



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

THURSDAY, 19TH JANUARY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2743]

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Thursday, 19th January, 1995.

The Assembly met at 8.30 a.m. in the International Conference Centre, Kampala

PRAYERS

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

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

THE DEPUTY CHAIRMAN: Hon. Delegates, I have two points of Communication from the Chair. One, I have been requested by the Chairman to pass on his greetings but he has a bout of malaria. He was advised by the doctor to rest although he would have wished to be with us and we consulted and he was of the view that we be allowed to go and attend the Graduation ceremony so that in the afternoon, we shall then not have the plenary but the Committees we leave to the discretion of the Chairmen of those respective Committees in the morning in case other members are invited for parties and what have you. So, the Chairman thought that it would be fit for delegates to go and have the Friday afternoon with the graduates.

Secondly, I have a letter which I am going to read to you from Dr. Wilson Byarugaba, Dr. Juliet Okecho - on the issue of water hyacinth management - I mean the members of the Water Hyacinth Management Association. They are sorry, they could not distribute this, so they asked me to read it to you so that you go and attend this important function. The letter reads: "*Water hyacinth sensitization rally at Port Bell Pier, Luzira at 10 a.m. on 21st, January, 1995. Ugandan waters are at the brink of destruction. Lake Kyoga is covered, Owen Falls Hydro Electric Dam is threatened, Uganda's Water gate at Port Bell is closing down, Lake Victoria drinking water sources are endangered and above all - Lake Victoria aquatic life and fishing activities are coming to an end. Therefore, the catastrophic situation in Uganda is crystal clear. The Association continues to see it necessary to spread the gospel of the dangers of the water weed. We, therefore, invite and appeal to all those that love our environment and are economically concerned, to come to Port Bell, Luzira on 21st January, 1995 at 10.00 a.m. and support our cause morally and materially. Hon. Dr. Paul Kawanga Semwogerere.*"

Second Deputy Prime Minister/Minister for Public Service will be the guest of honour. Please come all." Signed, Dr. Wilson Byarugaba (Chairman) and Dr. Juliet Okecho (Secretary). Thank you very much.

MR. PINTO (Kakuuto County): Thank you very much, Madame Chairperson. I do not think this letter calls for a lot of debate. You just gave it to us for information but I would like to say here that this problem has reached emergency and crisis proportions and we have not seen decisive action by government and this is a matter calling for strong action and condemnation that such a situation which, like you have read in the letter, can be brought up when there is total negligence on the action against the water hyacinth.

THE DEPUTY CHAIRMAN: No, we are not opening up debate. This was for information. It is not something official. This is an NGO asking members to go and attend. If you want to open this aspect, you can open it later on. Thank you very much.

First I could give audience to the Minister - not as Miyingo there but as Minister.

DR. MIYINGO-KEZIMBIRA: Thank you very much, Madame Chairperson. I rise to point out and give information about the water hyacinth. What Hon. Pinto has pointed out is not exactly true.

THE DEPUTY CHAIRMAN: No, I thought you are responding to this. If not, we are not opening the dialogue. Thank you very much. *(Applause)*

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

CHAPTER 14 - DEFENCE AND NATIONAL SECURITY

ARTICLE 231: UGANDA ARMED FORCES

THE DEPUTY CHAIRMAN: Hon. Delegates, I think we do not have to revisit this item. We wasted a lot of time on it and it was decided that we go back to the original and we voted. We cannot pronounce ourselves on this issue because we still have another three sub-clauses before we complete Article 231.

So, we are not expecting to say whether these do stand part of this Constitution because we still have 2, 3, and 4. So, I propose now we go to Number 2 because we voted and it was decided that we go back to the original. Hon. Kaberuka.

DR. KABERUKA: Thank you Madame Chairperson. My Committee deliberated on Clause (2) of Article 231 and we are recommending that within that Clause, we introduce the words "non-partisan, national in character and patriotic" so that the Article reads: "*The Uganda Armed Forces shall be non-partisan, national in character, patriotic, professional, disciplined, productive and subordinate to the civilian authority established under this Constitution.*" I beg to move.

MR. ELYAU (Kalaki County): Thank you, Chairperson. I thought what was read in the original draft is very clear. I find a problem by saying "non-partisan". Supposing this country had politics and those ones who are alive now have children who want to be in the army, are we going to stop these children from their national army? So, I think that "non-partisan" is a bit disturbing. Maybe the "patriotic" I can accept but "partisan" is very complicated. I wanted the Clarification from the Chairman. Why can we say "partisan" at this moment, because when you are joining the army, you do not know whether you are partisan - you are just defending your country. I want clarification on that.

MR. ERESU (Kaberamaido County): I would like to clarify my neighbour and Colleague and a friend from Kalaki, Hon. Elyau that the concept "non-partisan" here to me, refers to an army which is not aligned to any political force or opinion. (Applause) Thank you.

THE DEPUTY CHAIRMAN: With that clarification, I want to put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: It is so decided that the Committee's report be accepted according to their Amendment: Then can we go to Clause (3).

DR. KABERUKA: Madame Chairperson, my Committee looked at Clause (3), deliberated on it and decided that we should recommend it as it stands in the Draft Constitution. I beg to move

THE DEPUTY CHAIRMAN: The Committee is proposing that Clause (3) remains as it stands in the Draft Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: It is so decided. Clause (4) Hon. Kaberuka.

DR. KABERUKA: Madame Chairperson, Committee 3 looked at Clause (4) as formulated in the Draft Constitution and decided that we recommend an Amendment by deleting the words: "by or under the authority of an Act of Parliament" and substituting the words "In accordance with this Constitution" so that the Clause now should read: "No person shall raise an armed force except in accordance with this Constitution." I beg to move.

THE DEPUTY CHAIRMAN: There does not seem to be any objection Those in favour of the Amendment say Aye, to the contrary. No.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, now we can pronounce ourselves on Article 231. You may have noted on radio that they had said that we had passed 231 but it was 231 (1) and we did not pronounce ourselves. But now we can pronounce ourselves on the whole Article 231 - That it do stand part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, 231 as amended do stand part of this Constitution. Hon. Kaberuka, can you proceed then to Article 232.

DR. KABERUKA: Madame Chairperson, we looked at Article 232 Sub Clause (a) and we are recommending that it be retained as it appears in the Draft Constitution.

THE DEPUTY CHAIRMAN: So that means that Article 232 (a), (b), (c) and (d) remain as it is in the Draft Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: That means we can now pronounce ourselves on Article 232 - That Article 232 do stand part of this Constitution.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: It is so decided that 232 do stand part of this Constitution. So, can we go to 233.

DR. KABERUKA: Thank you Madame Chairperson. We looked at the Article 233, Clause (1) which seeks to establish the Office of the Commander of the Armed forces and we recommend that this be deleted - that Clause (1) of Article 233 be deleted.

THE DEPUTY CHAIRMAN: It will be good if any Member of the Committee clarified.

DR. KABERUKA: I can clarify. Madame Chairperson, first of all, we recognise that the position of the Commander-in-Chief is already a Constitutional position and we thought it unwise to constitutionalise the office of the Army Commander because if we have to provide for that here, like all other offices that we have provided, we shall be providing how he should be removed and so we foresee that there could be a problem when you have an officer who is in charge of the army, in charge of the arms when there is a conflict between the Commander and the Commander-in-chief. So, we thought that that could be a problem because in case there is no good working relationship between the two and you have a situation where, for instance the Parliament may not say or may not agree with the Chief Executive that the Army Commander should be retired, then we would have a problem. First of all, this is not an officer like those whom we have put in the constitution. Today he is an officer who is in charge of the army, he is in charge of the arms and we think that it would be better that we take care of this office under the Armed Forces Act so that the chain of command is derived from the Commander-in-chief and everybody under the commanding chief is catered for under the Armed Forces Act.

