and often we had to do this. So, Mr. Chairman, I think that the words written is not incompatible with the kind of advice that the Chairman had in mind and others when the matters are being negotiated. Ultimately, the advice must be reduced into writing. So I would support that amendment, Mr. Chairman.

THE CHAIRMAN: But how do you read the whole thing? Except in such cases and subject to such conditions as Parliament by law prescribes, no agreement, contract, treaty- So until we move Parliament, how would that be-affected in the relations- the day-to-day operations of the Government? We are talking about a Constitutional requirement.

PROF. KANYEIHAMBA: Mr. Chairman, my reading of this Clause to say that unless Parliament otherwise provides. Then, no agreement, contract, treaty, as the case may be, shall be concluded without legal advice from the Attorney General. In other words, Parliament may prescribe certain agreements, or treaties where the advise is to come elsewhere other than the Attorney General's Chambers. I think that is what they have in mind.

THE CHAIRMAN: No, but I am looking at a situation where, assuming Parliament has not yet done so, it would have required a legal opinion from the Attorney General for us to acquire the services of this Chamber. Because we would have had to enter a contract between Nile Hotel and us and that would have required an opinion from the Attorney General to enable us to be able to enter into this present arrangement we have with Nile Hotel and the Constituent Assembly for services.

MR. MUSUMBA ISAAC (Buzaaya County): Thank you very much, Mr. Chairman. Mr. Chairman, that is a very serious concern which you have made, because I had earlier on actually talked to Hon. Chairman of committee 2. And I said, in the day-to-day transactions between for instance, other Ministries or in Government, and the Ministry of Justice, with respect to relatively small agreements. We are in touch with the Solicitor General and the offices below him are actually writing opinions for the Solicitor General and signing for the Solicitor General. And the provision here, making it mandatory in a Constitution to be signed by Attorney General, locks out that cadre of people to communicate on a Technical level and advise. So, I think, Mr. Chairman it is important really to - not even to wait for Parliament, but to put a provision to amend this provision to the effect that agreements of a certain cadre, or a certain class can be dealt with ordinarily. But agreements of a certain nature may or should only be with the consent of the Attorney General.

MR. NDEGE JOHN (Luuka County): Thank you, Mr. Chairman. I think we can overcome this by redrafting it the other way. Instead of saying that no agreement should be concluded without Parliament, we can say that Parliament will give the Attorney General agreements, and etc, etc, which cannot be concluded without the consent of the Attorney General. In other words, where Parliament feels the Attorney General must be consulted in writing, Parliament can prescribe. The rest, which are very many, including fuel, etc, etc, buying of pens, and etc, can be left and Parliament just prescribes those contracts and other types of agreements where Parliament feels the Attorney General must be consulted. That is the way I look at it.

THE CHAIRMAN: There is a practice in some jurisdictions more or less on those lines, where they do not say, by merely, they even put values in some of them or treaties between states. For instance, under the Government Contracts Act of Australia, a contract, the value of which exceeds, is of, or above a certain amount cannot be signed. Except by first, the Head of State acting with and the advice of Cabinet. So that the process is started and opinions are given at all stages in including treaties. So, I think the proposal of Hon. Ndege could cure this, that we do it the other way. That Parliament may prescribe contracts, treaties, agreements or whatever. The signature of which or conclusion cannot be effected without first obtaining the written advice of the Attorney General. Then we leave the smaller ones to be available for the day-to-day transactions.

MR. WANENDEYA WILLIAM (Budairi East): Thank you very much, Mr. Chairman. Mr. Chairman, this is a very tricky sub-section which must be considered carefully. When it comes to the letting of contracts to amounts, for instance, you might say, no contract should be signed unless it exceeds a million dollars. Somebody cunningly may come up to sign contracts for \$999,000 dollars. So that so many of them are signed as a way of beating the requirement. So that must be considered. Mr. Chairman, there is also another scenario. The second scenario is that, there are people who have at times refused because they are considered favourites of a Head of State or a big man in Government. As a result, they ignore the advice of the Attorney General even without waiting for the advice of the Attorney General, goes ahead with the

contract. What do we do with those type of people? I will give you an example of PERD as one of the things. A lot of money has been sunk into PERD right from this time, it was initiated. The second example, is the contract of the Second Phase of U.E.B. So, what do we do? There should be, well, some section in the Constitution to guard ourselves or the country against these kind of malpractices. Thank you, Mr. Chairman.

MR. MWESIGWA RUKUTANA (Rushenyi County): Thank you, Mr. Chairman. To me, reading this Article, I do not think we have to strain ourselves to go to the proposal by Hon. Ndege and Hon. Isanga Musumba. Because, what they are proposing to me, is clearly catered for. When you say: *'except in such cases and subject to such conditions as Parliament may by law prescribe,'* you are already giving Parliament to consider cases which may not necessarily fall within this section. In that consideration, Parliament may decide to categorise and say, as they are suggesting that, for contracts of such and such amounts, we need A,B,C,D. For contracts of such and such amounts, we do not need A,B,C,D. So, I think the Article is okay and if we left it, it would cause no harm. But my concern is in light of the considered advice of the former Attorney General, which I agree with. Situations may arise where the Government may need to take a spontaneous decision as to whether to bind itself in an agreement or not. If such a situation arose, and it is so important for the nation, what would happen if we have this mandatory provision that it is a conditional precedent for the Attorney General to give a written advice? My suggestion, Mr. Chairman, would be, that whereas we should make it mandatory for the Attorney General to give a written advice, this advice need not be a conditional precedent to the conclusion of the contract. As long as he is consulted, as I said, if something arose, and he had to be consulted immediately, before Government can bind itself, as long as he has been consulted and he has duly regarded the matter. To me, I think the Government could go ahead provided that at one time, the reasons and the advice that was given by the Attorney General is codified or written. But we may find it dangerous in some instances to make it a condition precedent.

THE CHAIRMAN: But Hon. Rukutana, you said that this may not cause problems as it is. But can you run a scenario where, assuming we finish our work as we must by the month of June, and bring

this Constitution into force, and between that time and until Parliament has been moved to make these exceptions, we shall be operating under that new Constitution. How will the ordinary departments operate? In other words, can Parliament move instantaneously to pass the laws that provide for the exceptions? But if you put it the other way, then even if it takes Parliament one year, at least you can continue working until they have so provided.

MR. MWESIGWA RUKUTANA: Mr. Chairman, that agrees with what I am saying, that as long as at one time, the Attorney General gives his grounds in writing, it may not be necessary to make it a conditional precedent or to make it something that is mandatory if a contract is to be valid. If, for example, after the conclusion of the CA, before Parliament sits, we find we have to enter into a contract. The Attorney General is consulted and he gives his reasons. And later, when we have formulated instances when Parliament has sat and considered instances which may fall which way, later, the Attorney General gives his opinion, to me, that would be satisfactory. And it should not infringe on the validity of the contract that it was not given before the contract was concluded.

THE CHAIRMAN : But Hon. Musumba's concern was about the smaller operations of a daily nature. How would they be covered if the Constitution is saying there must be a written opinion?

PROF. KANYEIHAMBA: Thank you, Mr. Chairman. Like the previous Speaker, I would like the wording as it is, I think it cures the situation. But I want to give information, Mr. Chairman, that already Parliament has already made Statutes which make specific provision for specific contracts and treaties. For example, certain treaties have to be approved by Parliament, in some cases to be approved by Cabinet and so on and so forth. Those laws are here, and these will be saved, I assume by the transitional provisions in the Constitution. So, we do not have to worry that once we pass the constitution, such contracts, which parliament has already been prescribed may become jeopardised. On small amounts Mr. Chairman, also we already have laws which for example, allow Permanent Secretaries and their Assistants to conclude small amounts of contracts - involving small amounts of money without the sanction of the Attorney General. These laws are regulations are already in place in Mr. Chairman. Therefore, the ones that we had

in mind, are those which have not been prescribed by law already and as the previous Speaker has said, I think the present wording is very adequate. It would be - the kind of proposal which Mr. Chairman, you alluded to, would be very dangerous. In the sense that you are saying, unless Parliament prescribes, then no legal advice from Attorney General is necessary. Which I think would be jeopardising the whole field of these contracts and treaties, Mr. Chairman. So, on my really understanding, partly having worked in the Attorney General's Chamber and also my own experience of international agreements, the present wording is okay. We may not insist on Hon. Ssebaana Kizito's written word to be put there, although for me, it would also strengthen the case and it would have no harm, Mr. Chairman.

MR. WANDERA OGALO (BUKOOLI SOUTH): Thank you, Mr. Chairman. Mr. Chairman, I have my doubts about this wording. When we come to the small contracts, Hon. Kanyeihamba says there are already regulations which can allow Permanent Secretaries to deal with these small contracts. My doubt about this is, if those regulations exist, and the Constitution provides something to the contrary, then there is a conflict between the Constitution and those regulations of laws. I do not see how those laws and regulations will stand in face of the conflict with the constitution. No document may be entered in without this legal advice, I do not really follow it. I think what would happen, is there definitely, will be a construction that the Permanent Secretary in light of this provision, cannot enter into this contract. So, to avoid that kind of construction of this document, I would suggest that possibly, the best way, Mr. Chairman, would be, since we have referred some matters to Committee 2, to come back on Thursday. That in line with what Hon. Ndege proposed, this could be referred back so that it is re-phrased, so that we avoid this problem. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Kanyeihamba, I think you are following the argument raised by Hon. Wandera Ogalo, that, first of all, of course, there is a problem already in Government, and I think this provision was intended to address that. That there was laxity in signing of major contracts, and that was causing problems, people were signing without taking advice from the Attorney General. So, it is good that there should be some form of

provision. But I think the concern, the way it is written, is such that, even those Tender Board procedures apart, those are the ones where you have actually laws providing for a process and there, I think the Attorney General's people do attend. But you can have a real situation where like, for instance, buying an Air Ticket, and issuing an air Movement Order until Parliament will have said that buying an Air Ticket, you can do so without the legal opinion of the Attorney General. Under this, the Permanent Secretary will be required to obtain the legal opinion first before he buys an Air Ticket from an Airline and that will become obviously ridiculous. Let us hear one or two and then we go.

MR. MUSUMBA: Thank you very much, Mr. Chairman. Mr. Chairman, I was of the view that given the discussion that has been on the Floor, we could put in place an Amendment which reads as follows. '*Parliament, shall by law prescribe agreements, contracts, treaties or conventions, that shall be concluded only after advice has been obtained from the Attorney General.*' In so doing, Mr. chairman, we will be curing two problems.

i) The problem you have most ably explained to us and also that is the problem of smaller or lesser consequential agreements and also we shall be avoiding abuse. Abuse is likely to arise if, the name and office of Attorney General is to be used by all smaller officers in the Ministry of Justice, who will be giving advice. Because for lesser contracts, you are really not expecting that the Attorney General as appointed by the President with approval of Parliament will all the time sign. It will be the Civil Servants, under the Solicitor General, who will then have to be communicating this and now, they will be doing it on behalf of the Attorney General. This will create problems and it will not only water down the office of the Attorney General, but also be a subject of abuse. Mr. Chairman, I beg to move.

