



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

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TUESDAY, 21ST MARCH 1995

MOTION:-

Communication from the Chair

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Consideration of the Draft Constitution of the Republic of Uganda

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Tuesday, 21st March, 1995

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

P R A Y E R S

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

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR.

THE CHAIRMAN: Hon. Delegates, I am sorry we have had to begin rather late today but the Chairman and his Deputy were involved in consultations concerning our work programme. I have received representation from the Buganda Caucus who met until late last night that they are not ready to proceed at this juncture straight on to the chapter 13 as we had envisaged yesterday. They would like to have a bit more time of consultation. Now, whereas it may appear to be slowing down our work, but I think in all fairness, knowing what exercise we are embarked on, an exercise of producing a Constitution which will attract respect from all sections of our society. If consultations will help us achieve that, then whereas we must of course also balance against the time factor. My view is that we should allow a bit more time to a large section of our membership to finalise their consultations. So that when we come to that chapter, we are all moving as one even if we may disagree here and there on some of the details. But at least there will have been sufficient consultations. This is the view I think we should share so that we do not at the end of the day attract the view that maybe had more time been given, whatever may happen, whether a referendum or whatever could have been avoided.

And so, I have consulted my Deputy and also consulted the Chairman of Committee Two, Hon. Mulenga. And since the chapter on the Legislature will be available this morning, I have taken the view that we should, given the reason I have just given—that we allow this morning for Members to receive and study the chapter on the Legislature, chapter eight. Then at 2.30 p.m, we start on the Legislature and when we finish the Legislature, what will follow will depend on whether Hon Mulenga's committee is ready with chapter on the Judiciary. If his committee is not ready with chapter on the

Judiciary, then we would proceed to the chapter on Local Government. But if they are ready, then we would go in that sequence, finish the chapter on the Legislature, do the Judiciary and then come to the chapter on Local Government. By that time, I am sure it will not be anybody's fault but their own if the Buganda caucus will not have finalised their consultations. I do not think we should carry a general debate out of this. I would like therefore, to adjourn the House to 2.30 p.m this afternoon. Thank you very much. The House is adjourned.

(The Assembly rose and adjourned and resumed at 2.30 p.m, the Deputy Chairman, Prof Victoria Mwaka, in the Chair)

THE DEPUTY CHAIRMAN (Prof. V. Mwaka): Hon. Delegates, can we all take our seats and resume business and also, may I call upon Hon Mulenga to bring his papers.

LAYING OF PAPERS ON THE TABLE

CONSIDERATION STAGE OF THE DRAFT
CONSTITUTION OF THE REPUBLIC OF
UGANDA

CHAPTER EIGHT - THE LEGISLATURE

ARTICLE 130 - THE ESTABLISHMENT AND
TERM OF PARLIAMENT.

THE DEPUTY CHAIRMAN: Hon. Delegates, I think you received your papers in good time this morning and we should be ready to start debating Hon Mulenga's report. So I call upon Hon Mulenga to give us what he has.

MR. MULENGA JOSEPH (Democratic Party): Thank you Madam Chairman. Madam Chairman, I am happy to present a second report from select committee two. That is the report on chapter eight which deals with Legislature. Madam Chairman, I wish on the outset, to point out that the layout of the report is similar to that we presented last week on the Executive Chapter Seven. Namely that the report first indicates what the committee recommends, the clauses of every article to be and then follows with notes indicating what issues were discussed, what amendments were made and why. Madam Chairman, I am aware that the report was distributed only this afternoon. At least most Mem-

bers got their copies this afternoon and therefore, they may not have had time to go through all of this. But I would wish to assure Members that the report is fairly simple to follow and if we could go slowly with a little more explaining than I did last week, we may usefully go through a number of articles or clauses this afternoon rather than again put off the work for this afternoon. I would therefore urge Members to agree with me that we start on this second report. Having said that Madam Chairman, I wish to proceed and start with Article 130 where the committee recommends amendments to Clauses one and three. And recommends that Clause two be retained without amendment and a new Clause four be inserted. Madam Chairman, select committee two recommends that article one should read as follows: "*There shall be a Parliament of Uganda the composition and functions of which shall be as prescribed by this Constitution.*" I just wanted to mention that only amendments to delete the expression or under which is superfluous. Madam Chairman, I beg to move.

THE DEPUTY CHAIRMAN: There does not seem to be any contention. So can we move?

MR. MULENGA: The committee recommends that Clause 2 should read as in the draft as follows: "*The term of Parliament shall be five years from the date of its first sitting after a general election.*"

(Question put and agreed to)

MR. MULENGA: Madam Chairperson, Clause 3 is recommended to read: "*Where there exists a state of war or a state of emergency which would prevent a normal general election from being held, Parliament may by resolution supported by not less than two thirds of all Members of Parliament to extend the life of Parliament for a period not exceeding six months at a time.*"

MR. KATENTA-APUULI (Conservative Party): Point of clarification. I am seeking clarification from the chairman of committee two, Madam Chairperson as to the logic why they dropped the words, 'other circumstances.'