MR. MAIKUT (Kween County): Madame Chairperson, I am seeking Clarification from the Chairman of Select Committee Three to clarify to me further when he says the position or rather the office of the Commander of the Armed Forces is already provided for constitutionally. Now, could he enlighten me more as to where this is provided for constitutionally - the Office of the Commander of the Armed Forces - because when I look at the Draft on Page 39, when you look at the provisions of this one, I do not seem to come across where it is provided for that the President shall be the Commander-in-Chief of the Armed Forces.

THE DEPUTY CHAIRMAN: Let us first give the Floor to Hon. Kaberuka.

DR. KABERUKA: Madame Chairperson, I want to refer the Hon. Member to Article 101, Clause (1). In case he has not yet reached there, the Article says: *"There shall be a president of Uganda, who shall be a head of state, head of government and the commander-in-chief of the Uganda Armed forces"*

DR. MAGEZI (Jinja Municipality - East): Thank you very much, Madame Chairperson. Madame Chairperson and Distinguished Delegates, I oppose the deletion. I oppose the deletion for a number of reasons. First of all, it is true that the office of the army commander is a very important office in any country. It is so important that in fact, if you look back at the history of Uganda. The crisis we have had in Uganda has been evolving from or initiated by this office of the commander of the Uganda Armed Forces. If we have seen it fit to constitutionalise Junior offices, the more reason that we cannot omit to constitutionalise how the Army commander is elected and removed from office, if for no other reason than for security of tenure and to have what could be an appellant court should there be foul play or conflict the Army Commander may have with the Head of State.

There are military codes of Conduct and other systems within the Armed Forces which can deal with disobedience - with discipline, but when it comes to appointment or dismissal, I think that the people of Uganda, through their elected representatives should have a say in these two appointments and that is why I am referring to Chapter 14 in the Odoki report, Page 374, as a recommendation of what the people said. It is clearly stated that the President should be the Commander-in-chief of the Uganda Armed Forces. As a commander-in-chief, his/her powers should include powers to do the following and one of them is to appoint the commander of the Armed forces, subject to approval. This is what the people wanted and I think we should be cheating to believe that such a strong and powerful institution can be left purely to the Army Council or the President himself to elect or appoint the chief officers.

The Police is now constitutionalised and how the Chief of Police Forces will be appointed, even the Prisons and although we are marginalising these forces, they can also cause - they have got also guns and they can constitutionalise a crisis in the country

of Uganda. So, I beg you Hon. Members, let us not shy away from our responsibilities. We should recognise the importance of the office we are dealing with and make it transparent and accountable by saying that the appointment is by the President, with approval of Parliament. I oppose the deletion.

MAJ. GEN. MUGISHA MUNTU (NRA Delegate): Thank you Madame Chairperson. I was just listening with interest to the contribution of the last Speaker, Hon. Magezi. I appreciate his sentiment but at the same time, I would like to request all the Hon. Members in the Assembly to realise the history of this country because I heard him talk about the importance of the office of the Army Commander or the powerfulness of that office, but we should first ask ourselves how it came about that that office became powerful or as important as he says.

In our own analysis - and this is a matter which we deeply discussed within the Army - by the time we went to Committee Three to recommend that it should be deleted, it was after thorough analysis. It was not out of simple sentiment. If you analyse the history of this country, you will know that the Army came to gain the position it gained in public life because of it being used in politics after democracy had been undermined by the leaders that have been in power. We think that ultimately - and there is already a process which is ongoing - the Army would become irrelevant in politics once the process of democratisation is fully established. The Army would cease to be a factor and that is what we should concentrate on most.

If you look at the way politics has been from '62, given the many decades we have gone through, the Army came to gain - to become the centre stage because it was being used as an instrument of repression. As of necessity, you would find an Army Commander taking a position which ordinarily in a democratic society he should not because an Army Commander should be subject to civilian control but if you are relying on the Army to repress the people and it becomes a constituency, therefore, you are subject to blackmail by the Army and therefore, the head of that Army. You would literally be hugging him more or less because if you do not handle him carefully, the result is that the Army could pull the rug from under your feet but if you have got a system like we are now establishing, of democracy where the will of the people must be followed, you cannot, in such a situation - the Army in such circumstances.

the way the Army has been weighed in the past, to us we think that it is not necessary. Therefore, now that we are democratising the politics of this country, that we should have the office of the Army Commander constitutionalised for that matter.

We know that if it is done, you are simply sewing seeds of conflict; conflict which could result into a situation that might be palatable to *-(Interruption)-*

MR. ERESU (Kaberamaido): Point of Clarification! Madame Chairperson, I have listened very attentively to the Hon. Delegate from the NRA - Hon. Mugisha Muntu saying that we are in a democratising process and the Office of the Army Commander therefore, is not necessary because the Army is subject to the will of the people. I would like to be clarified on this particular point and that point is, what guarantees are there in place that can make the - if we remove the Office of the Army Commander from the Constitution, what guarantees are there in place that can justify lack of abuse by the appointing authority that will have to appoint - that is the commander-in-chief now - the Army Commander to the extent that that appointment can antagonise sentiments in the country?

THE DEPUTY CHAIRMAN: Before Hon. Mugisha Muntu responds, I would like the delegates to recognise the presence of two guests. They are seated in the visitors' place - Mr. John Robby Singer, the head of Development Assistance of the Caribbean High Commission in Nairobi *-(Applause)-* and secondly, Mrs. Nickel Cortland Reich again from the Caribbean High Commission Office in Nairobi *-(Applause)-* You are welcome. Thank you.

MR. ELYAU (Kalaki County): Thank you, Madame Chairperson. May I get more clarification from the Hon. Speaker. First of all, from the outset we have been made to know that there are other forces which wanted also to be part of this Constitution making like the Police, like the Prisons. Now, that the NRA has been allowed to be in this conference, now some of them are denying that they are not taking part in the civilian activities. Can I be clarified whether it will not be true that there shall be a problem in this country because, one, the man who will be in charge as a Commander in Chief will be a politician in most cases if we are going to be democratised. He can be more effective than the actual Army Commander who would have been protected through a constitutional appointment. Can I be clarified?

MAJ.GEN. MUGISHA MUNTU: You see, the offices which are constitutionalised are for purposes of protection - having a constitutional protection but it looks as if most of the Hon. Members have not - those who are supporting the inclusion of the Office of the Commander of the Army in the Constitution, but if a situation arose where the chief executive fires the Commander of the Army and in such an instance where we would have put there a constitutional protection that there must be a body to approve the firing of the commander and in such a case that body says no, you cannot fire the Army Commander - in this case they are talking about the Parliament of course and you must be able to realise that we have got an elective president. In future, we may have a President who does not have the majority support in Parliament. Now, you have got an Army Commander whom parliament says cannot be fired. You have got the Chief Executive who is the Commander-in-chief, do you not realise the crisis that you would have created in the process? A crisis that now involves the institution - a President who is elected by the majority of the people through universal adult suffrage, who has got the mandate! We have got the Army Commander on the other side, the Parliament says he cannot be fired and he has got armed officers and men under him and he realises that he has got the backing of the Parliament. What do you imagine could happen in a situation like ours? *-(Applause)*

I would like to appeal to you Hon. Delegates that some of these matters - mostly matters which regard issues of security, before I started my presentation, I indicated that this is a matter we have thoroughly and fully discussed within the Army and we came to the conclusion that the Office of the Army Commander should not be constitutionalised in the interest of the country and I hope you do respect our position as an Army - at least in as far as the matters of security are concerned. We think that we could cause a bigger crisis in pursuit of wanting to put in this provision of the Army Commander being constitutionalised in the hope that we are going to solve some few problems we are talking about of appointments and the rest we realise those but we at the same time know that those can be solved in the Armed Forces statute which Parliament can review in any manner it wants to. I would like to appeal to you Hon. Delegates to support us in that position. Thank you Madame Chairperson.

