

Tuesdays 17th May 1994.

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

(His Lordship, The Chief Justice, Mr W Wambuzi presiding)

The Assembly was called to order

THE CHIEF JUSTICE: Distinguished delegates, the main item on the agenda this morning is the election of the chairman and deputy chairman but before that I understand there are some distinguished delegates who have not subscribed to the relevant oath. Let us start with that.

ADMINISTRATION OF OATH.

Mayanja-Nkangi Sibakyalawo Jehoash,
Kahinda Otafiire, Col.

THE CHIEF JUSTICE: Distinguished delegates, last Friday I had the honour to introduce to you the five Presidential nominees, one of them I introduced in absentia. I understand that Prof. Mwaka is now here with us and whilst I would not like to go over what I said about her perhaps she will give us the benefit of the delegates seeing you from at least some prominent position like this one. Prof. Mwaka would you kindly walk to the rostrum. I did introduce Prof. Mwaka on Friday and I did say that she was born in Gulu; I believe that was a mistake. Now that the professor is here may be she would like to correct that so that we have an opportunity to hear her voice.

(Prof Mwaka introduced herself to the Members)

THE CHIEF JUSTICE: Thank you very much Prof. Mwaka. It is true I did not give you any time but I did say that the distinguished delegates wanted to hear your voice and I think they have.

Distinguished delegates, that brings us to the end of that stage. Now with real business but again before we embark on that there is a little matter we did not finish last week. We went over suggested ways of how we should go about the elections. We have circulated some rules which we went over last Friday and we must have looked at them and if found satisfactory we can proceed. If there are proposals for amendment we entertain them. We should agree on how to go about this business.

MR. AGGREY AWORI (Samia-Bugwe North) : Your Lordship, last week you gave us procedural guidelines for the election of the chairman and deputy chairman of the Constituent Assembly. Your Lordship, I beg your indulgence. I wish to move that the guidelines providing for the method and procedure for electing a chairman and vice chairman for the Constituent Assembly should be duly tabled, debated and adopted by the delegates to the Constituent Assembly. I beg to move Mr. Chairman.

THE CHIEF JUSTICE: The guidelines be tabled and debated. Is that the view of most of the delegates? By consensus anybody contrary to that? Very well the rules will be tabled and debated. The Rules have been tabled and the matter is open for debating.

MR. KISAMBA MUGERWA (Bamunanika County): Your Lordship, I Presume that the procedural guidelines prepared in advance were prepared to help the officials to arrange for elections according to these procedures and having had perusal, I am of the view that they are within the line of enabling us to elect the chairman and the deputy chairman. I would like to suggest that fellow delegates accept the procedure as it is and we get this business out of the way. I beg to support.

THE CHIEF JUSTICE: Thank you. Delegate Awori, is that correct?

MR. AGGREY AWORI: Your Lordship, it is not adequate, I still insist that we should debate. The reasons why I am advancing and why it has been adopted among other things is that we have been given in the Statute the bench mark against which we shall measure the capacity of each of the candidates or nominees who have been given. It is the bench marks Mr. Chairman I am begging for your indulgence that this House be given the opportunity to start measuring each candidate as briefly as possible against the yard-stick. In other words I am begging that we have at least more time to amend the procedure, to have more time for us to share views on each candidate and the bench-mark.

THE CHIEF JUSTICE: Would it assist if distinguished delegates were to say in what way the Rules should be amended?

MRS. FIONA ASEMO (Kumi District) Your Lordship, I would like to propose that this House - *(Interruption)*.

THE CHIEF JUSTICE: I am sorry but I was waiting for a voice from here.

MR JACKSON ASHAKA (Kibale county Kabarole) I am of the view that after being given the procedures for election of the chairman and the deputy chairman we have been given time, we have perused through, we have read through their curriculum vitae and we feel convinced that we are ready beyond reasonable doubt. Fellow delegates, let us proceed. Thank you very much.

THE CHIEF JUSTICE: Any contrary view?

MR. OKWAKOL (Pallisa county): I beg to support the motion moved on the procedural guidelines so that we incorporate some items that we feel are lacking. Your Lordship, the procedural guidelines are supposed to effect the law which is provided in the Constituent Assembly Statute that is the section which states that: "10 (1) A person shall not be qualified for election to the office of chairman or deputy chairman of the Assembly unless the person (a) is of high moral character integrity and impartiality; (b) has had experience in public affairs or employment in a high office for a period of not less than ten years; and " this is what I wish to emphasize " is capable of attending to the duties of the office of chairman or deputy chairman on a full time basis". My Lord, it may not be possible that some of the nominees are in a position to attend to these duties on a full time basis. Consequently I would propose that this addendum be effected. On Clause 4, of the Procedural Guidelines namely, that the following provisions shall apply to the casting and counting of votes in respect of both offices of Chairman and Deputy Chairman. '(a) before voting commences, the Chief Justice shall cause to be produced one ballot box and cause it to be demonstrated to the fact that it is empty..' My Lord, the point I am making is, we need to add 'before voting commences, the Chief Justice shall satisfy himself that the candidate nominated shall devote his full time to the duties he is called for.' If there is any doubt that he will not be able to implement that, then he should be excluded. So, I beg to move that that bit be included into Clause 4, of the Procedural Guidelines. I thank you.