MR. JACK SABIITI (Rukiga County): Thank you, Mr. Chairman. Now, I think we are just spending unnecessary time on this topic. I have been in Civil Service for a long time and I do not see, or understand what Hon. Kanyeihamba meant, when he said some small agreements or whatever. As far as I know, whether there are small agreements or agreements which involve small monies, or whatever, the office of the Attorney General is, actually, it is mandatory that, it must be consulted. There is no agreement that can just be signed

without consultation. Whoever does it, it is contrary to the law. So, really, I do not see why we should spend too much time here.

THE CHAIRMAN: Hon. Jack Sabiiti, you have been in Public Service for a long time. What nature of agreement are you talking about? When you send an Office Superintendent to Uganda Airlines, with a signed Air Movement Order or whatever or L.P.O., you are signing an Agreement. Were you getting opinions from the Chambers of the Attorney General?

MR. JACK SABIITI: Mr. Chairman, I think you have narrowed the whole argument to administrative issues which could not be called the agreements we are talking about in the Constitution.

MR. MUSUMBA: Point of information. Mr. Chairman, the reading of what is stated here, is saying that no agreement, contract, etcetera; with the example you have given, a Local Purchase Order, when you go to the Airline and you enter into a contract to provide services for the money you are going to pay. So, that would definitely also be coming into the preview of this provision.

MR. SABIITI: Mr. Chairman, I think this being a Constitution, a word like agreement should not really in this Amendment. Maybe we should confine ourselves to a contract, treaty or convention, because when we talk of agreements, it complicates the whole issue.

THE CHAIRMAN: Anyway, I think let us do it this way. I do not know whether Hon. Mulenga accepts the formulation of Hon. Member for Buzaaya or he thinks that this matter could be stood over and come back on Thursday.

MR. MULENGA: Mr. Chairman, I am inclined to the suggestion that we stand it over and report on it on Thursday. But in the view of the old issues, I am going to suggest, Mr. Chairman that, you will have to give us an afternoon maybe or a morning in the course of early next week, because there are many matters that we have to consider, but specifically on this one, Mr. Chairman, I think we need to freshen up what Hon. Musumba suggestion - Amendment

THE CHAIRMAN: It also falls in line with the view of Hon. Ndege. That being so, we also do not

pronounce ourselves on 122. When we have cleared Clause 5, then, we pronounce ourselves on that one. 123.

MR. MULENGA: Mr. Chairman, Article 123, formerly 124 in the Draft, is about the office of the Director of Public Prosecution. The Committee recommends that Clause 1, of that Article should be retained to read: "There shall be a Director of Public Prosecution appointed by the President on the recommendation of the Public Service Commission and with the approval of Parliament."

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause 2." *A person is not qualified to be appointed Director of Public Prosecution unless he or she is qualified to be appointed a Judge of the High Court.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: 3,"*The functions of the Director of Public Prosecutions are:-*

(a) To direct the Police to investigate any information of a criminal nature and to report to him or her expeditiously.

(b) To institute criminal proceedings against any person or authority - (Interruption)-

THE CHAIRMAN: Hon. Mulenga, I see the hand of Hon. Malinga.

MR. MULENGA: In the middle of reading (b)?

MR. CHAIRMAN: In respect of which one Hon. Malinga?

MR. MALINGA: 3 (a). Mr. Chairman, I do not know whether we are to understand that, that unless the DPP directs the Police to investigate, the Police are not to investigate. If that is the meaning, then, I do not agree, because I think it is the duty of the Police to investigate any matter which is brought to their attention. But if we to say here, we make it a Constitutional provision that, it is only the DPP who directs them to investigate, I think he can direct the direction of investigations already commenced by the Police. But I think it should be the duty of the Police to commence those investigations.

THE CHAIRMAN: Yes, we had already covered the question relating to the functions of the Police. I do not have memory with me here, one has to see whether-

MR. MULENGA: Mr. Chairman, may I explain? The purpose of this paragraph is to give DPP power to direct Police, where the Police has failed or neglected to act. Because to date, the position is that, it is only the police.

THE CHAIRMAN: Okay, then why do we not add those words?

MR. MULENGA: Which, Mr. Chairman?

THE CHAIRMAN: To direct the police to investigate any information of a criminal nature, where in his opinion- in his or her opinion, the police has failed or neglected to act and report to him or her expeditiously. So that it is quite clear.

MR. MULENGA: No problem, Mr. Chairman. But I do not think that even this one, is in any way suggesting that the police must wait for him.

THE CHAIRMAN: But it could be so misconstrued if a lawyer of Hon. Malinga's experience and background has found it to bring out two meanings. We might as well make it quite clear. Hon. Mayombo, you have difficulty with formulation?

LT. MAYOMBO: Thank you Mr. Chairman. The difficulty I have is with the addition of the words: 'and to report to him or her expeditiously.' Because Mr. Chairman, I do not find that to be one of the duties of the DPP. Maybe expressing an emotion that the police has delayed in investigating cases in this country, but I do not find it to be a duty of the DPP. Actually it is not necessary to add, 'and to report to him or her expeditiously.'

THE CHAIRMAN: In matters where as we have added, that where in his opinion, the police have failed or neglected to act. Then they should report to him because he has directed them.

MR. ABU MAYANJA: Mr Chairman, people have been arrested, charged and taken before the courts and it is only then that files are brought to him and then he advises that there is no case for prosecution, things should be withdrawn. And sometimes the State is landed into a lot of damages

and that kind of situation. Mr. Chairman, this is known. So, this is okay, but the problem I think will continue to arise so long as in this country, you have these separate compartmentalisation and you have the attitude - the people in the Ministry of Justice want to act independently of the Ministry of Internal Affairs and so forth and so on. I just thought I would mention this as information.

PROF. KANYEIHAMBA: Thank you, Mr. Chairman I wanted to add further information on what Hon. Abu Mayanja has said, and I think this matter actually was argued in committee. There are two issues, Mr. Chairman, there is the issue which you have rightly pointed out and we could clarify by saying that where he is satisfied the police have failed to carry out their duty, that is one situation. The other one is which Hon. Mayanja had emphasised, which actually was considered in the committee, namely, that it is the constitutional duty of the Director of Public Prosecution to comment on files and cases which have been reported to him by the police. The problem we have, is that over the years in Uganda, because of the situation Hon. Mayanja has explained, there has been an impasse between the office of the Director of the Public Prosecution and particularly the office of the Director of Criminal Investigations. Twice, Mr. Chairman, the Legal and Security Committee of the NRC, has recommended that the administration of justice in Uganda should be brought under one umbrella. It does not matter whether you put these under the Director Public Prosecutions or indeed under someone in internal affairs. Nevertheless, there ought to be one centre of operations for the investigations and prosecution of crimes. And in (a), I think if I am not wrong, the committee members were saying that now, the responsibility of directing the investigation of a criminal nature and so forth should now be thrust upon the Director of Public Prosecutions. I thought that this is the other hidden point here, and maybe we need two Clauses on this one to make that point clear. Nevertheless, I think that it would be a good thing if this Constitution finally resolved that matter. So that we do not have two departments responsible for investigating and prosecuting crimes, with the kind of delays that we have experienced in the past, Mr. Chairman.

THE CHAIRMAN: Of course, the Americans have only one department. Department of Justice is also in charge of F.B.I. and such things. But I

think if you think that a statement of this nature will more or less make it imperative for those in charge of arranging the structures of Uganda Government to see that the Constitution is envisaging that the two should operate as one, I do not think we have got to go into greater detail. But I think - do you not think that a statement of this nature will more or less make it imperative for those in charge of arranging the structures of Uganda Government to see that the constitution is envisaging that the two should operate as one? I do not think that we have to go into greater detail. I think this can actually make it imperative for those who are in charge to say if the DPP is going to be directing, surely he should also be directing someone who is within the structures of that particular ministry. Otherwise, crossing lines to go to another ministry to direct can create its own conflicts but of course, the DPP can rely on the Constitution to say I have this constitutional power and that may cause a change in arrangements. Hon. Ben Wacha, do you have some new ideas on this matter?

MR. WACHA BEN (Oyam County North): Thank you Mr. Chairman. I just wanted to comment on what you have just stated and suggestion made by my learned friend, Hon. Kanyeihamba. That sort of position can only arise if we were to eliminate the edition which we have already put in. If we are going to say that the direction of investigation should be under the powers of the DPP, then we do not have to add in words, *'where in its opinion the police has failed to act,'* because this edition still casts back to the police - the initial power of initiating investigation, I think.

THE CHAIRMAN: So, what do you suggest? That we should remove those words and leave it as it is?

MR. WACHA: I think we should be clear, Mr. Chairman, what we want to do. If, as Hon. Kanyeihamba suggests, we want now to bring the initiation of investigation under the DPP, then we cancel the words. But if we want to continue with the present format, then we include the words.

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Mr. Chairman, the problem - this Clause has arisen out of Hon. Malinga's fears. But in my view, really, there is neither the need to insert this clause - there is no need. Although - if we

insert, 'where in the opinion of the DPP, the police have failed,' it will be stressing the current separation that there is a DPP in the Ministry of Justice and there is police in the Ministry of Internal Affairs. If we remove them, it does not- or rather if we do not insert them, it does not suggest that no investigation will be done without the DPP directing. In my view to say his functions shall be to direct the police to investigate any information of a criminal nature, does not mean all information of criminal nature. If it is said direct the police to investigate all, then it would suggest police would not investigate without him directing. So, Mr. Chairman, my opinion is that we could leave this as it is and leave the administrative authority to determine whether in future, they will streamline this department and put all CID Officers under the DPP or take DPP to be in Ministry of Internal Affairs.

THE CHAIRMAN: Agreed.

(Question put and agreed to)

MR. MULENGA: "(b) To institute criminal proceedings against any person or authority in any court with competent jurisdiction other than a court martial."

THE CHAIRMAN: Next.

MR. MULENGA: "To take over and continue any criminal proceedings instituted by any other person or authority."

THE CHAIRMAN: Do you say that it should be to take over and continue or he can even take over and exterminate because I think *(Interruption)*

MR. MULENGA: We will come to discontinuing in (d) Mr. Chairman.

THE CHAIRMAN: Okay.

MR. MULENGA: "(d) To discontinue at any stage before judgement is delivered, any criminal proceedings to which this article relates, instituted by himself or herself or any other person or authority. Except that the Director of Public of Prosecutions shall not discontinue any proceedings commenced by another person or authority except with the consent of the court." The distinction being made there is that DPP should not come and take over someone else's prosecution for purposes of dis-

continuing it. If he is going to discontinue it, then there should be opportunity for the court to say, okay, this is a genuine withdrawal and subsequently we have something to say about exercise of this power anyway.

MR. BATEGANYA: Thank you very much Mr. Chairman. I have my worries about that Clause and I would wish the chairman to clarify. We have seen certain sensitive cases in this country being undecided upon after various investigations have been done. If he says that this Clause will allow the DPP to discontinue at any stage any matter started by him. I think it is giving too much to the DPP to abuse his office. I would suggest that we should delete this article.

THE CHAIRMAN: Hon. Katenta Apuuli.

MR. KATENTA APUULI (Conservative Party): Mr. Chairman, I am seeking Clarification from the Chair of Select Committee 11. Recently and you will excuse me for making a reference to a neighbouring country. Recently, in a neighbouring country, there was- the Director of Public Prosecutions refused a citizen to proceed with a criminal procedure against another individual. Now, does this mean here that Ugandans are free to institute a criminal procedure against any other person or groups of persons?