MR. MULENGA: Madam Chairperson, if you go to page two and note 30.3, it is noted and amended by deleting the expression, 'or such other circumstances' and inserting the word 'which' and by substituting 'six months at a time,' for '12 months.'

No other circumstances should prevent general election. The committee considered seriously whether there can be other circumstances other than war which should be acknowledged as making it necessary to postpone a elections and came to the conclusion that there were none. And also took the view that if that expression was left, then there would be temptation by those in power to find some other circumstances which they would give as excuse for not holding general elections and that would defeat the concept we wanted to enshrine in this constitution that general elections should be regular. Then we thought Madam Chairman, that 12 months of extensions was too long.

MR. BASALIZA HENRY (Fort Portal Municipality): Thank you Madam Chairperson. Madam Chairperson, when I read through this clause, it stipulates the state of war or state of emergency. This is not under normal circumstances. But then when we talk about two thirds of all the Members of Parliament Madam Chairperson, I can foresee a situation in a state of emergency or war where Members of Parliament may have run away as it has happened in other countries like Rwanda. Now, what happens when the Members of Parliament are not there? So Madam Chairperson, for this reason, I would like to oppose this clause because it does not really - it applies to the abnormal circumstances. Then when it comes to two thirds majority, it appeals to the normal circumstances. So they do not tally. Thank you very much Madam Chairperson.

DR. KAKUNGULU SHANNON (Presidential Nominee): Thank you Madam Chairperson. I stand to oppose this amendment in that I think it is a blank cheque open to abuse by a President or a Parliament which would like to perpetuate itself in power. If we look back in our history of this country, I remember in the Obote one, he did as much as was possible then to always suspend an impending election. If he had such a clause in the constitution, he would always declare a state of emergency before an election and always say, we extend for another six months. Supposing they do this extension 100 times, there is no time limit at all by adding this thing at a time. So I believe we would rather delete it and go back to the draft. I thank you Madam Chairman.

MR. MALINGA IGNATIUS (Usuk County): I also agree with what Hon Kakungulu has just said,

that the provision has now stated, it is open ended for the government of the day to keep on extending without limit. Provided the extension is for six months at a time. It can go on for 50 times and that will be 25 years. Considering that Members may be elected at around- about 20 and with the life expectancy at 43, you might find that all the original Members might die living only a lone survivor extending his life six months at a time. So really, it can be ridiculous. I think we should go by the text that maximum. If you want six times at a time but only twice as a maximum so that we have a maximum period of 12 months. If I had my way, I would say that a provision should not be made at all for extension of a life of a Parliament. That could be my deal. Then secondly Madam Chairman, this expression in this article, a normal general election. Could the Hon chairman of the committee tell me when an abnormal general election could be held under this constitution? If there is no abnormal general election, then I would suggest that we would drop the word 'normal general election' and we just have a general election as envisaged in this constitution. Thank you.

MRS. LAGADA BEATRICE (Women- Apac): Thank you Madam Chairperson. Madam Chairperson, when I read this amendment, I see that it refers specifically to state of war. It is quite very possible that you can have a state of war in our country and we have had it before and there is no reason for us to presuppose that it will never be there. Now those who are arguing against this amendment are saying that it will provide an excuse for government to keep in power permanently. But Madam Chairperson, can we have a war and then it continues for 50 years? If there is a state of war, we cannot definitely have elections. A normal general election I suppose refers to a situation where there is peace, where people can go and vote, where there can be no interruption. But when there is war, you cannot have normal general election. At least I think that is what it refers to. So Madam Chairperson, for us to sit here and assume that if we pass this amendment, we are giving an excuse to government in power to stay I think is an argument that is fallacious. I think we should provide this amendment and since it is specifically related to a state of war, whichever government wants to perpetuate itself in power when there is no war, will surely be seen to be trying to keep itself in power and then I think the people will hold their stand and say no, there is nothing abnormal, there is no war. Why are

you putting there a state of emergency? We must have a general election. But for us to ignore it completely as if we do not know that there can be war, as if we have never gone to war, I think is burying our heads in the sand like ostriches. So Madam Chairperson, I support this amendment.

MR. MEDI KAGGWA (Kawempe Division South): Thank you Madam Chairperson. I want to oppose this amendment. Without repeating what Hon Kakungulu and Hon Malinga said, I want to add on that this last part of it 'not exceeding at any one time.' I think we are prescribing problems. I would feel happier by giving a definitive time limit. After all, at any rate, if a situation of war pertains in a country, all the citizens, all the Parliamentarians will be able to know that there is law and it will be a circumstance beyond their control. In which case, I do not foresee a situation where somebody will go to a constitutional court and say you have even exceeded the one year but we must have a time limit. We should not give room for people to misuse power and then they extend themselves indefinitely. I see this in Zimbabwe. Every six months, they extend - the emergency, the emergency. I think we have lived in those sort of situations and we should not encourage them. So I oppose this motion.