MRS. ZZIWA NANTONGO (Women Representative, Kampala): With due respect to your Lordship I think we are mature delegates as we are seated here. The fact that these nominated candidates were able to come forward and present themselves shows that they were able and they have accepted to take on this responsibility. Your Lordship I beg that this house proceeds with the business of election of Chairman and Vice Chairman *(Applause)*.

THE CHIEF JUSTICE: It seems to be the consensus that we should proceed with the election *(Applause)*.

Distinguished Delegates, I am advised there a few developments to be sorted out, and shall we rise for about 15 minutes and we shall reconvene after that.

(Assembly adjourned for 15 minutes)

THE CHIEF JUSTICE: Distinguished Delegates, before we rose I did indicate that there were a few developments that required sorting out. Last Friday I introduced five Presidential nominees to the distinguished delegates. I understand that one of the nominees has withdrawn his candidature. I saw a letter addressed by the nominee to His Excellency the President of which I had a copy, but as the matter was already before the Assembly, I thought that it would be better for the nominee who has appeared before the Assembly to reappear and formally withdraw. So, that was Unfortunate, there was no nominee to be seen when I went out. So rather that keep the Assembly waiting, I have decided to read to the Assembly the relevant correspondence so that we get on with business before us.

Mr. Justice Ntabgoba, the Principle Judge addressed the following letter to His Excellency the President: It is dated May 16th 1994.

'Yours Excellency, I am very grateful to you for nominating me among the five persons whom you deemed capable of chairing and presiding over the Constituent Assembly meetings. I also feel proud of being one of the five candidates. Whereas however, there is nothing wrong in appointing a Judge to preside over such meetings, a Judge is prohibited by the Code of conduct for judges from election campaign, contest and lobbying of such appointment. You will, Your Excellency, appreciate that it is inevitable if one has to be elected from among the five candidates one has to campaign and lobby, yet I should be the last Judge to commit a breach of the Judges' Code of judicial ethics. I request, Your

Excellency that you kindly allow to withdraw my name from the list of candidates. I must assure you of my ever willingness to serve the public in any capacity you may wish me to serve it, provided it is appropriate for me to serve. I hope, Sir, that you will understand and appreciate my problem. Lastly, I wish to thank you every so much for the honour you bestowed upon me by finding me one of the five persons you deemed suitable for filling the post of Chairman of the Constituent Assembly. I wish also to thank, through you, all those who supported my candidature as well as all those who have been prepared to vote for me. I am, Your Excellency, obedient servant; J.H. Ntabgoba, Principle Judge. Copy to the Hon. the Chief Justice, Interim Chairman of the Constituent Assembly.'

I understand that a letter has been received by His Excellency and his Principle Private Secretary said this - he wrote to me this time:

'Election of the Chairman and Deputy Chairman of the Constituent Assembly; Please refer to the letter dated 5th addressed to you by His Excellency the President written requesting His Excellency the President to allow him to withdraw his name from the list of candidates for the Chairmanship of the Constituent Assembly meetings. His Excellency the President has accepted his request. The purpose of this letter is to request you to withdraw his name from the five candidates previously submitted.'

As I indicated Distinguished Delegates, I thought that was a bit late, because the name had already been presented and the person himself had been presented. To prevent innuendos and conclusions we thought it would have been better for the candidate himself to be here and to withdraw. But as again that it is not possible to say when he was coming again, and that is why to save time we propose we accept the relevant correspondence and regard the candidate as having withdrawn.

MR. NABUDERE: Point of order. Mr. Chairman, this development raises a number of questions. The withdraw of Judge Ntabgoba would seem to suggest that there was no consultation made with him prior to the nomination. If this would be the case then there are problems. Well, if he had been consulted before his name would have not been nominated, because he would have withdrawn. Now, I am raising a question for your clarification whether in fact, we have the five required names as provided for under the Statute.

THE CHIEF JUSTICE: No, Distinguished delegate, read your law again. The President is supposed to submit a list of names not exceeding five. He is not required.

MR. NEKYON: Lord Chief Justice, when you introduced the proposed procedures to be adopted in this big election we thought it was a simple matter. Now with the withdrawal of the candidate Ntabgoba, I want to add my voice to what - I do not know whether he is honourable or is just a mister, Mr. Nabudere. He is saying that his withdrawal indicates clearly that the President did not consult those whom he nominated and presented before us. It is always wise in public service to talk to the person whom you propose to appoint so as to obtain his willingness to serve. But in this case now we know that these people were not properly consulted. Now, the law says *-(Interruption)*.

MR. ABU K. MAYANJA:- Point of order. My Lord Chairman, I was not here because I had been given permission, but I did see on Television that when he was introduced to the Assembly as one of the five, Mr. Justice Ntabgoba stood up and accepted nomination *(Applause)*. The fact that he has changed his mind does not mean that he was not consulted. Then is it in order for the hon. Nekyon to mislead the House or confuse it by suggesting that the President did not consult the people whom he nominated?