THE CHAIRMAN: Hon. Kaberuka.

DR. KABERUKA WILLIAM (Ndorwa West): Thank you Mr. Chairman. Mine is a bit minor but I am wondering whether the second except the last one is necessary. Whether we should not say, 'authority without the consent of the court,' without having to load the sentence with so many 'excepts' - *(Interjection)* The last, 'except,' I am wondering whether we could not do without it and say, 'authority without the consent of the court.'

THE CHAIRMAN: Hon. Musumba.

MR. MUSUMBA: Point of Clarification. Thank you very much Mr. Chairman. I seek clarification. In (c), we have already said that DPP is free, is allowed to take over and continue any criminal proceedings instituted by any other person or authority. And then in (d), we are saying he can discontinue proceedings except those which have been commenced by another person or authority.

What would be the problem - why do we not say - the DPP take over and then discontinue. I mean if proceedings have been instituted say by me private prosecution. What would stop DPP if he really wanted to stop this private prosecution? First to take over under (c) and then discontinue under (d).

THE CHAIRMAN: You see, I think that is exactly what it is saying. It is saying that he has power to take over and continue with it but also they are saying he can discontinue his own where he has started it or where you have began your own private prosecution. He can under (c) take it over and under (d) he can discontinue it, except that in that case he must first get the consent of the court to discontinue yours. I think these two - we are putting in written form what is an old common law rule that the crown could at anytime since we took it from England, could take over private prosecutions and discontinue. The crown did not have to go to court to seek permission but here we are saying that in all fairness I think there should be permission from the court. Hon. Mayanja Abu.

MR. MAYANJA ABU: Thank you very much Mr. Chairman. I have some grave doubts especially in light of what Hon. Katenta Apuli has referred to which is fresh in our minds. This provision I remember was put in 1962 Constitution. I do not know if it was in the other. But I was there in London in 1962 and it was done because a similar provision that is to say, for the DPP to take over prosecutions instituted or started in other authority. That was the time when we had a federal kind of government. And there were various authorities, Buganda Government, other governments which had their courts and their prosecution services. People may know, Hon. Members may know that there was here something which was called a, 'Empisa y'ensi.' People used to be charged for breaking the native custom which was not known and anything could be brought under that kind of thing. Joseph Kiwanuka was prosecuted for abusing the Katikiro about dances when the Katikiro prohibited ball-room dancing. Hon. Members may be aware of this but Mr. Chairman. The point is there were various authorities who could prosecute and which were not under the Central Government. It was felt that nevertheless, the Director of Public Prosecutions should have power to take over prosecutions especially those which might be considered to have been instituted for political or activated by political motives. But when we are having the

kind of thing which appears to be merging from our work here where all powers shall be concentrated in one government, then it seems to me - *(Interruption.)*-

THE CHAIRMAN: Hon. Mayombo has some -

MR. MAYANJA A: He is seeking clarification or he wants to give me information?

THE CHAIRMAN: He is seeking clarification.

LT. MAYOMBO (NRA Delegate,): Mr. Chairman, I would like to inform Hon. Abu Mayanja that this Assembly has already passed a provision of taking over. That is a provision of take over and continue any criminal proceedings instituted by any other person or authority. We are now discussing Clause (d) which says to discontinue at any stage. I would like to make that clarification, Mr. Chairman.

MR. MAYANJA: Sorry, I have not quite followed the point - if he had allowed me to give him is that under this sort of organisation where prosecutions are, really if there is one authority. I do not see any value or rationale for allowing the Director of Public Prosecutions to take over and discontinue prosecutions which have been commenced by say, a private citizen, because this will now be a private citizen. There are no federal states, there are no different authorities. It might be railway police, it might be people like that maybe. So, I would think on reflection, Mr. Chairman, that when you say that he shall do so without the - by leave of the court, then you want the court to make a decision. And how can the court make a decision on that matter at that stage before the evidence is before it. Therefore, since we have provided for rights of appeal, maybe Parliament might make some provisions governing the institution of private prosecutions. But where they have been allowed and the prosecution before the court, then the fairest thing to do and the most transparent, in order to ensure that there has been no interference in the matter by the government of the day. Because the DPP although Clause 7 gives him protection as that given to High Court Judge, nevertheless, he will be a relatively middling civil servant in the office of the Attorney General. I think that these powers should be removed from him so that private prosecutions commenced should be decided upon by the courts and not be discontinuable by the Director of Public Prosecutions.

MR. KAGGWA MEDI (Kawempe Division South): Thank you Mr. Chairman. For different reasons from Hon. Mayanja's submission. I am just wondering why it should be the courts to get the consent of the courts when we know parties aggrieved go to court for adjudication. Now, if the parties concerned feel that they are not, at that material time, enough grounds to sustain concern of the court. Why don't the parties from whom the DPP is taking over not agree rather than go to the court and burden it with almost having as Hon. Mayanja says, to take a decision. So that if the DPP is going to take over, he consults the party concerned, he convinces the party concerned and then they mutually agree to withdraw the proceedings from the court. I would seek to be clarified on that.

THE CHAIRMAN: Hon. Karuhanga.

MR. KARUHANGA: Thank you Mr. Chairman. I have listened to the contributions from Hon. Bateganya, Hon. Mayanja and Hon. Kaggwa. I think we have a situation here which needs a proper explanation. We are trying to give power to the DPP, to discontinue a case before judgement. This is on Page 48 (d). I think -

THE CHAIRMAN: Hon. Karuhanga, there is a point of order. Hon. Musumba.

MR. MUSUMBA: Thank you very much Mr. Chairman. Is it in order for the Member holding the Floor to refer to somebody else as Bateganya, when in fact the name is not Bateganya, Mr. Chairman.

THE CHAIRMAN: What is his name?

MR. MUSUMBA: Musumba.

THE CHAIRMAN: In other words, Hon. Karuhanga you referred to Hon. Bateganya when you meant Hon. Musumba. So, you are thereby informed.

MR. KARUHANGA: I am pleased that Hon. Musumba thought I was referring but in fact, I was not. I am just only pleased that he has the enthusiasm to have thought that I referred to him. I actually meant Hon. Bateganya who wanted a deletion of (d) and that contribution is the one I am addressing. When it comes to being attracted to answer Hon. Musumba's contribution, I will do so but at the moment, I will restrict myself to my intentions.

Now, I would propose that for any power to be given to the DPP to discontinue at any stage before judgement is delivered, any criminal proceedings, that power exercised in public interest presumably, should be checked. There should be a balance of checks on that power and since the Attorney General is the legal adviser of the government, I would prefer that it reads: *"To discontinue with consent of the Attorney General at any stage before judgement."* That is the part (a) and I will be talking about private prosecutions later. But in other cases where the DPP wants to discontinue criminal proceedings, I think he should get the consent or advice of the Attorney General. The reason why this is the case Hon. Members, Mr. Chairman, is this, that the DPP while exercising that power, he delegates it as well. And you will find that in Clause 4 on the same page 48, the functions conferred upon the Director of Public Prosecutions under Clause 3 of this Article may, in the exercise, in the case of the functions under paragraph (a) (b) and (c). Okay, Mr. Chairman, (b) does not get included in this. So, fortunately that is saved. But I still think that the DPP before he takes on this decision to discontinue. I think the person whom we have charged with the overall responsibility of the legal advice to government should have a say in the matter. The DPP should retain the final decision but I think the Attorney General's contribution should be brought in. That is as far as the public prosecutions are concerned. On the aspect of private prosecutions, I think we should take the words of Hon. Mayanja seriously. Here is a person who is prosecuting privately. It means that the DPP and the police have actually failed him or he has no trust with the system and he is proceeding to do what should be done by the government because of its failure. Then, why should there be any consent from anybody. I think this person who has come should go, pursue justice to the end without anybody touching his hand. After all he is meeting the cost. So, this consent of the court, I agree with Hon. Kaggwa and Hon. Mayanja that it might also not be necessary. It might actually bring problems. Thank you Mr. Chairman.

THE CHAIRMAN: Thank you. Before Hon. Mulenga, I will hear from Hon. Ben Wacha, Hon. Wandera and then we close this discussion.

MR. WACHA: Thank you Mr. Chairman. I am seeking clarification from either the Chair or any of the learned members in this House. I seem to

recollect that in 1984, Parliament passed an amendment to the Magistrate Court's Act. I think, in respect to private prosecutions which provided that anybody initiating a private prosecution must first obtain the permission of the DPP. I have a vague recollection to this. I want somebody to assist me whether this is true or not.

THE CHAIRMAN: Who is in position to assist. Hon. Karuhanga you seem to be in a condition to assist.

MR. KARUHANGA: Yes, Mr. Chairman, it is true that if you want to start proceedings and prosecute a criminal case in this country, you must get the consent of the DPP. Organisations which have got statutes which allow them to prosecute like the Social Security Fund, like the - there is another one, it has just escaped my memory. They have to get consent and in fact, the prosecutors get registered for that. They have to be known and their names get registered with the DPP.

THE CHAIRMAN: Hon. Malinga, do you want to comment on that?

MR. MALINGA IGNATIUS (Usuk County): Mr. Chairman, the position in law is this, that a private citizen can institute criminal proceedings with the consent of the court in which he is instituting the proceedings. But the other bodies like the police are appointed as public prosecutors. The police, The Weights and the Measures, the game department, the Forest Department, the Fish Department. These are appointed public prosecutors and the thinking now is that instead of having these large number of public prosecutors from other departments. Maybe, if funds were available, we should form a sort of organisation like the British Crown Prosecution service which would binding all these departments into one body, not to investigate but to prosecute. So, you can institute proceedings in any court with consent of that court. In other words, the court must be satisfied that you have a good case to put before taking off the time of the court, not the DPP.

THE CHAIRMAN: Order! I think we have covered quite a bit of this subject. What we are discussing really is an old common law practice. That a private citizen had the right and has the right to bring criminal proceedings against any other citizen and see it through. But also the same practice

said the crown, in this case the crown prosecutor or solicitor can by what they call 'relate process or relate action' actually take over and terminate any proceedings at any time before judgement without obtaining consent of the court. Here we are saying, the old practice. If we do not put in a specific provision relating to those permissions, it is possible that someone could read that we are saying that these people can bring their proceedings without permission. But as Hon. Malinga has said, the courts would first be satisfied that the prosecution is not frivolous and vicarious before they allow it to proceed but the DPP under this would have the power to take over and terminate those proceedings at any time before judgement but we are adding a tail to it again with the consent of the court. Hon. Dr. Besigye.

LT. COL. BESIGYE: Mr. Chairman, I would like to move an amendment to delete the expression, 'except with consent of the court,' so that the clause reads: "To discontinue at any stage before judgement is delivered an, criminal proceedings to which this Article relates instituted by himself or herself or any other person or authority except the Director of Public Prosecutions shall not discontinue any proceedings commenced by any other person or authority." Mr. Chairman, this is because I think that first of all if it is the conviction of the court that the prosecution should be discontinued, the court can say so because the case will be in court anyway! That is where the private person prosecuting such a case would have lodged the case. So, if there is any reason for the determination of the court to discontinue such a prosecution, the court should indeed be moved to stop that prosecution but not the Director of Public Prosecution with the consent of the court. The point which has been I think ably discussed by the Members - Hon. Karuhanga, Hon. Mayanja and the others is a very valid matter. First of all, the cost of the prosecution is on the private person prosecuting. The Director of Public Prosecution is losing nothing by this man continuing with the prosecution to its logical end where the case will be lost or won. So, why should he the it over?