MR. OKALEBO HENSLEY (Bukedea County): Thank you Madam Chairperson. Incidentally Madam Chairperson, Hon Okanya is my neighbour but we do not share the same name. When the plenary considered Article Three, Sub-Article One of the constitution, it said that it is prohibited for any personal group of persons to take or retain control of government of Uganda except in accordance with the provisions of this constitution. It is in line with this provision which has already been passed that I see the recommendation of the committee as timely. This is so because leaving the expression, other circumstances, truly this expression is vague. It is ambiguous and may depend on the wishes of the government in power and of the day to retain control of government and defeat Article Three, Sub-Article One. What are these other circumstances? The range is so big and unlimited that anything could be taken to mean other circumstances. The question of holding elections Madam Chairperson is a general or regular general election, it is a constitutional matter of importance and cannot be underrated on matters of stipulation. We have already decided and dis-

cussed also that there is a possibility of having an emergency in a nation and that emergency may not allow the holding of a general election when it is due. Now who determines the time when we hold the general elections? That is why this amendment goes to say, in the event of an emergency, or a war which would prevent the holding of a general election, two thirds of all the Members of Parliament should pass a resolution. That truly we are in trouble and we are unable to hold a general election. So they say let us hold on for six months and see if the situation will settle to allow the nation to go into a general election. Should it happen that the situation has not normalised, Parliament is again to meet and review the situation. If there is still need that we cannot hold a general election, they will decide as may be allowed by this constitution but it is not a question of saying it is unlimited to say after six months. It is not a question of saying after six months, it is automatic that the extension goes on. Parliament again through the representatives of the people have to decide whether the situation is good enough for the holding of a general election. So, the reasons given Madam Chairperson for opposing the recommendation of the committee is tied as I see it on a point of conspiracy of a Parliament. And this also, I look at as a speculation that we should not tie ourselves to but let us look at realities especially bearing in mind the possibility of a situation where the nation cannot go into general elections Madam Chairperson. So I do support the recommendation of the committee.

MR. SAMKUTESA (Mawogola County): Thank you Madam Chairperson. Madam Chairperson, I share the sentiments and the reasoning expressed by Hon. Mulenga the chairman of this committee. With regard to limiting the period to six months rather than 12 months. I think it is important to appreciate that under a state of war, you cannot carry out a meaningful election. And also under a state of emergency, you cannot be able to carry out a meaningful election. So I support the idea that there should be a review by Parliament, every six months to say the state of emergency or state of war still exists or does not. However, when they remove the words, 'other circumstances,' I think while I agree with removing those words of other circumstances, I think by limiting it to war and state of emergency, the clause will not be exhaustive. I think we should also include insurrection or civil strife because there are instances where you have insurrection and civil strife and no state of war or

state of emergency has been declared. For example, in the north in 1989, some counties could not have elections. There was no state of war declared, there was no state of emergency but it was practically impossible to conduct elections in that area. So I would agree that the words, 'other circumstances' could be removed but we should be a little more exhaustive in catering for situations of insurrection and civil strife where no state of emergency has been declared or a state of war. I support the amendment but I would like to invite the chairman to consider putting in a few more instances that would replace other circumstances. I agree that leaving it so vague like other circumstances could be an excuse for a government that once perpetuates itself in power to find every conceivable excuse and calls it another circumstance to allow itself to continue. But I think we should be a little more exhaustive. Because there are instances where you can - where it can be impossible to hold an election and yet no state of emergency or state of war has been declared. Thank you Madam Chairperson.

MR. ELYAU MIKE (Kalaki County): Thank you Madam Chairperson. Madam Chairperson, I am wondering why people expect war when the election is about to take place. Will war not take place after a week only after you have elected your Parliament? So I think this is a very serious speculation. I want to agree that if there is going to be even election, it is most likely that there will be no war in Uganda. *(Interjection)* Yes, to expect war when elections are about to take place is really a bad idea. It gives the government in power excuse to try to cause a situation where there shall be an extension. So, I am opposed especially on that line. Otherwise the provision of six months only would be enough. For example, why should somebody wait until elections are about to take place then he declares a state of emergency? We have a lot of internal strife here in Uganda, because somebody is fearing to go for election, he is sure he will fail. He will perpetuate and this has happened in our country. So I am also a bit worried about this arrangement of giving six months. After six months, will you finish the war? Why do you need another six months? I think there is something wrong somewhere there. So Mr. Chairman, we should clarify this. Why do we need six months, then after six months there must be some conspiracy behind. I am also opposed. I thank you.

MR. SABIITI JACK (Rukiga County): Thank you Madam Chairperson. Madam Chairperson, what we have gone through in the past should guide us while taking a decision on the extension of Parliament. We know what we have gone through, that the temptations of the incumbent government to try and perpetuate itself in power has been the cause of chaos in this country.