MR WAGIRA MOSES (Kibuku County): Thank you Madame Chairperson. First of all, I would like

to give some information regarding a clarification which was sought by Hon. Delegate for Kaberamaido, in that he sought to know how the democratisation process could help in the appointing authority or a Chief Executive not abusing that office. My view here is that - the history of this country has been that we have lived under what I can conveniently call a diarchy. By diarchy I mean a marriage of convenience between a politician and a military man. This diarchy itself is a product of people or rulers who do not have the mandate of the people and therefore, depend on the military muscle to sustain themselves in power. Now, how can the democratisation process help in this kind of situation? It can help in that - when the democratisation process has taken root, the ruler will now not rule through a diarchy. That is, owing his office to the good will of the Army but this time, the good will of the population and for that matter, it will now mean that the democratisation process has helped to make sure that there is no blackmailing - there is no patronising of a politician over the Army simply because he knows it is not to them that he owes the office but it is to the population. That is how the democratisation process can guard or insulate against this abuse of office.

Now, having said that, Madame Chairperson, when we have on top a popularly elected President, which President is owing his office not to the good will of the Army but to the good will of the population, it would therefore, mean that that president will no longer have reason to have a direct interest in this office of the Army Commander. Secondly, Madame Chairperson, we should not debate this thing losing sight of the fact of separation of power which this House has for a long time been emphasizing. Here we are with an Executive government, popularly elected by the people of the country. Here we are saying that this popularly elected Chief Executive should not have a hand in actually disciplining or actually enforcing obedience of this person who is in charge of the forces of a country.

Madame Chairperson, let me wind up my remarks with a submission that our history has been turbulent - it is true but I would feel that we should not write this Constitution with sentiments and therefore, come up with an explosive document. Because we are always talking, we are always being challenged to produce a Constitution that will stand the test of time. Do we, fellow Members, Hon. Delegates see this Constitution surviving in the circumstances?

For example, if we take a situation of a deadlock, where we see a situation that the Chief Executive being the Commander-in-Chief of the Armed Forces and where the Code of Conduct is actually obeying superiority, that superiority is the person who is in a higher rank. Now, here we are saying that this person should not fire that person until he goes to Parliament. Now, when he goes to Parliament, Parliament is saying this man should not go. Here is the Chief Executive saying - I cannot work with this man. You can see that kind of deadlock and here is a man also in charge of the Forces. So, I would like us to put aside our sentiments resulting from history and debate this Constitution with sober minds bearing at the back of our minds that anyone of us can also come in charge of the affairs of this country tomorrow. So, put yourself in such shoes. Madame Chairperson, this is not a matter which would have required debate but I had also to borrow a leaf from Hon. Pinto which reminded me of some situation in "Julius Ceaser" where somebody said - I have not come to praise Ceaser but I have come to bury him. Then he began praising. So, I think this is a matter which would not have required much debate but I only endear my fellow delegates that this is one way of institutionalising or making our Constitution not stand the test of time. Thank you very much.

MR. ATWOMA (Chua County): Thank you Madame Chairperson. I think here, Madame Chairperson, I would like to appeal to this August House to be very calm when discussing this because this has been the source of the calamities in this country because of the Armed Forces and this now we are talking of the Head of the Forces. Madame Chairperson, we have a living example before us as we discuss this matter today. We have heads of Armed Forces, whose characters, whose nationalities have been doubted and it remains so up to now. If we were to have this provision before and that had been put into practice, I am sure it would have avoided some of the problems that we have entered into. In saying this, I will be very fresh in my mind. When Amin took the government in 1971, there was a lot of outcry that he was a non-citizen, he was a Kakwa - descendant from Sudan and I think he has proved that by his way of recruitment into Uganda Army where the Maleras and what not came here and butchered this country. This is very fresh in our mind because this appointment was done behind the Parliament, behind the consent of this country and just very fresh also, the late Major General Rwigyema. Had it not been because he wanted to go to salvage

Rwanda and he went very prematurely, he should have probably become also the head of the Uganda Armed Forces and we know his nationality also was not Ugandan and he died not a Ugandan.

So, with this provision Madame Chairperson, I have listened very carefully to Major General - the Commander of the Armed Force (*Interruption*)

AN HON. DELEGATE: Point of Order. Thank you Madame Chairperson. We have passed Article 231. Clause (3) and it reads as follows: "Members of the Uganda Armed Forces shall be citizens of Uganda". Is the Hon. Member in order to put forward his discussion on a wrong premise when we have already an Article ensuring that every member of the Armed Forces shall be a citizen of Uganda. Is he in order Madame Chairperson?

THE DEPUTY CHAIRMAN: Yes, but he was just giving a historical background. He is entitled to his way of presentation.

MR. ATWOMA: Madame Chairperson, even this Point of Order that was raised - I think is very supportive of my submission because we were talking here of the citizens being the personnel of our Armed Forces. Now, when we come to appointing very important men here, it is even more so that it should be, if possible, twice a Ugandan. So, we must check properly his identities, his concern about this country will be also looked into. So, Madame Chairperson, I listened very carefully to my friend Hon. Mugisha Muntu - the Present Army Commander - that this will bring some conflict between the Head of State and the people. If the Parliament would not support the appointment of so and so and it is the Parliament composed of the will of the people of this country - who is there above the sovereignty of the people of Uganda in the name of being a president? Certainly, the will of the people will have to prevail or even if it comes to the question of firing that Head of the Armed Forces and he head may be a very good servant to the people. Probably, they will see - they are human beings. With the president, they may disagree on just personal matters. They maybe disagreeing over girls - (*Laughter*) - over something else and that they would like to take it to fire him because I am above you. I am the Army Chief Commander, you are the commander now, I fire you. That will also have to be looked into. The capability of those kind of actions. So, Madame Chairperson, I would very strongly oppose this deletion because

that is dragging the country to where we are trying to uplift ourselves. This country is tired of personal armies. Thank you, Madame Chairperson.

MR. KAGGWA (Kawempe Division South): Thank you, Madame Chairperson. I want to strongly support the deletion of this Article on the following grounds but before I go to them, I would like to say something because many people have said that the Police and the Prisons are in the Constitution but also, I would like to remind fellow delegates that our history in Uganda has shown that it is not the Police and the Prisons that have been a threat to democracy and I say that on the point of blackmail as one Member raised. I would give two examples - could you imagine when one President called Binaisa purported - I would say, because he did not carry through the desire - to dismiss a Chief of Staff and he said he could dismiss him. Supposing the Office had been constitutionalised, could he even have made mention of it? Definitely he would not have! I also remember a President who went on Television to plead with the Army that if they left him in the "Red Chair", he would give them everything! Now, if the Office of the Army Commander was in the Constitution or of the Chief of Staff at that time, you can imagine how much blackmail there would be on a Head of State.

Madame Chairperson a delegate has said that the people desired this office, which is very important, to be put in the Constitution. I do not think it necessarily needs to be in the Constitution to signify its importance. Parliament can very well legislate for the appointment and removal of the Army Chief or the Commander of the Armed Forces. Another point I would want to put across to Members is the conflict that is likely to arise if the Army Commander who happens to be in the person of the president does not get on well with the Commander of the Armed Forces and he has no powers to dismiss him. This may create perpetual instability in the country. I have also been looking at the past Constitutions and I note that in these Constitutions, it is only the Office of the Commander-in-Chief that has been talked about. In view of that, I would plead to Members not to have this Article in the Constitution and leave it to Parliament to legislate. Thank you Madame Chairperson.