THE CHIEF JUSTICE: I think the speaker had better confine his remarks to the point at issue. The point at issue is not whether the President consulted but what happens in this case.

MR. NEKYON: Mr. Chairman, during his speech Justice Ntabgoba said he was not consulted, and in fact, Mr. Ayume also said so. So, for the hon. Abu Mayanja to say I am misleading the House, I think he is wild.

THE CHIEF JUSTICE: No, I think, hon. Nekyon can we proceed to the point, because we are not here to find out whether they consulted or not, because the candidates were here.

MR. NEKYON: I was about to do that, and what I was going to say, since the law provides that we have a specific number of names up to five - *(Interjections)* not more than five, if it is not more than five it means they are five. So, I say, supposing

after introduction all four of the five had withdrawn, what would happen? That would mean that we would remain only with one person forced on the Assembly to elect. So, I will proceed to say that since these people presented themselves and then one withdrew, we should have followed the norm of discussing each candidate because presenting yourself means you have offered yourself to be discussed. In the High Court, Sir, where you preside, when you present the case to a panel of three Judges, it means you are prepared those Judges should discuss your case, and the case cannot be passed unless discussed by the panel. This Constitution depends on credibility of the entire country, because from the beginning we agreed that the Constitution is going to be agreed on by consensus, and credibility is the very foundation of acceptance. We now see that we have got a Government minister as a candidate and yet we know that throughout the country there was a general belief that this draft was prepared by the Government. Now, we are playing in the hands of the people who believe in that way, by saying we are going to put a government minister to preside over the proceedings of this House. The British Constitution which is not written as you are all aware is highly respected and honoured by the people of Britain, but it is not written; but once you say that a minister goes to preside over this House, then Mr. Chief Justice we are not in order. Finally, I want to say that the proposal of voting continuously until we get one person is going to land us in trouble. There are 17 million people in this country and there are many outside who are capable of presiding in the House. I, therefore, propose *-(Interruption)*.

MRS. SSEKITOLEKO: Point of order. My Lord Chairman, is hon. Adoko Nekyon who is a Member of Parliament, who made this Statute, however lousy it may be, in order to waste the time of this august House, because he more or less wants the wonderful Statute he made to be amended here. Is he in order, Sir?

THE CHIEF JUSTICE: I think hon. Nekyon was trying to follow your point; it is to the effect that the Assembly should have an opportunity to discuss the candidate - is that what you are saying?

MR. NEKYON: Yes.

THE CHIEF JUSTICE: Then why do you not confine yourself to that?

MR. NEKYON: I was going to that. Mr. Chief Justice, the hon. Minister for Agriculture should know that this procedure which you presented here is not what was made in the NRC; it was a new development, it is not in the Statute. So, I am discussing that proposal; you say that we are to vote continuously until we reach a consensus of one person. What I am saying - after voting for about three times then we should dismiss all the candidates and ask the President to submit five new names. This is because there are people outside who are capable of presiding over this House and we cannot confine ourselves to these four who are now before us.

THE CHIEF JUSTICE: I think, distinguished delegate, you will remember we have debated that earlier this morning, and it was decided to proceed. What we have not discussed is whether the distinguished delegates would like, at this opportunity having had an opportunity to consult whether they would like an opportunity to debate or to discuss here the candidates as proposed.

MR. NEKYON: Yes, I would like to discuss the candidates;

THE CHIEF JUSTICE: Any hon. delegate seconding that *-(Interruption)*

MR. PINTO: My Lord, I want to give information from the Statute that according to Clause 9, subsection 4, it clearly states that the delegates shall after due consultations elect a Chairman and a Deputy Chairman from the Presidential nominees. Now, from the five names that were presented we are ultimately to elect the Chairman and a Vice-Chairman. It, therefore, follows that we are going by elimination to have out of the five, now four, only two. I, therefore, pray for reason that you allow this Assembly to continue with the business of electing a Chairman from those among.

A DISTINGUISHED DELEGATE: My Lord, I also agree that this House should proceed with the business before it. I wish, however, to confine myself to one issue which was raised by Mr. Adoko Nekyon, and that the issue of discussing demerits or the merits of the candidate. I observe, Sir, that under section 9 (4) of the Statute, this House is obliged to elect a Chairman and Deputy Chairman after due consultation. It can be argued, Sir, that what we have been doing over the week-end constitutes consultations. But, Sir, it can also be counter-argued

that those consultations - individual consultations do not constitute what can be called consultations in respect to a House of this nature. I would, Sir, ask this House to allow itself a few minutes so that we find ourselves, whether the candidates who have so ably presented themselves before us merit the obligations that is before them as provided for under this Statute, by finding out between ourselves what each one of us has found out during our consultations during the week-end. Thank you, Sir.

THE CHIEF JUSTICE: The proposal is that the Assembly has an opportunity to discuss the candidates.