We have already passed Article 128 (1) where the President and the Cabinet have been given power to declare a state of emergency in Uganda. And the same article, clause two, we have said, subject to the provisions of this article, a state of emergency declared under clause one of this article shall remain in existence for not more than 90 days and shall then expire. In the same article Clause 4, we have said, a state of emergency may be extended by Parliament for a period not exceeding three months at a time. Now if we look at this amendment Madam Chairperson, I think we are giving an open cheque to both government and Parliament which might be in favour or government maybe having a majority in government. So Madam Chairperson, I would have expected the committee while proposing this amendment to compare it with 128 so that we do not give them too much time or many days or many months. I do not see why, if we have given them 90 days or Parliament can extend it for three months, and now we are saying that Parliament should be there for six months, that is to long. So Madam Chairperson, I would propose that three months is fair. Let us not give much temptation to the incumbent government to extend itself in power. Secondly Madam Chairperson, when we say six months at a time, again this is an open cheque. Surely we should clearly specify what period. So Madam Chairperson, I oppose this amendment.

MR. MUSHEMEZA ELIJAH (Sheema South County): Thank you Madam Chairperson. I support the recommendation of the committee. First, I would like to respond to Hon Malinga who says he does not see much sense in the expression, normal general election. As Hon Kutesa put it clearly, there could be circumstances or there could be part of a county where practically an election cannot be held but you would hear on the radio that a Member of Parliament has been elected in that area. Surely if that happens, it means it is an abnormal general election. So Hon Malinga should be in position to understand that there could be an abnormal general election and we are now

talking of a normal general election which we are interested in. Madam chairperson, we are trying to create in this constitution, a very strong Parliament, a Parliament that shall be entrusted with the job of reviewing the situation in the country and taking very serious decisions on behalf of the people. So when some Hon Members begin to speculate that there will be a government and a Parliament which simultaneously will be anti-people, it is being unfair.

AN HON. DELEGATE: It is possible.

MR. MUSHEMEZA: It is possible but it is being unfair to think that the Parliament with the checks and balances we are trying to entrench in this constitution, that these institutions and the government will be completely anti-people. Madam Chairperson, a Parliament we want to establish with the checks and balances in this constitution should be given faith to review a situation which cannot allow a general election to take place and I find six months very adequate. The recommendation is well drafted and I beg Hon Members to support the recommendation of this committee. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: I think we have had enough discussion. Let me call upon Hon. Mulenga to address a few issues. Hon. Kutesa invited him to consider including civil strife and insurrections. Then the question of Hon Sabiiti on why six months, not three months as already specified elsewhere in the draft.

MR. MULENGA: Thank you Madam Chairperson. Perhaps I should also comment on why we chose to use the expression, at a time. Madam Chairperson, as it has been stated, we cannot determine how long the war will take, how long a state of emergency will take. Therefore, it became necessary to say if there is to be extension, it is not that we say there must be extension. If there is to be extension, Parliament which is entrusted with making decisions for the people of this country considers that general elections cannot be held, then it should extend for six months. Review the situation and after the six months, consider whether now elections can be held. That is the reason we said they should consider after six months if there is need again they extend and consider after six months. Hence the expression, at a time. Hon. Elyau, I wish we could all share his optimism that war will not

come when general elections are about to come. But I want him to also appreciate that war may have started while the term is going on and the term comes to an end during the war. So that is the position that is being considered. It is not that war will start on the day of election or the day after election. Madam Chairperson, I appreciate the point raised by Hon Kutesa but I thought - but I do not have the final copy we passed on emergency. To my recollection, we passed that emergency will be declared in given circumstances including insurgency and civil strife. So Madam Chairperson, I would expect that where the insurgency or the civil strife is of such a magnitude that will prevent a general election taking place, then the executive will have seen it fit to declare a state of emergency, so that really a state of emergency covers the two. Madam Chairperson, Hon Sabiiti's point that in the case of extending the state of emergency, we have said three months. Why should we make it six months for extension of Parliament? I think it should be obvious. Why? You cannot anticipate or expect that immediately emergency ends, you hold elections. You have to prepare, the circumstances must be such that you leave room for preparation for a general election and during those three months, we do not - nobody would wish that we have no Parliament. So the essence or the idea is not to equalize the two extensions. It is to give room for preparation for general election. Let me say this, the first contributors including Hon Basaliza, Hon Kakungulu and Hon Malinga, seemed not to analyse the clause we have amended. What is the position if we leave the clause as in the draft? The position would be that Parliament would be empowered to extend its life for only twelve months, in case of war. In case of the emergency and after that twelve months, it would seize. But suppose the war has not seized? Suppose the emergency has not ended? We would have no Parliament because by that clause, Parliament would not be able to extend again. According to Hon Kaggwa, he says nobody - if the war is continuing, nobody will take them to court. But they will not be there. They will be an invalid Parliament. So rather than leave a situation where you may have a group of people calling themselves Parliament when the constitution does not recognise them, why not provide for them to be legalised in the constitution? The issue is not being taken to court. The issue is whether there would be a Parliament legally so called. There would not be if you do not give them the power to extend. Madam Chairperson, I would still urge Hon Delegates to support the amendment.