MR. WASSWA LULE (Rubaga Division North): Thank you very much, Madam Chairperson. I listened diligently to the Army Commander. I have

looked at what is written in the Draft Constitution and in that respect, I do not see any reason why it should be deleted. What is very important is that it was included in the Draft Constitution. It is the element of checks and balances particularly when it comes to appointing the Army Commander. This is a very important office so that the Parliament can actually look into this appointment. I think the main worry by the supporters of the deletion is when it comes to the actual sacking and the problem when it comes to the sacking is because of the way our friends wrote the Constitution. The Constitution purports to say that when the appointment is made, it will be subject to consultation with the National Council of State. Likewise, the sacking would be subject to the National Council of State. Now, the National Council of State, which is not amongst the submissions of the people of Uganda, was any institution that was put in the Constitution that would have guaranteed a Constitutional dictatorship. Now, that we have thrown it away, the problem that we fall into is that wherever there was a National Council of State, we put in Parliament. That is where the problem comes because this superfluous animal that was in Chapter Nine was initially put in the Constitution to give resemblance of some consultation but consultation of a body that is controlled by a single entity. Now, going back to what the army commander - (*Interruption*)

MR. AMAMA MBABAZI (Kinkizi West County): Point of Clarification. Thank you Madame Chairperson. The Clarification I seek is from the Speaker on which Article he is talking about because I thought we were discussing Article 233 and Article 233 talks nothing about the appointment of the Army Commander. Appointments are under 234. Therefore, that point does not arise it would appear.

MR. WASSWA LULE: You are quite right that the point does not arise but the whole purpose to delete Article 233, you automatically delete Article 234. I think you understand the import of that. So, we go into the reasons as to why there is a deletion and the substance of the reasons are in the Articles that follow. So that is quite illogical - (*Interruption*)

MR. KARUHANGA: Point of Information. Thank you Madame Chairperson. I want first of all to inform Hon. Wasswa Lule that in fact when discussing this Clause 233, it would be wrong to discuss it in isolation without looking at the series of articles

which have been proposed to be deleted on 233, 234, 235, 236, 237, 238 and even when 239 comes, it is also kind of narrows down. Therefore, it would be wrong for this item to be discussed in isolation without reference to the other points.

MR. WAGIRA: Point of Clarification! Thank you very much Madame Chairperson. The Clarification I wish to seek from Hon. Wasswa Lule is when he says that when we constitutionalise the two offices, it is intended to achieve checks and balances. Why then did we defeat the constitutionalisation of the Office of the Deputy Auditor General simply because it will create a bad working relationship between the two when both bodies are constitutionalised?

MR. WASSWA LULE: Thank you very much but when you deleted the Deputy Auditor General, I was not party to that debate and do not know the logic that you used. If you used simple logic, then we would not apply it here. Now, as I was saying, thanks for Hon. Karuhanga pointing out the effect of some of these deletions. It has got far greater impact that include Armed Forces Council, the Armed Forces Service Board - all of these to be left to a Parliament which could be partisan. Now, the Army Commander talked about the development of democracy. We are currently locked in a democracy debate. We are deeply divided and the democratic institutions that have so far been presented in what has been debated, is debatable and there is a big division as to whether indeed, they are democratic and that is a potential problem and the argument for deletion rests very much on this development of democracy and yet there is a sector of society in Uganda that says that these institutions are not democratic. These institutions that have been introduced were not even known to the public, that this institution - the democratic institution that was introduced is unworkable because of the manner in which it was formulated. So, we have a problem on one of the major pillars of the argument behind this thing.

Now, the other implication of course, what was implied is that the appointment and the removal will be subject to the office of the President. Now, this is where the checks and balances comes in. Where Parliament checks excesses of the Executive. Of course, there were problems that were raised but I feel it is important to constitutionalise the vetting of this very important office. Otherwise, we stand the risk of building personal armies. Now, many people have said that various Armies in Uganda's history

have been personal Armies. Even today, there are people who say that the current Army is a personal Army. Rightly or wrongly, I am not going into that debate but the issue is still there. Now, we want that check to ensure that in the future that this question of personal armies does not arise. That is where this check comes in, particularly when it comes to the appointments. As my friend says, the office -
(*Interruption*)

MR. SEBI (Koboko County): Point of Clarification! Thank you Madame Chairperson. Similarly, I would like to thank Hon. Lule for giving way. I would like to seek clarification from him in this manner. Madame Chairperson, when you create an office, it means you are putting certain things in place including some measure of autonomy. It means creating a centre of power. Now, my fear is that when you create too many centres of power, you bring about clash of interests. This inevitably leads to conflict which is not healthy. Now, Hon. Lule, is it not more dangerous to create an office of the commander in the army who will have a lot of things at his disposal? Are you not creating greater danger of a personal army? Assuming that his commander himself can be very ambitious, can he therefore, not be more dangerous in creating a personal army?

MR. WASSWA LULE: I think you have hopefully answered the question. The question is, are we likely to create a personal army if it is constitutionalised or if it is not? If we constitutionalise the appointments in the army in such a way that they are vetted by Parliament, you are less likely to create a personal army. - (*Applause*) If you constitutionalise or do not constitutionalise - because you can even legislate the same - but if you constitutionalise the appointments as presidential appointments, then you are more likely to get personal armies. That is where the check is because there is an independent check on the decision of an individual; whether it is constitutionalised or statutory. The question is not whether it is constitutionalised. It is what is put in law at the end of the day but we put it in the constitution to make sure that some people who are appointed to Parliament, who may be a majority - You might have a parliamentary dictatorship and in that way that is the control we want to see put in this Constitution so that this issue of personal armies is dealt away with once and for all.

MR. KARUHANGA: Point of Information! Madame Chairperson, I would like to inform Hon. Wasswa Lule holding the Floor and to thank him for

giving way. I am supplementing his point which I think is valid. We should refer to Article 3 of Chapter One of our Constitution where the defence of this Constitution is clearly indicated and which we debated for a long time. Along the suspicion that the Army may overthrow the Constitution. We said: "*It is prohibited for any person or group of persons to take control of or retain the government of Uganda except in accordance with the provisions of this constitution.*" It is important that we constitutionalise the people who are going to be in charge of our defence. - (Applause) There is no need. Mr. Chairman, I have listened to the argument of the Committee and the important people I would always want to associate with. But on this point I think I would like to differ completely. Thank you.

MR. OMARA ATUBO: Madam Chairperson, in the event of conflicts where the President would like to dismiss the Army Commander and Parliament refuses to endorse the President's wish, and the risk of an overthrow of the Government is very high Madam Chairperson. It should be born in mind by those who are saying the position should not be constitutionalised that if Parliament enhances that conflict between the President and the Army Commander, in the event of the Army Commander overthrowing the Government, it is not the President alone who is going to be overthrown, the whole Government, including that Parliament, will go. So, the flimsiness of the argument that Parliament will necessarily encourage the conflict should not be entertained because that Parliament itself also will go.

AN HON. DELEGATE: Madam Chairperson, I really raise this point of order in the hope that it will enhance the debate. According to our Rules, we debate Article by Article and as far as I am concerned, we are debating Article 233. This Article is not talking about the appointment of the Army Commander either by the President or by Parliament or by anyone. Is it therefore, in order that the debate follows the suggestion of Hon. Karuhanga that we look at all the Articles at the same time?

THE DEPUTY CHAIRMAN: Usually, logic goes with reference. I cannot stop somebody from referring to something in order to advise his or her logic. He has not referred to the whole Constitution. He was specific on certain items. So he was in order.

MR. OMARA ATUBO: Thank you very much for your ruling. I think it is very important when we have just discussed constitutions that whenever we are discussing an Article, we do not discuss it in isolation. You discuss with the full realisation of the impact it has in other areas of the constitution. That is the way I know that we debate and have a good constitution not to be narrowed down in our thinking. But in conclusion, if we do not constitutionalise these very important offices and structures of the Army, God knows what we may get. We may get an Army which we do not know the structure of; we do not know how it can be checked because by nature of the operations of the Army, their actions are secret irrespective of the fact that sometimes even when they sit, you get to know a bit of what they have discussed. But the actions are normally secret by nature. But we would not know how this institution is checked, so we want to see that we put these things in order. Otherwise, at the end of the day, we might end up - we have had 30 years of personal armies, we do not want to have another 60 years of the same. Thank you Madam Chairperson, thank you very much Hon. Delegates for being patient with me.