MRS. EGUNYU (Women Representative, Kumi): My Lord, I beg to second the proposal made by the distinguished delegate. My Lord, due consultation as provided for in the Constituent Assembly Statute should be interpreted in relation to how the Constituent Assembly is supposed to deliberate on matters before the House. My Lord, this consultation should be carried principally in the House by all the delegates and not merely on an individual basis. Finally, my Lord, the Statute does not bar a debate on the nominees, and I request that the House be given opportunity to debate the candidate in relation to the legal requirements in the Constituent Assembly Statute. Thank you my Lord.

THE CHIEF JUSTICE: I think generally there is one issue. Should the House have an opportunity to debate the candidates; I think that seems to be the only issue. Should we debate or not debate - *(Interruption)*.

MR. WACHA (Oyam County, North): My Lord, this is a matter of such utmost importance to this House, that it would be, I think unfair if we just said 'Aye' or Nay. I think it is important that each individual indicates individually which side he is opting for; by voting by raising the hands or standing up.

DR. S. KAZIBWE: Thank you very much, my Lord Chief Justice. I wish to advise my distinguished colleagues that one; we are here not to write a biography of the Chairman and Deputy Chairman or Chairpersons of this august House. We are here to discuss and debate a new Constitution of this country. So, I wish to say that whoever is advocating for us to go into the personal biographies which are different from the CVs that have been presented to

us, will indeed be taking the time of the people of this country who are very anxious to see us start and move ahead. Mr. Chairman, my Lord Chief Justice, I wish to say that some of us are already getting worried about the constant reverse gears that some Members may be planning to use while we debate this document. I want to advise the distinguished delegates that let us move and vote for the candidates who have been presented before us so that we can get on with the business of making a Constitution for this country. Thank you.

THE CHIEF JUSTICE: I think the issue is whether or not the candidates should be debated here. I now put the matter to the vote.

(question put and negatived)

THE CHIEF JUSTICE: The proposal is lost. So, we proceed with the elections. May I remind distinguished delegates that we have now four names: Hon Wapakhabulo, Mr. Francis Ayume, Prof. Mwaka (Mrs.) and hon. Rebecca Kadaga. Our rules we have just adopted are very fresh; we proceed by secret ballot using the ballot papers supplied by the Commissioner, and we begin with the election of office of Chairman which we shall complete before we elect the Deputy Chairman. Now, if I may remind distinguished delegates, according to our rules we are 283 delegates, I gather that two are not available, they are abroad, and that leaves 281 delegates, which means that the nominee to be elected will have to have two thirds of 281 which I am advised is 187 persons, or 188 votes. Then the following provisions apply. Before voting commences I am required to cause to be produced one ballot box and cause to demonstrate the fact that it is empty. Now, the next thing is that I am required to call upon the delegates to vote for the office - *(Interjections)* - then I will specify the offices to be voted and the distinguished delegates will cast their votes, and it is suggested that we have a record of voters and we shall go one by one and call out relevant names to cast their votes, and that way we know who has voted and who has not voted. Now, after all delegates who wish to vote have voted, we shall in full view of the Delegates cause officials provided by the Commissioner for Constituent Assembly under the supervision of the Chair to empty the ballot box and immediately count the ballot papers contained in it. At the completion of counting, I shall announce the results of the voting, giving the number of votes obtained by each nominee, the

number of votes spoiled and blank ballot paper and the total number of ballot papers contained in the ballot box. Then if a nominee obtains 188 votes and over that one will be declared to be elected. If upon the first vote no nominee obtains that number required, voting and counting shall be repeated, and we can go on doing that. So, we want to limit that by saying if after three votes no nominee has obtained the required number of votes, the nominee who obtains the least number will drop out. Then we will keep the process until a person obtains the required number.

Now, I think distinguished delegates we are ready to begin what we have been waiting for all morning. We shall distribute the ballot papers and you are required to write the name - one name you wish to vote for, and the first voting will be in respect of the Chairman of the Constituent Assembly; you write one name of the candidate of your choice.

(Voting exercise began)

CHIEF JUSTICE: We are now counting the votes. Distinguished delegates, here comes a moment we have been waiting for the results. I am required to get a number of votes obtained by each nominee, the number of spoiled and blank ballot papers, the number of ballot papers contained in the ballot box. In the ballot box were 276 votes. Two were spoiled and these are the results.

NAME OF NOMINEE	NUMBER OF VOTES
KADAGA REBECCA ALITWALA	1
MWAKA VICTORIA PROFESSOR	0
AYUMNE FRANCIS JOIASH	82
WAPAKHABULO JAMES FRANCIS WAMBOGO	192

Accordingly, I declare Wapakhabulo James Francis Wambogo has been elected Chairman of the Constituent Assembly. *(Applause)*

ELECTION OF THE DEPUTY CHAIRMAN

CHIEF JUSTICE: We repeat the process. And as in the first office, the Deputy Chairman, must also be elected with a majority of two thirds. Shall we repeat the process; empty the ballot box?

(The voting exercise was repeated)

THE CHIEF JUSTICE: Distinguished Delegates, here are the results of the office of Deputy Chairman. There were 278 ballot papers, one was spoiled. Kadaga Rebecca Alitwala 36, Ayume Francis Joash 52, Mwaka Victoria Professor 187. *(Applause)* Unfortunately, distinguished Delegates, the vote is less by one and therefore, I declare that no person has been elected. We shall repeat the exercise this afternoon at 3.00 o'clock.