THE DEPUTY CHAIRMAN: Hon. Delegates, I think really we have surveyed the issue for and against and I want to put the question. I think we have had enough debate. Otherwise if we just go on and on, we will not finish. I put the question.

(Question on the report as presented by Hon Mulenga agreed to)

MR. MULENGA: Madam Chairman, the committee recommends the insertion of a new Clause 4 to read as follows: "*Notwithstanding the provisions of Clause 2 of this article, the term of the first Parliament elected under this constitution and of a Parliament elected under Paragraph (b) of Clause 1 of Article 134 shall be more or less than five years so that the next general election of Parliament shall be held on the first Monday of December nearest to the date of the fifth anniversary of the first sitting of the outgoing Parliament.*" Madam Chairman, I wish to explain that this clause is in line with the clause we passed in respect of the term of President. We have to provide for eventuality of a general election not falling on the same day as was fixed of first Monday of December in two cases. One is the case of the first Parliament. It will be the transitional section of the constitution and the transitional Parliament that will fix the date on which the first election under this constitution will be held. Secondly, if Parliament, in the circumstances we have considered should extend its period, then it means that we cannot be sure that the five years will end on the fixed period. Having agreed while considering the chapter on the executive that we should fix a period for a date of election for the president, I think Hon Delegates will have no difficulty in doing the same for Parliament. And for Parliament, we are proposing first Monday of December. This insertion therefore, is necessary to cater for these situations. Madam Chairman, I beg to move.

THE DEPUTY CHAIRMAN: Hon. Delegates, I have one amendment before me and I would wish to give the mover a chance to move his motion.

DR. KABAYO PATRICK (Kassanda South): Thank you Madam Chairperson. Madam Chairperson, this clause is one of those clauses which separates the legal men from the boys I would say. It is quite a mouthful and it introduces a lot of difficulties with regard to sitting dates and having them changed and so on because of the circumstances. Madam Chairperson, if the elections are

due to be held in December and in that month and the following one, there is a state of emergency. You will have to wait until the following December before you have another election which will of course contradict what we have already passed regarding the six months and so on. It is for that reason among others that Madam Chairperson, I proposed a formulation which is more universal and if Members can allow me and Madam Chairperson, I will read it. It is universal in time and also in interpretation because you do not even have to specify the transitional arrangements or any other time. It is specific in itself. It reads: "*A general election of Members of Parliament shall be held on the first Monday following the date on which the term of Parliament or extension thereof expires.*"

THE DEPUTY CHAIRMAN: Is the motion seconded? Okay, it is seconded by Hon Kaberuka.

DR. KABAYO: I will read it slowly Madam Chairperson. "*A general election of Members of Parliament shall be held on the first Monday following the dates on which the term of Parliament or extension thereof expires.*" Madam Chairperson, each time when we have election, we know the term of Parliament should be five years as we have said in the clause before. So we know the date when that term of Parliament will expire. If there is an extension, we also know the date on which it will expire. It therefore should not be difficult to set exactly in time when the elections should be held. This will be clear to everybody for a long time. So those who want to campaign and so on will do so and it is universal in the sense that we will save ourselves having to forward and change dates and so on. This is in my view, a better way of stating what we want to state in Clause four of Article 130. I daresay that it will also make Clauses one and two of Article 134 which will come to unnecessary and also of course in that way, it will save us time and space in the constitution. Thank you Madam Chairperson.

DR. BYARUHANGA FABIOUS (Kitagwenda County): Thank you Madam Chairperson. Since Hon Kabayo's motion is now on the Floor, I would wish to seek some clarification from him. The implication of the original Clause four of the report was that we would under normal circumstances always have Parliamentary elections before Presidential elections. Now I would wish to know from Hon. Kabayo, that in your own amendment, is it

still the situation? Shall we always have Parliamentary elections before Presidential elections? Because I have problems with that, having Parliamentary elections before Presidential elections. Thank you Madam Chairperson.

DR. KABAYO: Madam Chairperson, if you have the elections at the beginning, beginning with Parliament, then it will always be like that. But there is a problem of course inherent in that requirement because if the President resigns or he is removed from office or he dies, you will not have to wait until after again the term. Otherwise you will remain without a President for as long as a year which will contradict of course the provisions laid out. So I do not think that in all circumstances, you will always have that situation. I think that if you begin with Parliament now and have the Presidential elections after, as long as there is no disturbance in that term, it is easy to predict that you will always have Presidential elections after Parliamentary elections.

MR. NDEGE JOHN (Luuka County): Thank you (*Interruption*)

THE DEPUTY CHAIRMAN: Just hang on. There is a procedural problem from Hon Karuhanga.