DR. KABAYO: Thank you very much, Madam Chairperson. Madam Chairperson, I am a Member of Committee 3, and this matter attracted a lot of debate and I want to just refer to a number of considerations that we looked at before we made the decision that we did recommending the deletion of this Article. We noted as Hon. Maj. Gen. Muntu has pointed out, that the history of this country tended to distort the power structure and by default, to impart undue power and influence on the Army, and turned it into an instrument of the executive. We also noted that the Army is by and large, or it should be, a highly technical institution with rigid administrative and operational procedures and regulations which has religious observation - observance of hierarchy and command structure, and with strict considerations of discipline. We also noted, as has been pointed out by the Chairman of the committee, that the office of the commander in of the Armed Forces has already been appointed in Article 101, Clause (1) and that now constitutionalising the office of the Army Commander would be nothing short of introduction of a duplication which would be a dangerous prescription for confusion and conflict particularly with regard to removal of that post. My question is, in a whole country, who would you rather trust the Army with? Would you trust the Army with some General or would you trust them with some body who has

been popularly elected as the president would be - since he is the commanding chief of the Armed Forces?

Madam Chairperson, we also noted that the Army, at least our Army, is a very young army, and it is in the process of development. We do not know whether we are going to require one commander or several, as the army may grow and change its functions - its method of work coverage and span of control. Therefore, we recommended that, the Office of the Commander of the Armed Forces does not need to be constitutionalised. Because the Army already has regulations which are certified and technically followed, and the only real legitimate boss of the Army that we should confirm is the President who is Commander in Chief of the Armed Forces. I support the deletion of that article. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Before we proceed, Hon. Clement Kandole - where is he? Hon. Clement Kandole has passed a piece of paper and he has a message can you please -

MR. KANDOLE: Thank you, Madam chairperson, I have listened to the arguments for and against the deletion, and I had my own problems but I want to point out a few, so that I lead to that Motion, Madam Chairperson. Okay, Madam Chairperson, I move that Article 233, Clause (2) be retained and reads as follows - *(Interruption)*-

THE DEPUTY CHAIRMAN: Procedure!

AN HON. DELEGATE: Thank you, Madam Chairperson. I find that the Hon. Member on the Floor is going on to Clause (2) when we have not even disposed of Clause (1) of Article 233. Is that in order Madam?

THE DEPUTY CHAIRMAN: Sorry, I thought it was one. We are still on one. You better hang on.

MR. KWERONDA: Thank you, Madam Chairperson. What we are debating about Article 233(1) is whether there should be an office of Army Commander and whether that office should be determined by this constitution or not. And I think that Committee Three erred in not naming this very important office. Madam Chairperson, the point put forward by one of the army delegates here was that, they did not want to create this position because it may make

it difficult for future presidents to sack Army Commanders. I do not think that is a very valid and strong point. Because we have created a position of Governor Bank of Uganda, and Auditor General, and we know that the President can sack these people without causing political turmoil in the country. One is commanding the finances of the whole country - *(Interruption)*-

AN HON. DELEGATE: Point of information! Thank you, Madam Chairperson. May I inform Hon. Kweronda that, of all those offices he has enumerated, none of them commands arms - *(Applause)*.

MR. KWERONDA: Madam Chairperson, this constitution is trying to usher in some transparency. But I can see some hidden agenda when we do not name this position in the constitution. Madam Chairperson, for instance, by June, we shall have promulgated this constitution. Between June and when we elect our first president, it may be March, and by the time we elect in February - *(Interruption)*-

THE DEPUTY CHAIRMAN: More information from Hon. Mugisha Muntu.

MR. KWERONDA: Can I finish the sentence Madam Chairperson? By the time we elect the parliament, which is going, according to this amendment, to make laws that are going to govern the army, it will be somewhere in March or May next year. In between June this year and June next year, when we do not have an institutionalised army, what would be happening to this army?

MAJ. GEN. MUNTU: Point of information! There are two pieces of information I would like to give to Hon. Kweronda Ruhemba, one, it is not true that the offices or structures of the army are not going to be provided for under the constitution because if you look under 239 - in fact to us, that is the most important - you will see that Parliament shall make laws regulating the Uganda Armed Forces and in particular, providing for (a) the recruitment, appointment, promotion, discipline and removal. And it will indicate the command structures as well. (b) The terms and conditions of service - and in that provision alone, you completely check all the fears that I have heard being talked about and Hon. Wasswa Lule talked about it. First, they were talking about citizenship, two, they were talking about command structures and the rest. Once

parliament has got those powers, it can review anytime it wants, the Armed Forces Act. They were also talking about personalised Armies. A personalised army cannot be simply one man - the Commander. If it is a personalised army, it must be literally more or less the whole Force. The influence of the Force, there must be so many commanders, there must be so many men believing may be in one person. And you cannot make it a personalised army by simply having a commander. But if you have got parliament checking such an eventuality through the recruitment method, appointment, promotion, discipline and removal, it will be even more effective than the question of having to struggle on the position of the appointment of the Army Commander and in the process, sowing seeds of conflict.

The second piece of information I wanted to give Hon. Kweronda Ruhemba was on saying that, between now and March next year that, what army will be in existence. I felt that, once we pass 231, that there shall be an Army - there shall be Forces to be known as Uganda Armed Forces, once this constitution is promulgated. I thought that immediately after that, NRA would become the Uganda Armed Forces and would be in existence under transition, up to that time. I would not see any problem with that. Thank you, Madam Chairperson.

LT COL.SERWANGA LWANGA: Point of clarification! Thank you, Madam Chairperson. Madam Chairperson, I am seeking Clarification from Hon. Kweronda Ruhemba what he intends to do with NRA when the Constitution comes in force. Should it be dismissed? Because he is saying that, I do not know. I am seeking clarification from him.

MR. KWERONDA: Madam Chairperson, I will begin with Hon. Serwanga's clarification. I want to make NRA a caucus around which we can form Uganda Armed Forces but that caucus should have structures which are transparent and which are known. That is one. Now, to go back to Mugisha Muntu's problem, what is Uganda Armed Forces without establishment, what is Uganda Armed Forces without structures which this constitution is seeking to establish? And Madam Chairperson *(Interruption)*-

LT.COL.MAYOMBO: Point of order! Is Hon. Kweronda Ruhemba in order to mislead this August Assembly when he is very well aware that Statute No. 3 of 1992 Section 9 thereof, did establish a

National Resistance Army Council with its organs and its Membership. Section 10 thereof did establish a High Command with all its Membership. Does he therefore mean that, this Statute which is regarded as law - has it been repealed? Is he in order, Madam Chairperson?

THE DEPUTY CHAIRMAN: I do not know whether he knew, but now you have informed him. So, that was good information. Thank you.

MR. KWERONDA: Madam Chairperson, whatever hitherto existed in the Act, I believe Madam Chairperson will be endorsed by this constitution. They will be given powers. Those structures which may have been formed by the Act, if they are not endorsed by this constitution, they are useless.

AN HON. DELEGATE: Point of information! That we have got an establishment in the Army, we have got terms and conditions of service. In fact the establishment of the Army indicates the command structure from down - the Section Commander who commands 12 men up to the Commander in Chief. Indicating all the structures therein. So, there is such an establishment and there are also terms and conditions of service passed in 1991. I wanted to pass all that information to Hon. Kweronda. So, what parliament may be would do once 239 is passed, they would review, but they are already existing documents and structures. Thank you, Madam Chairperson.