The Assembly adjourned to 3.00.p.m in the afternoon.

THE CHIEF JUSTICE: This is the election of the Deputy Chairman. The nominees are: Ayume Francis Joash, Mwaka Victoria, Professor. Ballot papers will be issued and I think the procedure is, you write the name of the nominee you vote for, one name only. That is all you need to do. I gather that what some distinguished Delegates have done is to write the post on the ballot paper and the name. Now, it so happens that in the spoiled paper after the distinguished Delegate had written the post, he forgot to put the name. So it became spoiled. So please, just write the name of the candidate. That is all. We know we are voting for the Deputy Chairman. So, write the name of the candidate; that is all.

(Voting exercise was carried out)

THE CHIEF JUSTICE: Distinguished Delegates, the results: There was a total of 271 ballot papers in the box. Kadaga Rebecca Alitwala 5, Ayume Francis Joash 40 and Mwaka Victoria 226. *(Applause)*.

ADMINISTRATION OF OATH

1. Mr. Wapakhabulo J.
2. Prof. Victoria Mwaka.

THE CHIEF JUSTICE: Distinguished Delegates, although we have slightly deviated from the conventional separation of powers, it has been a great honour and privilege to me to preside over this august Assembly be it for only a few sittings. I think it was designed that in the important task ahead of this Assembly, it should start in the right atmosphere of impartiality and non-partisanship. All the distinguished Delegates present have been properly sworn in. Also the first business before the Assembly of electing the Chairman and Deputy chairman have been smoothly accomplished. *(Applause)* On behalf of the people of Uganda, I offer to you Mr. Chairman

and Madam Chairman, heartfelt congratulations. I wish you well in your great task of steering this august Assembly in the gigantic business before it; at the same time, I record the appreciation of the people of Uganda to other Presidential nominees for offering their services to the nation. That ends the preliminaries and this Assembly is ready to begin its proper business. My role is now over, but before I peacefully and willingly surrender this rather comfortable Chair to you Mr Chairman, I take the opportunity to say a few words.

Distinguished delegates, this is a great occasion in the history of our country and the people of Uganda, through you, their delegates, have for the first time, and I hope the last time, gathered together for the sole purpose of determining the manner in which we, Ugandans, shall govern ourselves. I said the first time advisedly and aware of the previous gatherings of some kind at various times and venues, but this is the first time that all the people of Uganda, of all colours and shapes, beliefs, views, trades, callings, sexes, ages, etcetera, have gathered to debate a form of their governance. I wish to take the opportunity to congratulate all the distinguished delegates upon winning the confidence of the people of Uganda, who elected or appointed them. I feel certain also, of the people of Uganda would like me to congratulate the Commissioner for this Assembly and his team for organising various elections and for making the arrangements which enabled us to meet for the first business. Those of us who have been following events relating to election in countries emerging from turmoil all over the world, are aware of the problems involved in organising such elections. Despite hitches here and there, the Commission did a tremendous job in the circumstances. I did not remind the distinguished delegates that the business before you, is only a part of the process which started some years back. Your part may be referred to as the second and final stage of the process. The first stage was the the establishment of the Constitutional Commission under the Uganda Commission Statute, 1988. The reasons for and the aims of which are summarised in the preamble to that Statute which reads as follows., I quote.

“WHEREAS the history of Uganda is characterised by political and constitutional instability: AND WHEREAS since independence, Uganda has had a series of Constitutional Instruments, many of which have failed to take account of or satisfy the national aspirations of the time: AND

WHEREAS in the past the people of Uganda have been afforded very little or no opportunity to freely participate in the promulgation of their national Constitution:

AND WHEREAS the National Resistance Government recognises the need to involve the people of Uganda in the determination and promulgation of a national Constitution that will be respected and upheld by the people of Uganda, through the establishment of a Constitution on the most suitable constitutional arrangement for their country.” end of quote. This is a summary of the reasons for setting up a Constitutional Commission and the aims the Commission was intended to achieve. In that Statute, the functions of the Commission were to study and review the Constitution, that is the current Constitution, with a view to making proposals for the enactment of a national Constitution which will satisfy the objectives named in Section 4 of the Statute which include the establishment of a free and democratic Government and to formulate and restructure the Draft Constitution that will form the basis of the country’s new national Constitution. The first stage took some five years or so to complete. The Commission explains what it did and how it did what it did in that time in its report which was supposed to be handed to the Minister for Constitutional Affairs but which I believe, somehow reached him, at the end of last year. As the distinguished delegates have seen or as they will in due course see, the Constitutional Commission did a magnificent job.