MR. KARUHANGA ELLY (Nyabushozi County): Madam Chairperson, having listened to Hon Kabayo and having seen the new amendment from committee two. The amendment four which is an additional to Odoki Draft. I am completely convinced that we need to delete Clause 4 of Article 130 and as a result, I think the deletion will come before Hon Kabayo's amendment. Madam Chairperson, I would therefore like to move to delete - if I am seconded.

PROF. KANYEIHAMBA GEORGE (Rubanda County East): Madam Chairperson, I would like to second that motion of deletion.

THE DEPUTY CHAIRMAN: There is a proposal that we delete the whole article. In which case, debating it may not help because it is the furthest proposal. But let me first give Hon Ndege.

MR. MUSHEMEZA: Point of order. Madam Chairperson, is it in order for a Hon Member to raise on a point of procedure and camouflage and move a motion? Is it in order?

THE DEPUTY CHAIRMAN: That is why I had given back Hon Ndege the Floor.

MR. NDEGE: Thank you very much Madam Chairman. First of all, I would like to disagree with the Hon Karuhanga that Article 4 should be deleted. There is a position regarding the first Parliament. And I was going get clarification on the amendment which was on the Floor. His clarification does not take into account the first Parliament being elected. If elections were held in May next year, when should the term of office end? Because Article four says it should be in December. Though I also have problems with December, that is when we will have the Presidential elections as we have already passed, that the elections will be held 60 days before first of February. So there is also a technical problem on dates. But I want him to tell us if with the first Parliament, the elections are held in May next year, when does he think we should have the next general elections?

Then the other one is that if we delete, as Hon Karuhanga says, when does he think these five years should start and end? We should be very clear. We do not want to confuse Ugandans this time. We want to tell them the dates when Parliament is going to start and when it is going to end. These are very clear in other constitutions basing on that one of the United States and others. I think that I agree in principle with what the committee did and I would like the mover of the new amendment to give us clarification on that point. Thank you, Madam Chairperson.

MR. ZZIWA GEORGE (Kawempe Division North): Thank you very much Madam Chairperson. Members of the Assembly are apparently in confusion as you can read their faces. We had an assurance from Hon. Mulenga that this is going to be a straightforward chapter. But now it turns out that we are getting quite a number of complications and reading the faces of the Members. It appears especially those who have just had the report just a few hours ago, that I do not think they will contribute effectively with so many amendments, with so many twists and turns as it has now turned out to be especially on this article on this clause. So Madam Chairperson, I would like to seek your guidance on this one. Apparently, Members do not seem to be understanding very well what is going on. I do not know whether this one is my own personal feeling. But it appears there is a lot of confusion and a lot of

digestion to be done. So Madam Chairperson, I would like the Members to give their opinion on this one.

THE DEPUTY CHAIRMAN: With due respect Hon. Zziwa, I think you should speak on your own behalf because we have passed two articles already. This one, we are going slowly but sure and when the chairman was introducing the report, he said he took it under consideration that Members had not read the whole report. But at least most of them should have read the first page which we are discussing.

MR. SEBI HAROUN (Koboko County): Thank you Madam Chairperson. Madam Chairperson, I would like to inform my neighbour Hon. Zziwa that it seems the way we are proceeding is not so bad as Hon. Mulenga said we would go slowly but sure. And again, it looks like a good number of the Members if not all of them are competent enough, they are capable of internalising this report promptly. As you can see, we are going quite fast. I would go by a request by Hon. Mulenga that we continue with this report as it is. Thank you.

MR. ERESUELYANU (Kaberamaido County): Madam Chairperson, I am a Member of Committee Two that supported the insertion of Clause four on the following grounds. One, Clause four takes into account the fact there will be general elections in Uganda soon after this constitution comes into force. But the date at which that general election will take place for Members of Parliament cannot be determined. That is why we have a clause which reads that the next Parliament will take slightly more or less time than the period it should normally take of five years to expire. In other words, this amendment brings out clearly and leaves no doubt of what period the next Parliament will take, so that it will not bring any constitutional litigations. Number two, this clause also brings out clearly the period at which a general election will have to be held in Uganda for Members of Parliament. And it is specified on the first Monday of December nearest to the fifth anniversary of the first sitting of the out-going Parliament. Hon. Delegates, these are very important things which are brought out very clearly by this clause. If we compare this clause with the amendment thrown in by Hon. Kabayo -

AN HON. DELEGATE: These are very important things which are brought up very clearly by this Clause. If we compare this Clause with the Amendment thrown in by Hon Kabayo, that Amendment does not bring out anything of the kind, let alone the fact that, it brings a fluid situation. A fluid situation in the sense that, the date of the general election for members of Parliament will have to shift from time to time, depending on circumstances when a certain regime or a certain Parliament is in office. Emergency can set in that will shift accordingly the expiry period when the next general elections for members of Parliament will be held. So, Madam Chairperson, I would urge all the members here present, that we adopt this Clause because of those two important aspects it brings out. Thank you very much.