MR. KWERONDA: Madam Chairperson, I am glad these people recognize that there are structures, there is an Army, and it has got commanders but why do they want us to this, why do they want the national constitution to be silent about that army and the structure? May I continue, Madam Chairperson? Madam Chairperson, I was arguing that this constitution seeks to usher in transparency within the management of the Uganda Armed Forces, and that transparency can only be ushered in by this House, which I think is impartial, by this House which has been appointed by the people who drafted the constitution. In other words, the population. And I think this House will have neglected its duty if it is not going to talk about Uganda Armed Forces, constitutionalise it and establish the offices of Uganda Armed Forces.

THE DEPUTY CHAIRMAN: Hon. Serwanga Lwanga, I had given you the Floor.

LT.COL.SERWANGA LWANGA: I thank you Madam Chairperson, for giving me the Floor. Madam Chair, I will start by saying that I support the amendment as recommended by the committee.

MR. KWERONDA: No, no, I thought you gave Hon. Serwanga the Floor to give information. Madam Chairperson I have not finished, and I was continuing.

THE DEPUTY CHAIRMAN: Okay, then receive the information.

LT. COL. SERWANGA LWANGA: Let him continue.

THE DEPUTY CHAIRMAN: Okay, proceed.

MR. KWERONDA: Thank you, very much Madam Chairperson. Madam Chairperson, if we do not create these positions, how do you suggest that you are going to pay holders of these positions. Because any position not created in this constitution, we may find it difficult to be paid. Madam Chairperson, there may be conspiracy to weaken Uganda Armed Forces in future, and this conspiracy may be laying in this silence about Uganda Armed Forces. Because I can imagine a situation where we do not establish this office that we are trying to establish, and somebody behind our back establishes these offices with people of his choice whom he does not want us to look into. And at the end of the day, we find that, it is just a village that maybe running in Uganda Armed Forces.

THE DEPUTY CHAIRMAN: Point of information from Hon. Babu.

MR. KWERONDA: Information Madam Chairperson, I do not want. If it is clarification I will accept. Madam Chairperson *-(Interruption)*. The elected president in future, may not be a professional army man like the one we have today. And this very unprofessional man will be the Commander in Chief of the Armed Forces. And Madam Chairperson, you know what pressures politicians we have, and particularly so, the president, and the pressures that may surround him. Madam Chairperson, I can see people coming to lobby to become Army Commander, to become a Commander of the Air Force, to become Commander of the Marines, and I can see a weak president going according to these demands.

THE DEPUTY CHAIRMAN: Hon. Kweronda, clarification!

MR. BAGEYA: Point of clarification! Thank you, Madam Chairperson. The clarification I wanted to seek from Hon. Kweronda has almost partly been answered. We did agree that this Army must, among other things, be non-partisan. The clarification I was seeking is how we can guard against an Army Commander involving himself in partisan politics in or to win support from the Parliament to which he owes the office? Thank you.

MR. KWERONDA: That position was clarified sometime back. Maybe he was contributing. Madam Chairperson, I was trying to qualify a point, and this point was to the effect that the president of the future may have no knowledge of how to run the army, and that he may not succumb to pressures exerted by the people, and there is nobody to check with the appointments, and he appoints an army commander behind the door of everybody. This, Madam Chairperson, may mess the Army. *(Interruption)*

MR. KARUHANGA: Thank you, Madam Chairperson. I thank Hon. Kweronda for giving way. The issue of a president having a possibility, not knowing anything about the army, being manipulated, or keeping the Army without an Army Commander can actually happen in the existing statute. Section 8 of that Statute says that the president who is Army Commander may appoint an Army commander or he may not. When Oyite Ojok died, this country was kept without an Army Commander for a long time. Well, he was a Chief of Staff but we can assume he was commanding the Army. But the point we are trying to make is that, *-(Interruption)-*

LT.COL.SERWANGA LWANGA: Point of order! Madam Chairperson, is it in order for Hon. Karuhanga to mislead this House that the Late Chief of Staff was the Commander of UNLA, when all of us know that the Commander of UNLA was Mzee Tito Lutwa. Is it in order for him to go and mislead this House?

THE DEPUTY CHAIRMAN: Thank you, for that information.

MR. KARUHANGA: Thank you very much, Madam Chairperson. I am very happy with your ruling that, that was actually information. And I am sure that, Hon. Serwanga Lwanga could read

between the lines and know exactly who was the Army Commander. Having said that, the point I was supplementing for Hon. Kweronda is that, in our existing law which has been passed by our parliament - including myself - we said that, the president may or may not consult anybody whether to appoint an Army Commander or not. Now, the constitution is saying that the President shall appoint an Army Commander on consultation, and with approval of the committee of parliament in charge of defence of the country, and it means that, if the Army Commander should die, there is a compulsion on the president to appoint an Army Commander. What is wrong with us saying that in our constitution to guarantee our security and our defence and our organisation and our appointment and our structure? Is there anything wrong with that? Why are people scared about such a simple sentence?

THE DEPUTY CHAIRMAN: But you were giving information to Hon. Kweronda and now you are turning it into your own debate!

MR. KWERONDA: I am appealing to this House, not to be silent when it comes to criticizing the responsibility in respect of creating the office of the Army Commander, having in hand disappointment, having a hand in creating Uganda Armed Forces, and having a hand in Army Service Board.

MR. AMAMA MBABAZI: Thank you, Madam Chairperson. Madam Chairperson, of course, I am very surprised that we can spend so much time talking about Article 233 when in fact all the arguments we are presenting do not address the provisions of Article 233. Madam Chairperson, Article 233 provides for the creation of the Office of Commander. It is not talking about the appointment of the holder of that office. Madam Chairperson, I would like this definition to be very, very clear in the minds of honourable Members. Whereas I agree with your ruling and the advice from Hon. Karuhanga that, of course when we are debating articles, we must debate it in the context of the whole, still we must address the substance of that article.

Madam Chairperson, Article 233 provides for the creation of office of Commander of the Armed Forces. It does not provide for the appointment of the office holder. Therefore, for anyone to say that the provision of 233 as it stands in the Draft Constitution entrenches the office is obviously - does not see the point I am making. Madam Chairperson, the reason
-(Interruption)-

MRS. CECILIA OGWAL: Point of order! Madam Chairperson, is it in order for the Hon. Member on the Floor to defy the ruling of the Chair on the subject he is talking about? You had already ruled that it was in order for us to discuss Article 233 and 234 because the decision we make on 233 will definitely affect 234. So, is it in order for this Hon. Member to continue to derail us? Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: Hon. Cecilia Ogwal, I did not rule that 233 should be debated together with 234. You are misquoting me. So, he is in order.

MR. AMAMA MBABAZI: Thank you very much, Madam Chairperson. I wish we could listen to each other. The reason why there is a proposition that this article be deleted is purely technical, Madam Chairperson. It is technical because if you keep Article 233 as it stands - indeed you are right that the office of Commander of the Armed Forces will have been institutionalised, will have been entrenched in the constitution. Madam Chairperson, by so doing *-(Interruption)-*

MR. OBUA OTOA: Point of clarification! Thank you, Madam Chairperson. I am seeking a very simple clarification from Hon. Amama Mbabazi. Can he tell me whether you can have a Commander in Chief without a Commander? How can you have a Commander in Chief when there is no Commander?

MR. AMAMA MBABAZI: Madam Chairperson, I will answer him. In fact, I am glad that you have raised that question because I think that is the confusion that needs clarification. And my contribution is on nothing but to clear up confusion. Madam Chairperson, you see, if we constitutionalise this as it is in 233(1), it means that we are entrenching that office of Commander. From the contributions I have heard on the Floor, there appears to be a mix up between command of the army and administrative control of the army. If members would allow me one minute to explain the difference. There is a big difference between command. Command means operational command, it means, it is that person, that office that gives an order, and that order is followed operationally. Now, there is another office within the army whose function is purely administrative, and this is for example the office of Chief of Staff in the army now.