I feel certain that the people of Uganda would like me to congratulate the Commission upon a piece of work well done. I am sure that the people would also like it me to thank all friends of Uganda, Government, organisations individuals who played a part in whatever manner to enable the Commission to carry out its functions. This is now the beginning of the second and final stage of the process as I have already indicated. To appreciate the significance of this stage, I should refer to the words of the preamble to the Constituent Assembly Statute, 1993, which creates this Assembly. It reads, and again I quote. “WHEREAS under the Ten-Point Programme, the National Resistance Movement envisioned a fundamental need for the development of a new national consensus upon Uganda’s constitutional arrangements as a prerequisite for the democratic process and rule of law: AND WHEREAS the National Resistance Council, by enacting the Uganda Constitutional Commission

Statute, 1988, took concrete steps towards achieving the ideal of procuring a national Constitution freely made by all the people of Uganda:

AND WHEREAS it is deemed expedient, and in concert with the policy of involving the will of the people in the entire process of the national Constitution-making, that a truly representative Constituent Assembly be established to scrutinise, debate, finally re-draft and enact the Constitution prepared and submitted to the Minister": I end the quotation there.

This Assembly was established in accordance with those principles. Distinguished delegates, you have been sent by the people to act for and to represent them in two respects. First to scrutinise, debate and prepare a final draft of the Constitutional text using the draft prepared and submitted to the Minister by the Uganda Constitutional Commission. Secondly, to enact and promulgate a new Constitution of the Republic of Uganda.

These are the two functions of this Assembly and perhaps I should add that unlike the Constitutional Commission which took five years to accomplish its task, distinguished delegates, you have been given a minimum of four months and a maximum of seven months to do and finish your job, subject of course, to accommodation of certain contingencies. But of course, areas which require debate have been identified and in a way this is a second bite at the cherry by the people: what is more, you are to attend to the business of the Assembly on a full time basis. The time schedule should, therefore, present no real problem. In my humble view, two factors control the operation of any law. First, the law itself, in this case the existing Constitution: what are its provisions? What do they say? Secondly, the application of the law, how has the Constitution been applied or observed? A bad law is always bad whether properly applied or not, but a good law may be wrongly applied and it becomes a bad law. The Constitutional Commission condemned the current Constitution and recommended a new national Constitution and gave reasons to support its recommendations. In their own words, to appreciate and understand the draft Constitution, it is necessary to read the report of the Constitutional Commission for explanation and reasons for the various provisions in the draft. I hope that the distinguished delegates will find time to do this if they have not done so already. The objectives in the promulgation of a new Constitution are set out at every stage in the preamble to the

relevant legislation. The proposed preamble to the new Constitution sums up the problems and aspirations of the people. It reads, and again, I quote,

"We The People Of Uganda: Recalling our history which has been characterised by political and constitutional instability; Recognising our struggles against the forces of tyranny and oppression; Committed to building a better future by establishing a new socio-economic and political order through a popular and durable national Constitution based on the principles of unity, peace, equality, democracy, freedom, social justice and progress;

Exercising our sovereign and inalienable right to determine the form of governance for our country, and having fully participated in the Constitution-making process: Noting that a Constituent Assembly was established to represent us and to debate the draft Constitution prepared by the Uganda Constitutional Commission and to adopt and enact a Constitution for Uganda: Do Hereby in and through this Constituent Assembly Solemnly Adopt, Enact, And Give To Ourselves And Our Posterity, This Constitution Of The Republic of Uganda". End of quote.

This is what the people of Uganda said they have experienced and what they wish to achieve through you, their delegates here assembled. Name one country in the world where the people were given a similar opportunity to decide their form of governance. I am not a politician and I must maintain judicial impartiality, but I think we must give credit where it is due. Well done the National Resistance Movement Government. It is said that misfortunes come in multitudes but opportunities come in singles. We must not take for granted the current atmosphere of peace, security, stability and freedom of speech. In case we have already forgotten the bitter experience in our country, let us take a look at the current or recent events in other countries around us, in Sudan, Somalia, Rwanda, Burundi, Angola, Zaire, Nigeria, Liberia - In their report, the Constitutional Commission remarked, and I quote.

"Uganda'S Past and current constitutional arrangements have not so far succeeded in sustaining a stable, coherent political system, capable of making and unmaking leaders short of use or show of force. There is need to devise means of producing a workable Constitution that enjoys a very wide degree of acceptability." End of quote.

It is up to you distinguished delegates to enable all Ugandans to realise their objectives and aspirations detailed in the proposed preamble. There was a great deal of enthusiasm at the time of the elections to this Assembly in which many people participated as candidates. Judging by the media, there has been a considerable collection and exchange of ideas.