MR. KARUHANGA: Point of clarification. Madam Chairperson, I was of the view that in order for us to proceed properly, it would be a good idea if I was allowed to speak to my Motion for deletion. So that the reasons which are being advanced, would be advanced against my Motion, in order that it would either be defeated or carried. Other than that, we now do not know where we are, I would really appeal to you to allow me to give the reasons why. The members can then, be able to understand why my intentions are to delete, so that at least, we move in the right direction.

THE DEPUTY CHAIRMAN: You see Hon Karuhanga, your Motion, you are deleting Hon Kabayo's Motion, that is on the Floor, which means, we shall go back to the original No. 4. We are debating Hon Kabayo's Motion, if - *(Interruption)*

MR. KARUHANGA: Madam Chairperson, I am deleting No. 4.

THE DEPUTY CHAIRMAN: But it is not on the Floor.

MR. KARUHANGA: No. 4 which is proposed by the committee is the one I am deleting.

THE DEPUTY CHAIRMAN: But we are discussing Hon Kabayo's Motion.

MR. KARUHANGA: Yes, if I succeed, then Hon Kabayo can go ahead and move his Motion, because it is different.

THE DEPUTY CHAIRMAN: But it is already on the Floor. So, - *(Interruption)*-

MR. KARUHANGA: So, whatever the case may be, if I succeed or not succeed, mine departs furthest. So, whether I succeed or not, then Kabayo can come in and Madam Chairman. I have very strong reasons for my Motion and there is no any other way you can proceed without seeking deletion first, because that is what the rules say.

THE DEPUTY CHAIRMAN: Let us go on like this. Let us go step by step. We dispose of Hon Kabayo's Motion, we go back either to the original or even if it stands, then, you will move, because now the contention which is in the original remains, then you will move to delete whichever and Hon Kabayo's. Which ever will remain of the two.

MR. KARUHANGA: I am obliged to your decision, Madam Chairperson, but I think the normal procedure would have been the deletion first, which is furthest.

THE DEPUTY CHAIRMAN: You see, you are moving a Motion on a Motion. So, there are two Motions on the Floor, I know it will take a little bit of time, but it will be cleaner. So now, what I want to do is, let us move like this. I will put the question on Hon Kabayo's Motion, because it is Kabayo's against the original in the Draft. So when Kabayo's either passes through or whether the original remains, then, I will give you the Floor, you move for a deletion because we would not have put the question anyway. That would be cleaner. So, now I put the question on Hon Kabayo's Motion.

(Question put and negatived)

THE DEPUTY CHAIRMAN: Now, we go back to the original. Now, Hon. Karuhanga you can bring your Amendment.

MR. KARUHANGA: Thank you Madam Chairperson. Madam Chairperson, I have read carefully the import of Clause 4 and I am convinced that we should delete this Article for the following reason.

THE DEPUTY CHAIRMAN: Let us have it seconded first.

PROF. KANYEIHAMBA: Madam Chairperson, I seconded the Motion for deletion.

THE DEPUTY CHAIRMAN: Okay, you can proceed Hon Karuhanga.

MR. KARUHANGA: Now, Madam Chairperson, my reading of this Article and reading it together with Clause 2, together with Article 134, Clause (A) on page 9, which we have not yet got to, but which by implication of passing this Article, we are bound to have problems when we get to that, because we would have tied our hands on it. I am convinced that the import of this, achieves one major - *(Interruption)*

THE DEPUTY CHAIRMAN: Hon. Karuhanga, can you please give me your reference again on page 8, either page 8 or page 9?

MR. KARUHANGA: Page 9.

THE DEPUTY CHAIRMAN: Yes, which is the reference?

MR. KARUHANGA: Article 134 (i) (A), both (i) and (A) and even (B), these must be read together, together with Article 132. Madam Chairperson, when you read those Articles together, and I must confess that my interpretation is subject to correction, but the way I interpret this, is, that the meaning of it. And I would like this to be understood clearly by the Hon Members is that we are deciding that the Presidential elections should take place after the Parliamentary elections. That is my interpretation. Now, having established that, since I - from the few voices, I can see that my interpretation is not subject to challenge. Yes, on that - on the fact that we are establishing that when the general elections come, Parliament will have elections first. And then, two months later on the 1st of February, the Presidential elections will take place after the 1st of December. Now, myself, Madam Chairperson, I would like to delete this Article in order that, the elections of Parliament are not necessarily tied to whatever the case might be to the Presidential elections. I would like, Madam Chairperson, to see a situation where Parliament is elected after it has expired. Whether it has expired after five years or whether it has expired due to other circumstances like a vote of no confidence in itself or dissolution or the President calls a short-term in which we are apparently, that is why this point is not in it. But I would like to have Parliament, for example, supposing now, in the current situation we are in. We are ready to have