MR. KIRENGA EMMANUEL (Mityana North): Point of Order. Mr. Chairman, is it in order to move that amendment when the effect of it would be the removal of the whole sentence beginning with except. Because there would be purpose of that if these last words are removed. What I mean to say (d) says - the DPP has got the

right to discontinue any proceedings, there is no quarrel with that, where those proceedings are brought by him or by any other person. But now if we say except that the Director of Public Prosecution shall not discontinue any proceedings commenced by any other person or authority and stop there, it means that sentence does not make any sense when you compare with the first one. Is it in order Mr. Chairman?

THE CHAIRMAN: Okay, what you are doing is really pointing out that his proposed amendment would cause structural problems to the paragraph.

LT. COL. BESIGYE: Mr. Chairman, I recognise what he is saying that there need to be a consequential amendment if I want to delete this to the preceding sentence by also deleting 'or any person or authority,' in line three. So that he can discontinue proceedings at any stage which he has instituted himself but those proceedings which have been instituted by another person or authority are only discontinued by the court. That is the intention of what I am saying.

THE CHAIRMAN: Okay, I think what Hon. Dr. Besigye is saying that the DPP should not have power to discontinue proceedings of a criminal nature started by the private citizen or, and any other authority. That would be - of course, the rationale behind this, was that the power to prosecute offences or crimes belong to the state. That is the historical and philosophical background that the state had the power over bringing people to trial and punishing them for offences committed. Then the state allowed an exception for the private citizens also to be able to bring proceedings in his own capacity. But then the argument was that since the whole power belonged to the state to prosecute and to punish crimes. Then the state through the organ in this case, the DPP could take over and say we terminate this one and it will be exercising its original authority. Now, what we are saying is that in our circumstances, this should not be case. Hon. Mulenga - (interruption) -

LT. COL. BESIGYE: Mr. Chairman, I was concluding. As you realise I am not against the Director of Public Prosecutions taking over prosecution which has been initiated by a private citizen. Because I think it is within his mandate to do so but what I am against is the DPP taking over and then discontinuing.

THE CHAIRMAN: But you see Dr. Besigye, if you give a power to take over, invariably that power to take over includes a power either to choose to continue with the prosecution or to terminate it. That is the point I pointed out immediately when the chairman - (interruption)

LT. COL. BESIGYE: Yes, Mr. Chairman, it is on that point that I think I am not fully understanding the implications of these clauses. Because I believe that if the DPP becomes interested in a case of a private prosecution nature, he would have studied that case and known that if he takes it over, he is to take it over for purposes of prosecuting it to its logical conclusion, and not otherwise.

THE CHAIRMAN: Okay, let us hear from other people on this subject. Hon. Katureebe.

MR. KATUREEBE BART (Bunyaruguru County): Thank you Mr. Chairman. Maybe this may help to clarify the point to Hon. Besigye. The DPP has power to withdraw proceedings at any stage without consent of the court. When he enters what is called a *nolle prosequi* and that is in respect of proceedings that he himself has instituted. Now, if he takes over a prosecution which has been instituted by a private person, we are trying to prevent him unilaterally entering a *nolle prosequi* without getting consent of the court. This is now a measure to protect the person who had instituted the suit, the criminal proceedings. We are now putting a catch that the DPP may withdraw, may enter a *nolle prosequi* but with the consent of the court and I see no problem with that at all.

THE CHAIRMAN: Hon. Kanyeihamba and then we come to Hon. Mulenga.

PROF. KANYEIHAMBA: Mr. Chairman, further information to that which has been given by Hon. Katureebe and others, is that there are times and this provision was put there for this purpose, when a private prosecutor is seen to be abusing the process. There had been some prosecutions started privately for vindictive purposes. Information relating to that may come to the attention of the Director of Public Prosecutions but which is not know to the court. That is why in his considering such a case, he may bring a resolution to the court to say these proceedings should be discontinued because it is an abuse of process but this will have to be with the consent of the court, Mr. Chairman.

THE CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Mr. Chairman, if I may pick up from there. There are two reasons why a DPP should take over. One is that mentioned by Hon. Kanyeihamba. But the more important one is that the private prosecutor maybe having taken an initiative on a matter that the DPP sees he ought to be taking up and feels this is a matter of public interest, it is my duty to prosecute. So, that is why he is given the power to take over. Now, for discontinuing, I wanted to add to what Hon. Katureebe mentions - for discontinuing, there may be a number of reasons. One, the DPP may find contrary to expectations, that he actually can no longer prove that case. Either because there is no evidence, or because he has found out other evidence which shows that it is not justified either legally on principal to continue. Now, why we retained the provision that in case of a private prosecution, he should have the consent of the court. It is, one of the delegates said earlier, to protect this and even appear to be transparent because immediate reaction. If he takes over and shortly after discontinues without explanation, it may be seen as deliberate maybe ill-motivated. But if he is to get the consent of the court, the purpose is so that he may explain his reasons for withdrawing. The court would not give consent unless he gives explanation why he is now discontinuing something he took over from somebody else. So, it is not quite right as Hon. Abu Mayanja was saying what is the poor court to do if it has not had evidence. It may have had evidence, it may not have had evidence but the essence is that, the DPP will now have to explain to court - I took over but I am discontinuing because of this and that is why we thought that should be retained. So, Mr. Chairman, I strongly recommend that we do not delete -

THE CHAIRMAN: Hon. Mayanja, you want to clarify some point. Could you say what you want to be clarified on?

MR. MAYANJA ABU: Mr. Chairman, that DPP is a member of the government or a servant of the government. If a private person does take up, as happened in a neighbouring country. If private person prosecutes a minister and the DPP sees that there is every likelihood for the minister to be convicted in which case, he would cease to be minister. Then he takes it over and discontinues it. How are we to provide for that abuse or to prevent or to anticipate that such abuse of power shall not be done?

MR. MULENGA: Mr. Chairman, I have understood the point and I want to answer it straight. No, Mr. Chairman, I think that it is important that I answer it now. It is important for us to distinguish what has happened the next door neighbours - the incident that has been referred to and what we are trying to promote here. Next door, the one who discontinued is Attorney General who wields the same powers of Attorney General and DPP. In our report and indeed in the draft, we are recommending a DPP that will have autonomy to exercise his professional ability without being directed by even Attorney General. That is why I thought Hon. Mayanja was working under a different concept when he says DPP is a mere middling civil servant in the Ministry of Justice. We are seeking, in Clause 6, to revive the autonomy of the DPP in the exercise of his functions. I am saying revive because in 1962 Constitution he had that autonomy so much so that those of you who might remember, there is a case called Farmer versus The Uganda Argus. Where Uganda Argus reported that the DPP had been directed by the Attorney General to discontinue certain case. And Farmer successfully sued that he was defamed to allege that as DPP he had been directed by the Minister or the Attorney was defaming him professionally. We want to restore that position of the a DPP who is in charge of all prosecutions in the country to have the autonomy to exercise his functions without direction from above. Mr. Chairman, therefore, I still would recommend that the Clause or the Paragraph (d) be retained with the slight amendment suggested by Hon. Kaberuka, I find it agreeable to delete the last word except in the last line and instead say, '*commenced by another person or authority without the consent of the court.*'

THE CHAIRMAN: Hon. Masalu Musene, do you have anything in view of that clarification?

MR. MASALU MUSENE (Manjia County): Thank you Mr. Chairman. I wanted to reinforce the fact that the consent of court is necessary from the practical point of view. Mr. Chairman, in the first instance, I want to inform the Members that the consent of court is not unilateral. The court before consenting asks both sides. It considers the reasons from both sides before granting consent and the practical example which we have been facing in the field are land disputes. Mr. Chairman, you will find that because (a) and (b) are neighbours and they are quarreling over land. One is trying to encroach on

land of another, then he goes to court in private capacity-alleging a case of malicious damage to property or assault or criminal trespass. So, you may find that the real intention is, he wants his neighbour to be imprisoned so that he continues to use his land. So, he alleges that (a) has encroached upon my land. In the process of prosecution, the prosecutor - the DPP or the court, may find out that - because the other man will be saying no, I have not encroached or trespassed on his land but the land is mine. So, in real analysis, it is a land dispute. But because the other one wants his friends to be in prison so that he continues to use the land, he has preferred a criminal case. So, the court in this instance, will consent to withdrawing the case and advise the parties to go to a civil court. They say no, this matter is criminal, it is a civil matter, you go to a civil court and whoever proves ownership of the land will take it without anybody being imprisoned. So, these are practical cases where the consent of court is really necessary to avoid abuse of the criminal process by one side or other. There are also many other examples but because I think this matter has been exhaustively discussed by other members, I do not need to go in detail. But it is important that - because even there are other private prosecutions. It is not individual only but for example, we have local administration. Local administrations have their own askaris who are also prosecuting local administration cases. And there could be an abuse or instances where it is necessary for the DPP to discontinue. But as I said the consent of courts is always necessary to re-assure the other side that the DPP has not been unilateral and the court will take the consent after hearing from both sides. So, Mr. Chairman, the consent of court is necessary to avoid abuse of the criminal process of the law. I thank you.

THE CHAIRMAN: Agreed. I think Hon. Delegates, we have spent enough time on this. We take it as it is with slight amendment. Agreed?

(Question put and agreed to)

THE CHAIRMAN: Okay, next.

MR. MULENGA: Mr. Chairman, Clause 4 - the committee recommends that Clause 4 should read: *"The functions conferred on the Director of Public Prosecutions under Clause 3 of this Article (a) May in the case of the functions under Paragraphs (a), (b), and (c) be exercised by him or her in person or*

by officers authorised by him or her in accordance with general or specified instructions and

(b) shall in the case of the functions under paragraph (d) be exercised by him or her exclusively."

THE CHAIRMAN: Agreed! Next.

(Question put and agreed to)

MR. MULENGA: Clause 5. Mr. Chairman, it is recommended that Clause 5 should read: *"In exercising his or her power, under this Article, the Director of Public Prosecutions shall have regard to the public interest, the interest of the administration of justice and the need to prevent abuse of legal process."*

THE CHAIRMAN: Agreed. Next.

(Question put and agreed to)

MR. MULENGA: 6. *"In the exercise of the functions conferred on him or her by this Article. The Director of Public Prosecutions shall not be subject to the Direction or control of any person or authority."*

THE CHAIRMAN: Agreed. Next.

(Question put and agreed to)

MR. MULENGA: 7. *"The Director of Public Prosecutions shall have the same terms and conditions of service as those of the High Court Judge."*

THE CHAIRMAN: Agreed.

(Question put and agreed to)

THE CHAIRMAN: We pronounce ourselves on - Hon. Ochyengh what is the problem.

MR. OCHYENGH MICHAEL (Kapelebyong County): Mr. Chairman, I have just a slight problem. Because in Clause 2 we say a person is not qualified to be appointed Director of Public Prosecutions unless he or she is qualified to be appointed a judge of the High Court. And now we have also said Director of Public Prosecutions - in 7, shall have the same terms and conditions of service as those of a High Court Judge. But then in (1), we said there shall be a Director of Public Prosecutions

appointed by the president on the recommendations of the Public Service Commission and with the approval of Parliament. Now, I am wondering why Public Service Commission and maybe why not Judicial Service Commission possibly?