In many armies, unlike Uganda where we have only one service, the army, they have many services. They have the Air Force, they have navy, they have the marines, they have the infantry, they have all these. You will find that, each services has got its own command. In America, Madam Chairperson, the set up is like this; what you have is the Chairman of joint Chiefs of Staff. He is a Chairman of the administrators of these services. In America, command is exercised directly from the commander in Chief who is the president to the various commanders of the various services. That means therefore, Madam Chairperson, that actually in a Force, as an army that is growing, in a Force that is complete, we have several centres of command. It would therefore be technically a mistake to entrench and constitutionalise one office, when we are likely to have more than several centres of command.

BRIG. MOSES ALI: Point of clarification! Thank you, Madam Chairperson. I want to clarify that this gathering here - the Constituent Assembly, sitted here, right now does not know what will be the strength of the Uganda Armed Forces in future. So, it is going to be very difficult for the same to determine the level of command. The parliament will be the right quorum based on the strength of the wealth - how much the nation can afford to spend on the Army. Then parliament will say, we need 30,000, 40,000 or 50,000 from that, then the top man of the army will come - whatever he will be called, depending on the strength not now. You cannot call this man - Army Commander or Chief of Staff, or Brigade Commander, or Division Commander. You cannot because you do not know what will be your strength. I am now telling you, listen Madam Chairperson - *(Interruption)* - So, what we should do, we should not waste time, let us give the power to the parliament to determine in future the strength. When I say strength, it is not what you have on your chest, I am talking about how many people you are going to have in the army with relevant weapons. That is when you will determine the level or the top man of the army. So, I think we are wasting time. I therefore, support the deletion, so that is the clarification.

MR. AMAMA MBABAZI: Thank you, Madam Chairperson, and I thank Brig. Moses Ali for his very concise clarification, obviously, his rank was well earned. Madam Chairperson, I would not have much to add to that.

MR. AWORI: Point of order! Is it in order for the Hon. Delegate on the Floor -

THE DEPUTY CHAIRMAN: Who of the two, because Hon. Mbabazi is on the Floor, Hon. Moses Ali was giving information.

MR. AWORI: I thought he had concluded?

THE DEPUTY CHAIRMAN: The point of order is for who?

MR. AWORI: The point of order is for Hon. Mbabazi. Is he in order to mislead this House by passing on information which is patently erroneous? By deriving his argument from the information given by Hon. Brig. Moses Ali that the command of any army is strictly based on strength? Madam Chairperson, to the best of my knowledge -

THE DEPUTY CHAIRMAN: Are you now giving information? Give information rather than point of order.

MR. AWORI: It is misleading as much as one could say that, I shall have Chief of Defence Forces because I have got three arms or three sections.

THE DEPUTY CHAIRMAN: What you should have done, Hon. Awori, is to give information, rather than giving the Member a point of order.

MR. AWORI: Exactly. I am saying that, the information -

MR. AMAMA MBABAZI: Thank you, Madam Chairperson, and I thank you Hon. Moses Ali for that information about one consideration in determining command. That other considerations that I have given, are the various arms or services you have. You may have an Air Force which has its own independent command, you may have a navy which has its own independent command, you may have - like in America now, they even have technical command, satellites and so on. So, all we are saying, Madam Chairperson, is that instead of using the present circumstances of Uganda today, and entrenching the position which may need change in future, why do we not leave out the question of command from the constitution and leave it to parliament which is easier to change according to circumstances of the day.

Madam Chairperson, I know many delegates have talked about appointments although I raised a point, you had a ruling on it. This question of appointment, I want delegates also to look at it closely. And I would urge my Colleagues in this House, not really to tie the hands of the Command in Chief in exercising his command. Because, I hope Members know that, command always must be clear. If it is not clear, obviously you will have a cause of problems. Can you imagine a situation where the commander gives an order for the Force to move, to advance, and then arguments begin. Madam Chairperson, if appointment of Army Commander was to be by a popularly elected body, what would follow? Madam Chairperson, as far as I am concerned, I know Hon. Kweronda ruhemba talked about transparency, he also talked about hidden agenda. I let it pass. But obviously, he ought to substantiate what he means, when he says there is a hidden agenda. Transparency - the way he was talking about transparency, it appears that there is transparency in this CA and transparency will disappear the day the CA closes. Madam Chairperson, I would like to call on Colleague Delegates to act on the basis that, the future institutions will be able to act as we have asked them to do. I want us to believe that the future parliament people will elect will be as transparent, if not more transparent than this body. So, Madam Chairperson -*(Interruption)*-

MR. KARURANGA: Point of information! I wanted to inform Hon. Mbabazi and I am grateful he gave way, because when Hon. Kweronda said - about the hidden agenda, my reading of what Hon. Kweronda's meaning was, my interpretation was that since we are discussing the Defence and National Security chapter, and we are starting with Uganda Armed Forces, which means the Army, why are we removing the Army Commander and leaving Prisons, Police with their commanders, but when it comes to the Army, they leave it? I am ordered by the Chairman, not by Hon. Bidandi Ssali.

MR. BIDANDI SSALI: Point of order! Thank you Madam Chairperson. Madam Chairperson, is it in order for the Hon. Member holding the Floor to pretend to attempt to clarify what an Hon. Member meant by hidden agenda, when he is talking of his reading. When I know that, every Member of this Assembly can give his reading of a hidden agenda. Is it in order for the Hon. Member to hide behind information to give his own interpretation instead of asking the person who referred to the hidden agenda to give a clarification?

THE DEPUTY CHAIRMAN: Hon. Karuhanga was given the permission by the current owner of the Floor.

MR. KARUHANGA: Thank you very much, Madam Chairperson. And as a delegate, I can express what I have learnt and I would like to share it with others. And my reading it, definitely I am entitled to it. Now, I would like Hon. Mbabazi to understand that it is strange if we start identifying the command structure of the Police, command structure of Prisons, and when it comes to command structure of the Army, we shy away. It seems as if there is something unique. So, we wonder why - *(Applause)*.

LT. COL. SERWANGA LWANGA: The information I want to give to Hon. Karuhanga and the House through you, Madam Chair is that, when we are talking of the offices of the Inspector General of Police and at a certain extent, the Commissioner of Prisons, these offices definitely deal with human rights. Two, when the Inspector General of Police is performing his duty, he does not necessarily need to get direction from anybody - when he is executing his functions as stated, but the Army Commander gets all orders from the office of the Commander in Chief. So, what we should be concentrating on here is the office of the Commander in Chief where the last order comes from.

MR. MBABAZI: Thank you very much, Madam Chairperson. I thank Hon. Karuhanga for his information. The simple explanation, I had already given, that you have different commands, you have different arms, and therefore, you are talking about - I do not know any country that runs a Police Force, that has an Air Force, that has a Navy. So, Madam Chairperson -*(Interruption)*-

THE DEPUTY CHAIRMAN: There is a hand up, somebody wants information.

MR. MBABAZI: I do not accept information now, I am concluding. I do not accept information or clarification from the Hon. Baruzi. Madam Chairperson, I was concluding -

BRIG KYALIGONZA: Point of order! Madam Chairperson, is the Hon. Speaker on the Floor, Hon. Mbabazi in order to confuse this House by stating that there is nowhere in the world where the Police and other Forces, like Prisons and so on have got the Marine and Air Force, when even in Uganda here, we have got the Police Air Wing?

MR. AMAMA MBABAZI: Madam Chairperson, I think it will not be necessary for me to clarify to the retired brigadier on that point. Madam Chairperson, there is a difference between an Air Force and Police Air Wing obviously. I do not have to make that point. Madam Chairperson *-(Interruption)-*

MR. DIDI: Point of clarification. Thank you. Madam Chairperson, I thought it was very clear when the Member on the Floor spoke about the different systems, and if we take the American example, the head of the military establishment is called the Chairman of Joint Chiefs of Staff. So, if we are developing into a situation whereby the top fellow may not be just an Army commander, it is good to provide for that. And with regard to delegations that we are only dealing with the Army, leaving the Police, when we come to that section, we know that, one time it was called Commissioner of Police, another time it was called Inspector General of Police. So, the convenience of how it should be reflected in the Constitution will come. So, the point is, if we are going to have, may be, a superior authority than, may be, Army Commander, why do we not provide for parliament to be able to face either on establishment and all the requirements of the day, to determine what the title of that top office would be? I think this was a very clear case. I thank you.