I think these consultations should continue to give meaning to the proposed preamble that the people participated fully in the Constitution making process. I feel certain that in this Assembly, there will be a very lively debate and a wealth of ideas. But let the abundance of ideas be a rich source of material from which to choose the best and not a reservoir of obstacles to agreement. I think it is fair to say that for a long time one of the principles on which we seek to base our Constitution has eluded us - the principle of unity. To illustrate our sense of unity, one observer is reported to have said that, if you put ten Ugandans in a room, to discuss politics, they will emerge having formed eleven political parties. In these circumstances, I would suggest that we seek to narrow down our differences and emphasise our points of agreement. Whilst you subscribe to the debate on any issue, you must be prepared to listen to others and when you listen you must also consider what has been said. We must seek solutions and not take stands. We must give and take or, if you prefer, compromise. We must well and truly serve the Republic of Uganda in whatever we do. A Constitution is one of the laws of a country. The difference from the other laws is that it is the basic law, the supreme law from which all the other laws radiate. It deals in the main, with the basic organisation of the society - who is who and who does what. You cannot therefore, put everything in the Constitution. There will be other laws first, to give effect to the Constitution, and to provide the details and secondly to regulate society in the various fields. So, give unto Caesar what is for Caesar or, if you prefer, put into Constitution only Constitutional material. I understand that the Constitutional Commission visited a number of countries, both developed and developing, to see how the people of other nations organise themselves. Obviously, it would be wrong to import organisational systems out of context because they work elsewhere. Let us use the other people's experiences as lessons, history is renowned to impart, to work out solutions peculiar to our circumstances. We must ensure that never again will our country be plunged into the types of turmoil we have been through. Firstly, by producing a realistic and

workable Constitution which takes into account the aspirations of the people and secondly, having put in place, a Constitution which we ourselves, have by our own free will so enthusiastically made, we must abide by it. Since independence, we have had at least three Constitutions - in 1962, 1966, and 1967 and modifications in 1971, 1979, 1980, 1985, and 1986. None of these Constitutions or modifications, imperfect as they may have been, permitted or authorised the kinds of tyranny, oppression and violations of human rights as we were subjected to by and in the various regimes. Therefore, whilst this august Assembly has the duty to promulgate the supreme law, those people who sent you, the people you represent, including yourselves, have a duty to respect and obey the law. If we do that, the Pearl of Africa will shine in peace, freedom, prosperity and justice now and for ever more.

It is now my pleasure and privilege to invite you, Mr. Chairman, to take the Chair. But permit me, Mr. Chairman, to add perhaps as a handing over remark that you should from the very beginning, insist on punctuality. I wish you all distinguished delegates successful deliberations. I gather that Madam Deputy Chairman has a few words to say.

THE DEPUTY CHAIRMAN FOR CONSTITUENT ASSEMBLY: (Prof. Victoria Mwaka). Your Lordship, Chairman, distinguished delegates of this Constituent Assembly, Ladies and Gentlemen. First of all, I wish to extend my sincere thanks to the President of the Republic of Uganda, Kaguta Yoweri Museveni for having nominated me as one of the candidates for the Chairpersonship of this Constituent Assembly, the nomination, I accepted. I thank your Lordship, for having conducted this Session in such a calm and stable atmosphere. I think that was very good. I congratulate my Chairman, for having been elected to this high office of Chairman of this august gathering; I am looking forward to working with you for a common cause and on a common agenda. I thank the distinguished delegates for the trust and confidence you have shown by giving me such an overwhelming vote. Each of your vote has been a great pleasure to me, thank you very much. I dedicate myself and my energy to the cause and maintenance of peace and order and good governance. The best instrument to acquire such, is through a respected Constitution and I hope and pray that once this Constitution comes out, it will be respected and observed and maintained. I shall serve to your satisfaction and the

satisfaction of the nation with your support and cooperation for God and my country.

MR. WAMBUZI: I am sure we are all waiting for the Chairman.

THE CHAIRMAN OF THE CONSTITUENT ASSEMBLY (Mr. James Wapakhabulo): My Lord Chief Justice, and able Chairman of the Session, the Deputy Chairman, Prof. Mwaka, distinguished delegates, Ladies and Gentlemen; I am overwhelmed by the decision you made to elect me and the reception I got when I came in to assume office. My Lord, let me say a few words concerning my office and also the role you have played. Unprudently, I could not prepare a written text because I did not know the result, I was not keen to prepare one which I would not read, but at the correct time, I will have a text possibly embodying the way I think we should work and that, I will do only when I have consulted and been advised by the Secretariat. But for the time being, my Lord, let me on behalf of my Colleague, the Deputy Chairman and the distinguished delegates who are here thank you and pay tribute to you, Sir, for a very able job done for the last three sessions. I have not attended many, I attended one on Friday and I was impressed by the manner in which you managed the proceedings and indeed today, I must pay tribute to you Sir, for a very able manner again in which you have conducted the session. I must thank you Sir, for the words of wisdom you have said to us this afternoon. In fact, those words of wisdom are a very good summary of the task facing the distinct delegates who are assembled here. In that message, you have identified the legal basis upon which we find ourselves here and what is expected of us. I hope that copies of your statement will be made available to the Members so that when we define and identify the various aspects of our tasks, we can use it as a reference statement. I hope Sir you will be finding time from time to time, when may be if you are bored, by listening to the same lawyers coming to appear before you, that you will come over the next four to seven months and join us and hear how this baby, who was produced under your management is performing and behaving and we shall be only be too honoured to receive you on those occasions. Let me also say a word of thanks on a personal note and I am sure on the part of my Deputy, for the nomination that we received out of cabinet and His Excellency, the President that has given us today's position of privilege and honour the two of us to be the servants of the people of Uganda