THE CHAIRMAN: Hon. Mulenga, could you - Hon. Mulenga will answer and then pronounce ourselves on this one.

MR. MULENGA: Mr. Chairman, the reason is that the Director of Public Prosecutions is in the Civil Service. Whereas, the Judicial Service Commission deals with judicial officers.

THE CHAIRMAN: Okay, let us pronounce ourselves on 123 (*Interjections*) No, no I think we are just - let us now put the question on 123 that it stands part of the Draft Constitution. Will those in favour say aye, to the contrary, no.

(Question put and agreed to)

THE CHAIRMAN: Article 124.

MR. MULENGA: Mr. Chairman, is to propose to insert a new article as Article 124 to read: *'There shall be a national planning authority whose composition, functions and powers shall be prescribed by parliament.'*

THE CHAIRMAN: Agreed.

(Question put and agreed to)

THE CHAIRMAN: Now, we pronounce ourselves on 124. That does stand part of the Draft Constitution. Those in favour say aye, to the contrary, no.

(Question put and agreed to)

THE CHAIRMAN: 125.

MR. MULENGA: Mr. Chairman, it is recommended that Article 125 reads in Clause I - First of all Mr. Chairman, Article 125 of the Draft - The Committee recommends that Article 125 of the Draft be deleted as its provisions are not justiciable, being more in the nature of objectives and directives of state policy. *"The government of Uganda shall conduct international affairs in consonance with accepted principles of international law and diplomacy consistent with the national interest of*

Uganda.

(2) In particular the government shall promote international co-operation which is beneficial to Uganda and work towards close regional co-operation and integration."

THE CHAIRMAN: It is agreed that it be deleted. Hon. Katenta Apuuli seems to have a diplomatic angle.

MR. KATENTA APUULI: I am only seeking Sir Chairman, the indulgence of Hon. Delegates if this provision is not in the objectives, it will be appropriate to transfer it to the objectives. I thank you.

MR. MULENGA: That is what we are recommending Mr. Chairman.

THE CHAIRMAN: Agreed? 125 as per the text be transferred to the objectives.

(Question put and agreed to)

THE CHAIRMAN: 125 now.

MR. MULENGA: Mr. Chairman, it is recommended that Clause I reads as follows: *'The President may, with the approval of Parliament appoint ambassadors and Heads of Diplomatic Missions.'*

THE CHAIRMAN: Agreed!

(Question put and agreed to)

MR. MULENGA: Clause 2. *"The president may receive envoys accredited to Uganda."*

THE CHAIRMAN: Hon. Bateganya.

MR. BATEGANYA: Mr. Chairman, I would like to get some clarification on this matter. Especially to Clause 2. I have been in the Diplomatic service and I have ever accompanied envoys to present credentials and most of them - sometimes not to a President or a Head of State. And I do not see why we should waste the president's time with this ceremony when the Minister for Foreign Affairs can ably take care of it. I have ever experienced this and I was just getting clarification whether it is possible for us to do away with it. And some other official say, the Vice President who is not very busy could take care of this part of the job. Thank you very much.

THE CHAIRMAN: Hon. Mugenyi Ponsiano.

DR. MUGYENYI PONSIANO (Isingiro North): Thank you Mr. Chairman. I feel this Clause is not necessary. Definitely the president will have to receive them and he may even delegate any of his ministers to receive them and even if we do not put this Clause in our Constitution. You think the president will not receive these envoys? Do we need to really increase our document by really saying the president is going to receive these envoys? So, Mr. Chairman, I move that Clause 2 should be deleted.

THE CHAIRMAN: No, let us first of all sort out this. Can hear from Hon. Obua Otoa on this very serious matter.

MR. OBUA OTOA (Erute North): Thank you Mr. Chairman. I just want to make an initial point that diplomacy is very much a matter of reciprocity. If we do not include this one, it may be that we are attracting a similar reaction from other countries. They may also not wish to receive our ambassadors in their capitals. So, I think it is important that we keep this Clause because of the reciprocal nature of diplomacy. I thank you Sir.

THE CHAIRMAN: Hon. Kabayo.

DR. KABAYO PATRICK (Kassanda South): Thank you Mr. Chairman. This Clause reads: "The President may receive envoys accredited to Uganda." My understanding of that, is that it also means that he may not receive them. That being the case, why do we have to put it in the Constitution, Mr. Chairman?

THE CHAIRMAN: Okay, let us pronounce ourselves on it. Let me put the question. Will those in favour of the retention of 2, say aye to the contrary, no.

(Question put and agreed to)

THE CHAIRMAN: Now, let us pronounce ourselves on 125. I put the question that Article 125 do stand part of the Draft Constitution. Those in favour say aye, to the contrary, no.

(Question put and agreed to)

THE CHAIRMAN: I think we are coming to lunch time and it would be good if you finished this

Chapter today. So, I would like to urge Hon. Delegates to be punctual so that we start on time and complete this chapter today. That being so I adjourn and we resume at 2.30. Thank you.

The Assembly adjourned for lunch and resumed at 2.30 p.m

MR. MULENGA: The Committee recommended that Article 126 formerly 127 be amended by deleting Clause 2 and amending Clause 3.

Clause 1, Mr. Chairman, reads: 'The President of a Person authorised by the President may make Treaties, Conventions, Agreements or other arrangements between Uganda and any other country or between Uganda and any International Organisation or Body in respect of any matter.'

THE CHAIRMAN: Agreed! Continue.

MR. MULENGA: Mr. Chairman, I will mention that the Committee recommended to delete Clause 2 in the Draft on the ground that provisions therein are already catered for under the Article on the Attorney General.

THE CHAIRMAN: Agreed!

MR. MULENGA: Mr. Chairman, Committee recommends that Clause 2 should read: 'Parliament shall make laws to govern satisfaction of treaties, conventions, agreements or other arrangements made under Clause 1 of this article.'

THE CHAIRMAN: Agreed! I now put the Question, we declare ourselves on Article 126, that 126 stands part of the Draft Constitution.

(Question put and agreed to)

Article 127.

MR. MULENGA: Mr. Chairman, the Committee recommends that Article 127 should be as follows: Clause 1 - The President may with the approval of Parliament given by resolution supported by not less than two thirds of all the Members of Parliament, declare that the State of War exists between Uganda and any other country."

THE CHAIRMAN: Does this apply even where Uganda has been attacked?

MR. MULENGA: Yes, Mr. Chairman, it does. Subjects to the arrangements is that they may do so and get approval later.

THE CHAIRMAN. Okay. Clause 2.

MR. MULENGA: Mr. Chairman, where it is impractical to seek the approval of Parliament - *(interruption)*-

MR. MBABAZI AMAMA (Kinkizi West County): Thank you Mr. Chairman. I believe we are equally concerned Hon. Dick Nyai and I. And where we find ourselves on the same side. Mr. Chairman, I wanted to be clarified. I was not sure about this. The President may declare war with approval of two thirds of Members of Parliament and where Uganda for instance, is attacked, you can declare war and obtain approval not later than 72 hours after. It looks alright but I was not sure though - *(laughter)*-

MR. DICK NYAI (Ayivu County): Mr. Chairman, my problem is a very slight one. The formulation that there exist a state of war - a state of war exists between Uganda and any other country. Would it seem to be that the other countries which we can say that the war is not very serious. Why do we not just say that a state of war exists between Uganda and another country rather than any other - *(Interruption)*-

MR. CHAIRMAN: Okay. Hon. Mulenga should answer to that. Hon. Awori

MR. AWORIAGGREY (Samia Bugwe North): Mr. Chairman, I am seeking clarification on the matter of declaration of war. Mr. Chairman, the principle part of the war is the engagement of troops in an act of combat. Mr. Chairman, it is quite possible that Uganda could engage Ugandan citizens in the armed forces in the act of war against another country. This does not necessarily need a declaration of war and yet Ugandan citizens are engaged in a war. I can give an illustration. Right now, Mr. Chairman, we have Ugandan troops abroad under the U.N. Flag - *(interjections)*- Mr. Chairman, an illustration could be wrong and yet may not be wrong. I am seeking clarification, I do not see how, but need information that will clear my problem I am prepared to take Mr. Chairman but - *(Interruption)*-

MR. CHAIRMAN: I think you have sought clarification. It will be answered by the chairman.

DR. BYARUHANGA FABIOUS (Kitagwenda County): Mr. Chairman, I am seeking clarification on this scenario. Supposing our troops are already engaged in fighting the enemy, and when Parliament is called after 72 hours, Parliament rejects the President's declaration of war, and yet the enemy forces are not willing to disengage. What happens in such a case? *(interjections)*-

MR. CHAIRMAN: Order, order, all of you are becoming experts on war.

MR. MUSHEMEZA ELIJAH (Sheema South County): Thank you Mr. Chairman, I am not an expert on war. But I would like to respond to Hon. Byaruhanga. I do not envisage a situation where enemy troops continue to pursue our national troops and we have a National parliament which says, no war. I do not think it can happen. Maybe if a war breaks and Parliament says we are not fighting and the other ones do not continue pursuing our troops, then you can say, Parliament has at least saved the situation. But if the other troops are continuing and advancing towards capital, I do not see how Parliament can take such a decision. That cannot happen. Thank you, Mr. Chairman.

MR. CHAIRMAN: What we are discussing - First of all we were receiving clarification on one. The mover has not yet explained number (2) and we are already debating number (2). So let me give the floor to Hon. Mulenga to explain to those on one. There are two people who need clarification on one.

MR. CHEBET MAIKUT: Mr. Chairman, I am seeking clarification from the Chairman on a situation where there is a kind of internal war whether that one can be construed to be war as such or emergency because going through these provisions one up to four, there is no provision that takes care of internal wars.

THE CHAIRMAN: Hon. Maikut, we do not consider internal warlike operations, a war between Uganda and any other country. We shall come to the State of emergency arrangements which should cover that sort of thing.

MR. KARUHANGA: Mr. Chairman, I would like to raise two points in one so that the Chairman or any Member or you, Mr. Chairman, can help to see the problems I have in 127, Clause 1. I have two problems in that article. One, where the words declare that the state of war exists between Uganda and any other country. Now, there are two ways in which a war in my opinion can exist. Either we have been attacked by another country and we respond or we have attacked another country. Or we are about to be attacked or we are about to attack. So that is the way I think a state of war exists. Now if this interpretation is correct that is what we mean, then the President may with the approval of Parliament, given by resolution supported by not less than two thirds of all Members of Parliament declare that war exists. Now if we are being attacked in the first scenario, then Parliament is invited to come and approve the attack-*(Interjection)*-

MR. CHAIRMAN: If we are being attacked then we apply two-

MR. KARUHANGA: But first of all I want to bring out the problems I have in one before we go to two.

MR. CHAIRMAN: No, but if the problem you are raising can be answered by two we cannot let you raise it when it can be answered.