MR. MBABAZI: Thank you. Madam Chairperson in conclusion, I want to say that, the point about checks and balances raised by Hon. Wasswa Lule is a good point but obviously, it does not apply to Article 233. How do you check and balance the exercise of the powers of the president, by the creation of the office in the constitution? I think really that argument becomes relevant when we go to the next article. So, finally, all I am saying and all we are saying, from a technical point and I wish Members recognize this, it would be a mistake if we were to entrench this office especially since we hope that this constitution is going to last a long time. Because our Armed Forces are only growing in future, we are going to have a bigger Force, we are going to have other services and we would have to expand this constitution in order to accommodate them. I therefore, call upon delegates to support the deletion, and put this power under parliament. I thank you.

MR. NYAI: Thank you. Madam Chairperson. I have a feeling that a few things are not being

specified clearly. One was that, in the Uganda Armed Forces, we shall have the Army, the Air Force, and the Navy. Like in the USA where the Chairman of the Army Joint Chiefs of Staff, who is also appointed by the President on the approval of the parliament, we want an overall commander of our Uganda Armed Forces. What is attaining as of now, is that, the Commander in Chief of the Uganda Armed Forces or NRA is himself a soldier, a knowledgeable soldier at a very high rank of Lt. General. In 20 years, the Commander in Chief may not be a Lieutenant General. So, it is imperative that we have, for the Armed Forces, somebody who is appointed, who is familiar with all the requirements. Secondly, Madam Chairperson, the argument that since the position of Commander in Chief has been constitutionalised, therefore, that of the Commander of the Armed Forces should not be erroneous. It is erroneous because we are equating the office of the Commander in Chief to the office of a Commander. I think that is not reasoning properly. Now, why do we need the office of the Commander of the Armed Forces? In the constitution, we want that protection. If it is left to the Armed Forces Act, and the President and commanding chief refuses to appoint a head for the Armed Forces, what cause will the army have, what cause will this country have? At least if it is a constitutional issue, we can prosecute it. If it is not a constitutional issue, it is unfortunate. And for that reason only, I am requesting that these delegates here, take this matter seriously and protect our nation from further chaos. Amen.

THE DEPUTY CHAIRMAN: Procedure!

MR. ATWOKI: I thank you, Madam Chairperson. In view of the fact that we have had a thorough discussion, I beg to move that we put the question.

THE DEPUTY CHAIRMAN: There is a Motion on the Floor, that I put the question. Now, I want to put the question on that Motion. The Motion is that, I put the question.

(Question put and negatived)

THE DEPUTY CHAIRMAN: Hon. Delegates, with due respect, we are trying to get a consensus. Hon. Delegates, you know the nature of our rules we said we should try to concur as much as possible a consensus. So if there are people who still - because where do we benefit? When we go to the lobby, then we reach a dead lock on a simple issue whether to

continue or not, will you go on recess to consult? I know the reasons why I rule that, you did not know whether I am going to give (1) (2) or (7). We are looking for a consensus. We are going to vote but I am trying to concur with as many constituencies here as possible. I was going to give the Floor to Hon. Ruzindana. I have a reason why. I have been spreading it to the parties, to the movement to the Army and the technocrats. We shall vote.

MR. RUZINDANA: Thank you, Madam Chairperson for your wise ruling and Madam Chairperson, I hope I will help the consensus to arise. Madam Chairperson, the discussion has been a bit secret and so on. But all of it sometimes is off the mark. Madam Chairperson, if you look at 233, the main problem is the creation of the office, that is the main problem. It is not that there shall be an Army Commander, that is not the problem. If you look at the section creating the Inspector General of Police, it only says that there shall be an Inspector General of Police, not an office independent of the minister or anybody else. If you create an office of the Army Commander, you are creating an office independent of the Commander in Chief that is the basic problem, Madam Chairperson. - *(Applause)* The example of an independent Army Commander is independent of the President, of Parliament, of anyone else and can originate command. And that is where the problem is Madam Chairperson. Many people are saying that, why should there be an office of the Inspector General of Police of the commission of Prisons and so on. There is no such office being created by - there is a post of Inspector General of Police being created but not an independent office of the Inspector General of Police. - *(Applause)* And that is what I wanted to clarify earlier on, Madam Chairperson, that once you create this office of the Army Commander, you are creating a new constitutional power centre, and that is where the problem is and that is where the Army is warning us that they do not want to be an independent constitutional power centre. That whether the later sections make consultations with Parliament mandatory, that is not the issue. The issue is that you create an office not an Army Commander. An Army Commander is there but you now constitutionalise an office independent of any other office, that one of the Commander in Chief, and that is the issue.

Madam Chairperson if we want to create the post of Army Commander, I think we can go ahead and do it. But not the office Madam Chairperson, and I support deletion of that office. Thank you

MR. BIRIMUMAISO: Thank you, Madam Chairperson, I would like to comment on Hon. Ruzindana for the clarification he has given us. Madam Chairperson, the debate so far has been going on, personally I have been disappointed by the likes of Hon. Karuhanga whom I really thought to be knowledgeable but in this field, he has disappointed me. Madam Chairperson, the emphasis that has been put to this 233 -

MR. OMARA ATUBO: Point of order! Is it in order for an Hon. Member of this House to refer to another Member as "the likes"?

THE DEPUTY CHAIRMAN: I think it was a slip of the tongue.

MR. BIRIMUMAISO: Thank you, Madam Chairperson - *(Interruption)* -

MR. KARUHANGA: Point of order! Madam Chairperson, is it in order for the Hon. Member from Bukoto to expect a delegate who has his own constituency, who has come here with a full mandate of the People to argue in order to please him? - *(Applause)* - Is that the purpose why some of us come here to make some arguments in order to please others or disappoint the likes of others? I think we have come here to really speak our hearts and our minds. It does not matter to me who is who, who comes up with something which I think it is not in the benefit of my country to support it just because it is supported by somebody else. Whoever he is, and Madam Chairperson, I call up on Hon. delegates to grow sufficient backbone to speak their minds when they are writing the constitution of the children, of the grand children, and grand, grand children of their children. Please, grow some backbone and speak your mind out.

MRS. MATEMBE: Point of order! Thank you Madam Chairperson. We Hon. Members are also here representing constituencies, and when we talk, we talk on behalf and for the interests of those constituencies in the interests of the national interest of Uganda. Is it in order therefore, for Hon. Karuhanga to insinuate that we are here with no backbones not speaking for our own constituencies, is it in order for him to say that we are speaking on behalf of one particular person, can he name that particular person or individuals? Is he in order?

THE DEPUTY CHAIRMAN: Now we have two problems on the Floor, Hon. Karuhanga was complaining to Hon. Birimumaiso, then Hon. Matembe is complaining to Hon. Karuhanga. And Hon. Karuhanga showed a lot of concern. So I am requesting the two, Hon. Karuhanga and Hon. Birimumaso, to shake hands and resolve their problem. And I think Hon. Matembe you are satisfied, the two have agreed to reconcile. Hon. delegates, I can see we have heated up, and I do not think if we voted on this issue, we shall be fair, So I adjourn until Monday and we revisit the issue. - *(Interjection)*- The Chairman has the right to adjourn a meeting when she sees there is disorder developing. So we adjourn until Monday; go and consult so that we come back when we are sober.

(The Assembly rose and adjourned until Monday 23rd January 1995 at 9.30 a.m)