in the process of determining the governance of their country and their lives from now on. I promise you and I am sure I speak on behalf of my Deputy, that in our service to you delegates, and in our service to the people of Uganda, we shall act with firmness, where required in accordance with Rules of Procedure given to us, but in doing so, we shall act with fairness and we shall act with impartiality. I have not worked before with Prof. Mwaka, but I have been hearing a lot about her and I have no doubt that she will give me able support and we shall work together very well. I congratulate her most heartily on her success at the polls today and as I said, together, we shall provide you with an able Chairmanship and we expect support from you so that we work together for the good of our country. I am a man of the Movement and not all delegates ascribe to all the principles or to many principles that the National Resistance Movement ascribes to, but let me disabuse those members whom I have thought that by virtue of my position in political spectrum, I may use my office to exercise unfairness that should not be taken so, because the task before us, is so important that we cannot let it be subject to the whims of pure political choice along the spectrum. We shall have to act fairly, impartially, listen to all views and then, hopefully working together, we shall find a consensus so that the people of Uganda receive what they deserve. The task before us is enormous, the people of Uganda will now be focusing on us. Their eyes will be on us, their expectations will be on us. We are here with various views and positions. I have got a message from the people of Mbale that may be passed through their delegates since I was not able to carry it. But the point is, in whatever we do, let us first and foremost, know that we are not working for the present view points alone, we are working for the Ugandans of today, Ugandans of tomorrow and the Ugandans of many generations to come. In doing this therefore, let us start our tasks with open minds, in a spirit of give and take, in a spirit of friendship, because the mere fact my opinions are different from yours, should not be a basis for conflict. That in fact, was may be one of the main reasons why Uganda has gone through what it has gone through. We must learn the culture of tolerance, understanding and respect of other peoples' views. If you disagree with my views, it is upon you to convince me and hopefully along the way, I may convince you before you convince me; if I do I succeed, if you do, you succeed, but together, we shall have used civilized methods of dialogue and friendship. As I said, I was not prepared to submit a text of a statement, in any

case I did not have the Secretariat because the Chairman had it, until a few moments ago. But what has happened today is a beginning I am sure of what will happen many times to come in future. There has been a peaceful, friendly and voluntary transfer of power this afternoon, (*Laughter*) from His Lordship, the Chief Justice to the two of us and we shall keep that power in custody for you and we shall give it to you from time to time, and in doing so, let us engage together for the good of our country.

Finally, I wish to say a word of thanks to Justice Odoki and his Commission for the good job done. They managed dialogue of our people at that stage, the dialogue is now resuming through you, distinguished delegates and for us as your instrumentalities, we shall give you all the necessary support you need. The Commissioner of the Constituent Assembly and his team, also deserve words of thanks for a good job done. They have managed the electoral process, now working with me and my Deputy, I can say on behalf of the Commissioner, that we shall do our utmost to ensure a smooth development of the proceedings of this august House and if there are any or that you notice, maybe there are any weaknesses that you detect, feel free to come to me, to my Deputy, or to the Commissioner and point them out; instead of, as some people tend to do, complaining through the corridors.

Let us have open methods of work and out of them I am sure, we shall have a more efficient outcome in the work that has been given to us by our people. As I said, I cannot distribute whatever I have said, because I did not prepare it, but I will beg to stop there and congratulate you again on your election, nomination or appointment and to wish you a successful tenure of office at the end of which, we hope and have no reason to doubt, we shall be proud when we have penned our thumbs and signatures on the text that will become the Constitution of the people of Uganda, enacted and promulgated through yourselves, the people that have been the trust by our people. I say this, For God and my country. I thank you.

I assume as I said earlier that the power has crossed, I saw it crossing here quietly and it has reached. Now, it is time that we see off His Lordship the Chief Justice, who-as I have said, has completed very successfully, his Statutory duties that were and functions that were imposed on him under the law. We do not have the Procedures to go by, but we are improvising until our Rules are properly ascer-

tained. I therefore wish to suggest the following: that you remain in your positions, to give me the opportunity to see off His Lordship, the Chief Justice, then I will quickly come back, and we proceed from there. Maybe I will have been advised as to how to proceed because as I said I did not have the Secretariat until a few minutes ago. If that is agreed, you let us proceed as I suggest. I thank you.

(The Chairman saw off the Chief Justice)

THE CHAIRMAN: The Deputy Chairman and distinguished delegates, I have come even now to the real power centre and I am glad. (*Laughter*) Knowing that today has been a very hectic day, we have discharged a very important duties and responsibilities, since morning to now, and seeing that I am new and my Deputy is new to this job, we need also to be slightly educated by the Secretariat and others; it is proposed that we adjourn to tomorrow. His Excellency, the President, will be coming to inaugurate us into our duties and jobs as Constituent Assembly, tomorrow in the afternoon. You are requested to take your seats by 3.00 o'clock. The cards for the occasion, I am sure will be distributed as you go out and as my predecessor said, let us begin our job in a spirit of punctuality. I wish therefore to adjourn until tomorrow 3.00 O'clock when His Excellency, the President will come to inaugurate us. Thank you very much.

(The Assembly rose and adjourned until the 18th May, 1994 at 3.00.p.m)