MR. KARUHANGA: Yes, Mr. Chairman the two is very important on the 72 hours. But now my problem which I am bringing is the problem I have brought in this house before. The problem of all the members of parliament and their two-thirds. For me I have a lot of problems with it and this is not my first time to bring it to the attention of the House and almost all the time this matter has been ignored. My appeal to the House now is to say that if the situation like that exists, I would prefer that all the Members of Parliament present- yes the majority of all the members of parliament present. But to say that we need all the Members of Parliament, those who are in Canada- For example, in the House this morning, we were 284, to get a simple quorum we had to wait and more than 100 people were, to wait to get the two thirds majority of all the Members present, in my view always looks to be too much a standard to use in a situation of a declaration of war. Secondly, Mr. Chairman if- you look at No. 3, to support the case in No. 1 and I am not using number 3 to discuss that. But you see that you summon Members when

they are in a recess to come from recess within 72 hours and then they must all be present. Now experience has shown. Anybody who has been in any Parliament, when you summon Members in 72 hours to come from everywhere, to get all the two thirds, majority to come, is like putting the standard too high giving the problem with the President. Now, if this does not happen, my question is, what then is the country left with? I would appeal to Members I have done this before and it has been ignored and can be ignored- to accept that we say that the majority of the Members present, but not to put up the standard. So, I move Mr. Chairman.

MR. OMARA ATUBO (Otuke County): Mr. Chairman, I belong to Committee 2 and I want to respond very briefly to what Hon. Karuhanga has said, and if I do not satisfy him, I think the Chairman of the Committee will help. First of all, Mr. Chairman, on the issue of two thirds, I think it was the view of the Members of the Committee that war is such a serious matter for any country. And it is such a fundamental national crisis that when a state of war exists between Uganda and any other country, it is important for the Government in power to have the full support of the country and that support should be across board. So, we believe that two thirds would form the basis of the minimum consensus for the country to get the support first of all of the people to get the credibility internationally and also to mobilise the national resources and move to fight the war. A President or Government in power which does not have that sort support of two thirds of the Members of Parliament and it is trying to prosecute the State of war, it would be a national crisis. It would be an internal war instead.

Secondly, Mr. Chairman, we are talking about a situation in which the President shall seek the approval immediately after the declaration of and in any case not later than. But Mr. Chairman, we are not putting a limit when after 72 hours, the approval should be given. Parliament can debate the approval and take about a week to approve. But the important point is that Parliament must be summoned within 72 hours. The word there is that the President shall seek the approval within 72 hours. Now, once Parliament is summoned within 72 hours, then that Parliament will sit, debate, President may address it and it may continue to debate the approval. It may take a week, or it may take a few hours. So, I think that the problem of Hon. Karuhanga can be taken care of in the sense that the

approval may not come immediately within 72 hours- actually after 72 hours. Thank you.

DR. MAGEZI: Mr. Chairman, my first point of concern is the word 'may'. Being optional, therefore, the second one, Article 2, seems to speak as if it is a must. I would like the Chairman of the Committee to clarify on that position. Secondly, Mr. Chairman, I am not a war expert. But when you declare that a state of war exists in one. And in two it is a declaration of war, is there any difference between these two? For example if you are saying there is now a state of war between Uganda and Kenya and the other one is saying there is a war? Thirdly, Mr. Chairman, I do not know why Hon. Karuhanga did not develop this point a bit further. But these should be a clear distinction between when Uganda is attacked and when Uganda is attacking. I think what we are talking about in 127 (1) could be practical if Uganda is attacking. But where Uganda is being attacked I think the Constitution should provide an alternative as to how the President can declare a state of war. The seeking of the Parliamentary approval can come much later on. Besides, Mr. Chairman, even the 72 hours we are talking about in two, in modern warfare, it is such a long time that the war could have actually be over and done with. I think the Israelis, the Entebbe raid or something - at least I have known of the Middle East war which took less place- in less than 72 hours. I would really wish that we entrust these matters to some other caucus for purpose of declaration and these formalities can come much later. I thank you Mr. Chairman.

MR. WASSWA LULE (Rubaga Division North): Mr. Chairman, I have no real problem with Clause 1 but my bone of contention is basically with Clause 2 whereby the presidency or the Executive is given unilateral powers to declare the state of war. I do not believe it serves much practical purpose as far as the declaration is concerned to debate it 72 hours later to ratify or not to ratify it. Once a presidency and it is a very serious state of affairs, declares a state of war and- against another country say, Kenya or Tanzania, when you come to debate. I do not think the Kenyans on the other side are going to take the debate very seriously. Because the formality of the war has already been executed whether parliament ratifies or it does not ratify. So, I do not think that the Executive should be given those powers to declare. I do not think there is any particular urgency in declaring a state of war. It is

a very serious state of affairs. We have got to draw a distinction between the existence of hostilities between nations and the formal declaration of war. We have had bordering countries- we have had planes coming from Sudan and bombing Moyo. We have had cross-border incidents between Uganda and Kenya. But to formally declare a war has far more serious implications than engaging in enemy troops. So, as I was saying, once a President has stood up and said we are now fighting Kenya, and has made a declaration, this debate after 72 hours becomes useless apart from whipping up support at home. So, there is no formality because it is finished. You have declared it, they have taken it seriously they are now engaging you. So 72 hours later when you turn round and say no, parliament says this war should not exist. It is finished. The state of war has already existed. so I do not think the Presidency or the executive should be given powers. There is no real reason why if a country is attacked it can defend itself for even 6 months without going through the formality of making a formal declaration which once made-

MR. ATWOMA TIBERIO (Chua County): Mr. Chairman, we are talking of war and war we know is a very serious situation. If a country is to engage itself into a state of war with another nation, we know the implications. I beg here to disagree with my friend Hon. Karuhanga, when he says the question of declaring war or endorsing a declaration of war against any other nation, should be by simple members majority, that are present at the time and not the total membership of the Parliament. This would encourage the President or the Head of State to go on declaring war or engaging the country into a war state with other countries, which should be discouraged.

MR. KARUHANGA: Mr. Chairman, really is it in order for Hon. Tiberio Okeny to think, to argue and try to mislead this House that when I talked about a simple majority of the Members of Parliament present, when he himself comes from a border area. When it is possible for a foreign country, neighbouring to come and take over the area where he even comes from and Members of Parliament from that region do not turn up to vote. Is he in order to just say that the war is then being declared by the President of Uganda who is interested in declaring the war without the majority of two thirds of Members present, when they cannot come to the house.

THE CHAIRMAN:—Mr. Karuhanga, I thought you were going to say that you have been misquoted but now you are just indulging into creating apprehension in the mind of Hon. Atwoma so that he fears taking a definite position on the matter. I think the Hon. member should debate without having to be reminded of where he comes from.

MR. ATWOMA: I think I will appreciate his reminding me of what is taking place back at home. We know Uganda and Sudan today are not very friendly and the country that is at stake to be trampled upon is my district. So, Mr. Chairman I would very much really appeal to this Hon. House to view this Provision within the Constitution with seriousness. And here I will also beg to disagree with my Friend Magezi, when he says that it is not only when Uganda is attacked but when also attacking. We would not want to reflect in our constitution that we are a nation which has made a constitution providing for attacking other nations. I think is very serious we should be of mind knowing the future and what are the implications of what we make in our constitution which will encourage even other nations to look towards us to see whether we have enough trouble with our borders. So Mr. Chairman I think we should be careful, we should guard our words. Thank you.

THE CHAIRMAN: I think Hon. Tiberio has a point. He is saying should we write in the Constitution of Uganda that in event of Uganda attacking, I have never heard of a country which even when it is framing the attack ever conceding that it is attacking.

MR. MULENGA: Mr. Chairman, I start with Hon. Nyai who was wondering whether any other or another should be appropriate. I think that is really drafting matter. As it stands now, there is no ambiguity that we mean a war between Uganda and a country that is not Uganda. Mr. Chairman, the State of war is a State as recognised or which has implications in international war. That is why it is necessary for a country to make such a declaration. Otherwise there can be fighting and people fight. But it has connotations and implications at international Law. So, the declaration is that a state of war exists between Uganda and another country, and that gives the fighting a status in international law.

Mr. Chairman, I think Hon. Byaruhanga was answered very well by Hon. Mushemeza and I

need not to repeat it. The question of parliament refusing the approval of the declaration of a state of war, that can only be done if in fact there is no state of war that exists. But if parliament should be infiltrated and it is composed— in fact that was discussed in the Committee. That suppose the enemy has bought all Members of Parliament and they want to frustrate the - that is a very dangerous situation that could arise. They could also buy the president and so on. So it is more hypothetical than real. Mr. Chairman, Hon. Maikut raised the question of Provision for internal war but I think you rightly pointed out to him that this is an Article about what we may call international war. A war between Uganda and another country. Provision may be made. We have an Article on emergency, if the Hon. Member would like to make a special provision for specifically or internal civil war in Uganda, that is another matter. It is not the concern of this article.

Mr. Chairman, I think what Hon. Karuhanga raised in reality has some merit in it. He is envisaging a situation where the country is attacked and the enemy advances so fast that Members of Parliament are cut off and Parliament cannot have—let us say, one third of the Members cannot come. Would Parliament then not be able to discuss that resolution? It is something to consider to avoid a situation where the Constitutional Provision cannot be fulfilled. So, Mr. Chairman, to me what Hon. Karuhanga is suggesting is not to minimise or underrate the significance or the gravity of the war. He is addressing the situation that could lead to a stalemate. So, I am inclined to concede that if one put in a provision that two thirds of Members of Parliament present would not really remove this one.

Hon. Magezi raised interesting questions. First of all with regard to why is it that in Clause 1 it is said that the President 'may,' yet in Clause 2 there is a use of the word 'shall.' I think he looked at it quickly. It is 'may' in both Articles. But where we use the word 'shall' is in respect of seeking approval. Otherwise the correct wording is that the President may declare that a state of war exists both in one and two. But in two there is the added provision that where he declares the state of war before getting approval he shall seek the approval.

The second point he raised is that in Clause 1 we have said, a state of war, the President declares that

the state of war exists. In Clause 2 we have said, if he should make a declaration of war. Do we mean that he is attacking? Maybe on strict interpretation someone like Hon. Magezi may wish to draw a distinction between the two Clauses and would rather if he is being absolutely sure, perhaps he would like us to say, where it is impractical to seek approval of Parliament before declaration of state of war. I think that is what he intended to say. It could not bring any harm in inserting that. But the Committee agrees with him that modern warfare things move very fast. That is why Mr. Chairman, we thought it appropriate to amend the provision in Clause 2 of the Draft where it was suggested that the President should seek approval in 14 days if Parliament is sitting or if parliament is in recess within 30 days. We thought that was too simplistic because within 14 days as the Hon. Member said, the war may have been ended. That is why we brought it up to 3 days. I think Hon. Wasswa Lule was giving his opinion and was not seeking clarification. So, I do not have to answer him.

MR. MALINGA: Mr. Chairman, I have entirely different thing. I want to ask the Chairman, suppose there is a different scenario. We have not been invaded and we have not invaded another country. But our good ally has been invaded and our President has committed our troops in defence of that neighbour in pursuance of an agreement made between Uganda and that other neighbour. Now, how do you regard that? The commitment of troops to assist a neighbour to repulse an enemy is it covered anywhere in this provision? This is what I want to know.

MR. MULENGA: Not in Article 127.

MR. BAGEYA: Thank you very much Mr. Chairman. Mr. Chairman, I was trying to seek clarification from the Chairman of the committee when he mentioned that probably we could allow that two thirds of the Members present. Now my worry here is, what if the Members present do not form a quorum? Do we still just go by two thirds?

THE CHAIRMAN: Then Parliament cannot act. So, the President will have sought permission under two and since Parliament cannot act, he will continue until Parliament is able to act.

DR. KABAYO: Mr. Chairman, my problem is with Clause 2 in that I have been attracted by its apparently internal contradiction.

THE CHAIRMAN: Let us finish one first.

DR. MUGYENYI: Mr. Chairman, in view of what has transpired and in view of the views expressed by Hon. Daudi Magezi. I beg to move an insertion for purposes of separating the two scenarios of when Uganda has been attacked and when Uganda is attacking-

THE CHAIRMAN: I think Hon. Mugenyi you will embarking on a very difficult exercise. As Hon. Tiberio said, are we to write in this Constitution that Uganda constitutionally can decide that today I am attacking country so and so? You see, you declare a state of war regardless of whether you are intending to be the attacker or you have been attacked. Because what you are saying is that between so and so and us, there is a state of war regardless of which one moved first. But for you to put in the constitution that for the purposes of moving first, we shall need two-thirds and for purposes of waiting until they have moved against us, we need one-third, that is dangerous. It will be making us war-mongers in fact.

MR. NDEGE JOHN (Luuka County): Mr. Chairman, I think these people did a very good job. If it is possible then the President can call Parliament and two thirds of the Members of that Parliament can approve a state of war. Now, if it is not practical or in other words, they have taken one third of Uganda, the President is given the power to declare war. And if he calls Parliament and they cannot constitute the two third and so on, the war will go on until Parliament can notify. So, I do not see why we are wasting a lot of time. I think this is very well drafted. The President has been given power in case he cannot call Parliament. But under normal circumstances, two thirds of all the Members must come. I have always seen on budget day we have nowhere to sit. If the president calls for a closed session we have nowhere to sit. If it is under normal circumstances, others can do their work. But if you are called for a specific- and come and attend parliament for something important, normally we are all there. If we cannot come, then the President is given the power to go ahead. So, I think that the Committee did a good job and I think we should pronounce ourselves on these two points and move on. I beg to move Mr. Chairman.

MR. MBABAZI: Mr. Chairman, I think really there are two points and one of them is a point that was adequately covered by the Chairman of the

Committee, Hon. Mulenga. Following the presentation of Hon. Karuhanga, Hon. Mulenga conceded that it might be prudent that instead of saying two thirds of all Members of Parliament, to say two thirds of Members of Parliament present. I think that needs to be formalised so that if it is acceptable to Members then it is done in one. But the other points in two, it appears we are debating both at the same time-(*Interjections*)

MR. CHAIRMAN: Now are you moving or was moved it moved by Hon. Karuhanga but we did not structure it? Because it was not seconded at that time.

MR. KARUHANGA: Mr. Chairman, I wish to move an amendment in Article 127 (1), to read as follows: *'The President may, with the approval of Parliament given by resolution, supported by not less than two thirds of the Members of Parliament present and voting declare that a state of war exists between Uganda and any other country.'* Mr. Chairman, my Motion is to delete the words 'all' in the text and add the words, '*present and voting.*' Why present and voting? Present and voting because it is possible that Members who register to have attended the session at the time of voting are not available. It is very possible and it has happened. So, to be sure that we write a water-tight law, it is important to use these words, present and voting. And since we have maintained the two thirds majority I think it would be better to have this formulation. Any other formulation is in-built with a number of problems. As I said earlier it is possible like what we saw when United States attacked Iraq- it is possible that a war nowadays, an electronic war a good part of our country can be taken, and not all the members from that area may not be present or even aware.

MR. CHAIRMAN: Hon. Karuhanga has moved and justified his - so the point of order does not arise.

MR. HASHAKA JACKSON (Kibale County): Mr. Chairman, I would like to be clarified by the Mover if at all his amendment has been seconded. Whether if only ten Members of Parliament came to the Parliament.

THE CHAIRMAN: Hon. Hashaka, the Parliament does not start transacting business unless there is a quorum. At the point of voting, when you are voting by percentages required by Law, you

first ascertain that there is more than that number which is required particularly in this case it would be the quorum.

MR. HASHAKA: But Mr. Chairman, this is the times of war and the war is advancing fast and Members of Parliament cannot come to the Parliament. Therefore, why should he strain himself to move that Amendment since No.2 clears his worry.

MR. KWERONDA RUHEMBA (Kajara County): Mr. Chairman, I am a member of Committee 2 and we spent a lot of time debating this very scenario.(*Interjection*)-

MR. CHAIRMAN: No. But we are not going to go into- because that justification has been said. Our argument now is whether you prefer the formulation of two-thirds of the members present and voting or you prefer the text to remain as it is.

MR. KWERONDA: Mr. Chairman, elsewhere in this Chapter on Parliament on Legislature, we have suggested and recommend to the Plenary that the Business of the Parliament can start but they cannot vote until they have realised one third of the Members of Parliament.

THE CHAIRMAN: So, one third is a quorum?

MR. KWERONDA: One third is a quorum. Now, one third of Parliament may be about 30 people or 40. That is still a very small number in respect of authorising war. Mr. Chairman, war is a very expensive affair. It is very costly in terms of manpower, it is costly in terms of money. It is not budgeted for in most case and you may have to divert the resources of the country and food towards war and certainly people are likely to die, not only soldiers but even civilians. So, to have one third of the Parliament approving a war which is going cause these tolls it is disastrous. And that is why we had said it should read as it is in 127(1). So, I would like to request Hon. Karuhanga to withdraw his Amendment because it is very dangerous.

MR. NGOBI MATHIAS (Presidential Nominee): Thank you, Mr. Chairman. Mr. Chairman, I can see that we have a problem here. If we put the figure too high we will not be able - we might cause an impasse. Whereas if we put the figure too low that is also not so good. What we need is something that will enable Government and the President to

carry on with a reasonable number of support of Members of Parliament. Therefore, I should think that if Hon. Karuhanga would agree to withdraw the amendment which really as it has been pointed out you could have disapproval by less than one third of Parliament. I would like to suggest that we take a figure of 51 per cent of all Members, we delete the words, 'two thirds' and replace those words with the words '51 per cent' of all members present. This will now give flexibility. Because if-

THE CHAIRMAN: Do you mean all Members present or all Members of Parliament?

MR. KWERONDA: All Members of Parliament, not present. 51 percent of all members of parliament. I think that will be reasonable and it would meet the two objections of 12 excesses either way.

MR. CHAIRMAN: Hon. Ngobi yours is not a motion you are just begging the other member. If it was an amendment to the amendment then we would have-

MR. NGOBI: Mr. Chairman, with your approval I beg to move that Hon. Karuhanga's Amendment be amended by replacing the words, 'two thirds' with the words, '51 per cent'.

THE CHAIRMAN: That is not adequate. What we are looking at is, you are saying Hon. Karuhanga has said that two thirds of the Members present and voting. What you want to do is to replace 'two thirds of Members present and voting,' with words '51 per cent'.

MR. NGOBI: Yes. So that the whole Article now will read as follows: *'The President may with the approval of Parliament, given by resolutions supported by not less than 51 per cent of all the Members of Parliament, declare that the state of war exists between Uganda and any other country.'*

THE CHAIRMAN: I will allow two speakers, one for and one against and then we will continue.

MR. BATEGANYA: Mr. Chairman, I would like to support Hon. Ngobi's Motion on the following grounds, that 51 per cent of all the Members is good enough in that the war will affect the whole country and it will not discriminate as to who is in support or not in support. If we take the scenario of the

invading country grabbing say, 51 per cent of the land area such that Delegates or Members of Parliament from that area cannot attend Parliament. That would really necessitate even no Parliament sitting at all because in effect we shall have lose most of the land territory and it will even be no country. But if I assume that part of the country is only under control and most of the Members can attend, then 51 per cent is a reasonable number to endorse an act of war. So, on that ground, Mr. Chairman, I wish to support Hon. Ngobi. Thank you.

MR. ERESUELYANU (Kaberamaido County): Mr. Chairman, I would like to oppose the Amendment on the following grounds. Mr. Chairman, to discuss Clause 1, one cannot avoid to make a reference to Clause 2, because the two Clauses operate side by side. Where Clause one cannot work, Clause 2 is used. As a Member of Committee 2, we discussed the 2 clauses together. Now the point is, the question having not less than two thirds, is to give the President the legitimacy and support which should be throughout the country to make him stand firm and fight the war. War as we know is very expensive. It diverts national resources and it even changes people's attitudes. So, to make the President rally that support throughout the war, he must have support of the majority of the people of this country. We must also realise that these two Clauses actually do not mean the President cannot declare war. Clause 2 reads that where it is impractical the President will seek approval after war has actually been fought. It is only to give the President that hand that people of Uganda have been attacked or people of Uganda have engaged themselves in war therefore we are in a state of war even after the war has been fought. So, Mr. Chairman, I do not see why we are trying to amend and do what. This thing is already catered for. All this Amendment which is being brought is just simply to confuse a very well done job. Thank you, Mr. Chairman.

THE CHAIRMAN: Okay we vote. The choice is between Hon. Ngobi's and Hon. Karuhanga's. You see the thing is quite simple. That is an Amendment of Hon. Karuhanga's Motion. If it carries, we go back to his. And then depending on which way it takes, we go back to the text. So, let us first vote Hon. Ngobi's Amendment of Hon. Karuhanga's Motion. He is seeking to replace the proposition of Hon. Karuhanga that it should be two thirds of the Members present and voting with 51 per cent of all Members of Parliament, I put the question.

(Question put and negatived)

THE CHAIRMAN: Now, the choice is between Hon. Karuhanga's and the text. Hon. Karuhanga is seeking to amend the text so that it is 75 per cent of the Members present and voting as against 75 per cent of the total membership. Two thirds, of the members present and voting. That is the Motion. The proposition is that we replace what appears in the text with formulation of Hon. Karuhanga, which is that we should have two thirds of the Members present and voting as against two thirds of the entire membership, I put the question.

(Question put and negatived)

THE CHAIRMAN: We have a text which reads as it appears.

(Question put and agreed to)

THE CHAIRMAN: Now, that disposes of one. We go on to two.

DR. KABAYO: Mr. Chairman, I was attracted by the apparent internal contradiction in Clause (2) to which I wanted to draw the attention of the Members too. In the first line, Mr. Chairman, we set the terms of the conditions under which the President may declare war without the prior proof of Parliament. But in the last part of that Clause, we restrict that to 72 hours. Mr. Chairman, my concern is that, the nature of the circumstances may not be pre-determinable in the sense that 72 hours may be too short. In the event that it may not be possible to comply with that provision.

My proposal, Mr. Chairman, is to amend that Clause by removing the word 'immediately' and inserting in its place 'as soon as practicable' and then stopping after the word 'declaration.' This is the only way that it will be only the subject of time, because it is impossible to set the time of 72 hours in the context of the fact that we do not know the circumstances, especially, during war. So the new formulation would read as follows: "*Where it is impracticable to seek the approval of Parliament before declaration of war, the President may declare war without the approval but shall seek the approval as soon as practicable after the declaration.*" I beg to move, Mr. Chairman.

THE CHAIRMAN: It is seconded by Hon. Mbabazi. I think the Motion has been seconded, I

will give the Floor to Hon. Tibamanya and then Hon. Bidandi Ssali, and then Hon. Kasajja Patrick

MR. TIBAMANYA: Thank you, Mr. I oppose the Motion on the grounds that it, will be open to abuse by a President who has become reckless and will declare war for personal interests, and before the whole country knows the war could be over. This word as 'soon as practicable' means a week or two and we have already said in a matter of hours the war could be over and so many people have died and resources diverted. So to tie down the President that he must come and explain to the nation, three days is good enough and that is the 72 hours. I thank you.

MR. BIDANDI SSALI: Mr. Chairman, I am not declaring myself to supporting or not supporting yet. But I am imagining a scenario where we wake up and Jinja Dam has been hit, Karuma has been hit and the President has declared war pending approval by Parliament. And I am wondering how it will be possible within 72 hours to have Parliament approve after we have passed what we have passed in (1). In other words, I just want to clear myself as somebody would clear my head over this-

THE CHAIRMAN: I think you are not reading, it properly. It is not saying that Parliament must approve within 72 hours they are saying he must seek Parliamentary approval. He must in other words inform Parliament and ask them to approve his action within 72 hours. Now they may take a week debating it.

MR. BIDANDI SSALI: Now, Mr. Chairman, the whole thing is really - if you now read (3), (3) clarifies (2). Three makes it mandatory that Parliament must approve - the way I understand it that must -

THE CHAIRMAN: No, that is an order to the speaker, he must make sure there is a Parliament within 72 hours- sitting. They must come into session within 72 hours of the declaration. And then that is to afford the President the chance to report so that because he is required to seek approval within 72 hours. But the approval does not necessarily have to be given within 72 hours under this formulation that is how I understand it.

MR. BIDANDI SSALI: Mr. Chairman, the purpose is really to clear my mind - my understanding and you have gone somewhere. Now (3) says where

the President makes the declaration of war under Clause (1), when Parliament is in recess the speaker shall immediately summon Parliament to an emergency session to sit within 72 hours. And I am saying, the other scenario when Parliament is not in position to sit within these 72 hours. Does (2) continue to work? If yes, then I have no objection. This is only the clarification I want Mr. Chairman. The 72 hours in (3), if they are practicable, does (2) continue to work?

THE CHAIRMAN: If the Speaker is required to call Parliament within 72 hours. But the President would have to seek approval which is crucial is not tied to the 72 hours in (3). The 72 hours are intended to create the forum for the President to report and then seek the permission.

MR. KASAJJAPATRICK (Bulamogi County): Mr. Chairman, I think this is a straight forward matter. I do not support the amendment moved by Hon. Kabayo. I think the explanation given here in this amendment by the committee is straight forward. Where the President has declared the war without meeting the Parliament, I think he needs the 72 hours within which to come and seek the approval from Parliament. Everybody, Mr. Chairman, is aware that a war is a very serious situation in the country, and therefore, we need a very short time in order to remove the tension which exists in the minds of the people in the country. Therefore, the earlier this thing is taken to Parliament and resolved, the better. Mr. Chairman, the second point is that fear of Hon. Bidandi that we require more time maybe beyond 72 hours-*(Interjection)*-

THE CHAIRMAN: No, but now you are putting words in his mouth. He was seeking clarification.

MR. KASAJJA: So I think, Mr. Chairman, this is a straight forward matter which I think Hon. Members should support. Because the Members in the country need to be informed as soon as possible what the situation of the war is so that their minds are settled. Therefore, I do not support Hon. Kabayo's amendment, we should just stick to what is here in the committee.

MR. KATENTAAPUULI: Thank you, Mr. Chairman. Hon. delegates, having successfully defeated Hon. Karuhanga's amendment to reduce the two thirds. Let us be a little bit more practical and actually imagine that a situation could arise where

Uganda has effectively been occupied through Mutukula, God forbid it. And Masaka is overrun, and Mbarara is cut off. Therefore, you cannot obtain the two thirds required. Therefore it is essential, for us to increase the number of days beyond 3 to enable the President to be able to summon Parliament, to be able to debate and give him permission to declare war. Because you could have a situation where the Members of Parliament, that constitute part of your two thirds are actually unable to come to attend Parliament in order to give the two thirds that we have just demanded. Whereas it remains reasonable that we should not take war lightly if Uganda is about to declare war and our territories are in no way occupied. Parliament should seriously consider this matter, but where the reverse is the case that Uganda has been invaded and Members cannot come surely the idea of three days appears to me to be impractical- impracticable. Therefore, think I would advocate and appeal to Hon. delegates that these numbers of days be increased. Because of the other requirement that war can only be declared by two thirds of Members of Parliament. I thank you, Mr. Chairman.

THE CHAIRMAN: We have heard two speakers against one speaker for but not fully. Because he does not refer to the words as soon as practicable he is making reference to even increase the days. But that was not a Motion it was just a statement. Now we have a Motion by Hon. Kabayo that we delete the reference to the time and say: "*shall seek the approval as soon as practicable after the declaration.*" We declare ourselves and then we go on. I now put the question.

(Question put and negatived)

MR. KUTESA: I have been putting up my hand but I had not caught your eye. I am having problems with regard to where we shall put a requirement for the President to seek Parliamentary approval not necessarily for war, but for commitment of troops. For example, right now we have troops in Liberia, I know that is not under a declaration of war but I do not know whether it would not be necessary for Members of Parliament to approve a decision to commit the troops of the country. I do not know whether it is adequately covered anywhere else or whether we should cover it in this area.

THE CHAIRMAN: It is in the chapter dealing with defence. The President has power as com-

mandar-in-Chief to deploy both internally and externally. Now we declare ourselves on the text of two (2). I will put the question.

(Question put and agreed to.)

MR. MULENGA: Clause (3), Mr. Chairman, committee recommends should read: "Where the President makes a declaration of war under Clause (1) when Parliament is in recess, the speaker shall immediately summon Parliament to an emergency session to sit within 72 hours after the declaration of war.

Clause (4). The President may with the approval of Parliament given by resolution revoke a declaration of war made under Clause (1) or (2) of this article."

MR. WANENDEYA WILLIAM : Thank you very much, Mr. Chairman. Mr. Chairman, before we pronounce ourselves on this one. I would like to know from the chairman to clarify to me whether it is possible in view of rising costs of troops or the defence, Ministry in the country to have an arrangement. A treaty with some other countries so that just in case we are attacked because we do not have enough resources, our president could call upon the assistance of some of the countries we may have treaty with so that we are adequately protected and therefore, we do not in future spend so much money on the Ministry of Defence Mr. Chairman, because quite a lot of money, you would agree with me maybe about 25 per cent -

THE CHAIRMAN: Hon. Wanendeya, under Article 126 the constituent assembly endorsed the power to make treaties. They did not set out heads of treaties to be made. So what you envisage is not for - is not to be under this provision. You are looking at Article 126 which we have already passed. Okay, we declare ourselves on 127. I put the question.

(Question put and agreed to.)

THE CHAIRMAN: 127 stands part of the draft constitution

MR. MULENGA: The next one, Mr. Chairman, is Article 128 which was 129 in the draft and the committee recommends that Clause (1) be amended to reads as follows: "The President may in consul-

tation with the Cabinet by proclamation declare that a state of emergency exists in Uganda or in any part of Uganda if the President is satisfied that circumstances exist in Uganda or in that part of Uganda-

(a) in which Uganda or that part of it is threatened by war or external aggression or,

(b) in which the security or the economic life of the country or that part is threatened by internal insurgency or natural disaster or,

(c) which render necessary the taking of measures which are required for securing the public safety, the defence of Uganda and the maintenance of public order and supplies and services essential to the life of the community."

THE CHAIRMAN: Agreed next.

MR. MULENGA: Clause (2). "Subject to the provisions of this article a state of emergency declared under Clause (1) of this article, shall remain in existence for not more than 90 days and shall then expire."

MR. KAGIMU KIWANUKA (Bukomansimbi County): Mr. Chairman, I am seeking clarification from the chairman of the committee as to why in Clause (1) it was Cabinet not Parliament.

THE CHAIRMAN: No, we have already passed that one. I think it will be unfair to work backwards.

MR. MULENGA: Mr. Chairman, if Hon. Kagimu is patient he will see where Parliament comes in matters of emergency. Clause (3) Mr. Chairman, the committee recommends should read: "The president shall cause the proclamation declaring the state of emergency to be read before Parliament for approval as soon as practicable and in any case not later than 14 days after it was issued."

THE CHAIRMAN: Agreed next.

MR. MULENGA: Clause (4). "The state of emergency may be extended by Parliament for a period not exceeding three months at a time.

(5). The President or Parliament shall if satisfied that the circumstances for the declaration of the state of emergency have ceased like this, revoke the

proclamation by which the state of emergency was declared."

THE CHAIRMAN: Agreed, next.

MR. MULENGA: (6). "*During any period when a state of emergency declared and this article exists, the President shall submit to Parliament at such intervals that Parliament may prescribe regular reports on actions taken by or on behalf of the President for the purposes of the emergency.*"

THE CHAIRMAN: Agreed, next.

MR. MULENGA: (7). "*Subject to the provisions of this constitution, Parliament shall enact such laws as may be necessary for enabling effective measures to be taken for dealing with any state of emergency and may be declared under this article.*"

MR. MUKWAYA ABBEY (Busiro East County): Thank you, Mr. chairman. Mr. Chairman, whereas I have no serious contention with this Clause, my concern is to ask the chairman to satisfy my curiosity as to whether this Clause is in conformity with what we passed under state of emergency in the human rights chapter. Because it has made no mention of ensuring that in case of state of emergency those provisions which are meant to protect citizens as passed in that chapter are enshrined here. My concern is how far does this one will fall in line with what we agreed on in chapter 5, Mr. Chairman.

MR. MULENGA: Mr. Chairman, the opening words are, subject to the provisions of this constitution which means you have to refer to that chapter on human rights. Section 7 reads, subject to the provisions of this constitution. So that makes reference to other provisions that are relevant to this and that would include the provisions in chapter on human rights.

THE CHAIRMAN: Agreed, next.

MR. MULENGA: Clause (8). "*Any resolution passed by Parliament for the purposes of Clause (4) or (5) of this article shall be supported by the votes of more than one half of all the Members of Parliament.*"

THE CHAIRMAN: Agreed. We declare ourselves on 128. I put the question.

(Question put and agreed to)

THE CHAIRMAN: Article 128 stands part of the draft constitution.

MR. MULENGA: Mr. Chairman, that is the end of chapter on the executive subject to what has been reserved.

THE CHAIRMAN: Thank you Hon. Mulenga and Members of your Committee for a good job. This is a good speed and we should maintain it. Now Hon. Mulenga, would it be alright if we allowed the Monday morning for your Committee to meet and transact those matters we referred to you.

MR. MULENGA: I will be grateful, Mr. Chairman.

THE CHAIRMAN: There are a number of matters we referred back to the committee and which are holding us up on this particular chapter. I think it is only fair that we give the committee time to finish them so that through the week we finalize everything on this chapter. I think we have done more than 90 per cent of it, if not 95 per cent so that what is left is just holding us up in few places here and there. That being so, I adjourn the House to next Monday at 2.30 a.m.

(The Assembly rose and adjourned until Monday 20th March, 1995 at 2.30 a.m.)