elections in October, supposing we are ready to have elections in October, this Clause, if we put it in the Constitution, creates immediate problems. If we want to have elections in October. We are saying - and if we tie the elections to the first Monday of December, it means that - and the first elections we are going to go in after December, we again have in-built problems in Article 4. To solve these problems which we are inherently building in, and we are making them even mathematical to solve it, is to delete this Article. Retain this Clause, retain the very important and significant Clause 132, which states: *"The term of Parliament shall be five years from the date of its first sitting after a general election."* And then, we can go to page 9. I invite Hon Members to turn to page 9 on the election of Parliament and say that, the general election of members of Parliament shall be - which is Article 134 (i) reads that a general election of members of Parliament shall be held not less than 30 days before the expiration of the term of Parliament on the first Monday of December. Except in the case of the first general election held under this Constitution, and then you can see where we are heading. We are only headed to ensuring that in the first elections, the elections of Parliament take place before the Presidential elections. I appeal to Hon Members to accept that we delete Article 4, it is introduced to Clause 4. It is introduced here to just introduce a lot of political mathematics, political equations, and confusion. Thank you.

MR. MULENGA: Madam Chairperson, I had wanted to seek clarification, to understand whether Hon Karuhanga understands the recommendations of the committee. When he says, if we wanted to have elections in October, next October, we would have problems. What problems does he envisage, when in fact, this Clause 4 is making way for whoever will decide to arrange any date for the first election. All we are saying is that, in order to keep a fixed date, the five years term for the first Parliament will be shorter or longer just to make sure that we fall back to a fixed day for general election. So, I do not see what difficulty we would have.

PROF. KANYEIHAMBA: Thank you, Madam Chairperson. My arguments are really different and I must say that I am a member of Select Committee 2 and I made these arguments in that committee, although obviously they did not succeed. My argument is, that the five years term of

Parliament is determinable in reference only to Article 130, Clause 2. Term of Parliament shall be five years from the date of its first sitting after general elections. Why do we want to complicate issues by including Clause 4? Clause 4 adds nothing to that, Madam Chairperson, because when we finish making this Constitution, there has been some speculation of course, that we may have elections in December or wherever. We do not know whether we shall, but once we have those elections, and the first sitting under this new Constitution takes place, then, everything else thereafter is automatic in accordance with Clause 2 of Article 130. Therefore, there is no need to cloud this Constitution with wording which is contained in Clause 4 on page 2. And I appeal to members as I appeal to my committee members that really the matter is very well clarified in Clause 2. Because if the Constitution says that Parliament shall be only five years from the date of first sitting, there can be no ambiguity whatsoever. People are arguing that the executive, the President may extend Parliament. That is not allowed in this, Constitution. We have even deprived Parliament the right to extend itself except in the case of emergency.

There was a provision in the Odoki Draft Report saying that Parliament can decide to expire itself. We have refused that, because we know the danger there, that maybe a Parliament may consider itself very popular in one month and then say, we expire ourselves, hoping to be re-elected again. So, the committee quite wisely Madam Chairperson, rejected that provision, because we want the date of Parliament, when it is to be elected, to be automatic and 132 makes that automation very clear and without any ambiguity. Whereas if you introduce Clause 4, you are bringing in some ambiguity, particularly when we should finish this Constitution. Supposing we finished it in December and we are not in a position to have elections, it could be argued thereafter that we are not going to have elections under this new Constitution until December 1996, which would really defeat the intention that we are trying to execute. I said it could be argued, I did not say it would succeed, Madam Chairperson, it is my considered opinion, having analysed provisions we have put in this Chapter that the term of Parliament is determined by Clause 130, sub-clause 2. We do not need any more provision on that matter, otherwise, we shall cloud the issues and the only thing perhaps that we could express ourselves on, is to say, what in the transitional period should the first Parliament seek?

Because really that is the only thing that will determine future terms of Parliament. So, Madam Chairperson, I strongly support this Motion to delete Clause 4 as being unnecessary. Thank you.

MR. NEKYON ADOKO (Maruzi County): Madam Chairperson, while giving his reasons for asking for deletion, the Hon Prof. Kanyeihamba forgot to tell us the time limit within which Parliament must sit for the first sitting immediately after the general election. If that is left open, it is possible, the Parliament will not be called to sit within even six months or three months because we are assuming that once Parliament is elected, the next week they will sit. But supposing, Parliament is not called for six months, then, you need that provision specifying when the election should take place.

DR. MAGEZI DAUDI (Jinja Municipality East): Thank you very much. Madam Chairperson, I oppose the deletion of Clause 4. My reasons are simple. First of all, this august House has fixed the date of Presidential elections, that is position number one. Now, if we are happy to fix the date of the Presidential elections, but we are not ready to fix the date of Parliamentary elections, then, I can see the reason for the deletion, because Clause 4 is only providing the reasons for it. It is that it will be more or less in order to ensure that thereafter the date for the general elections will be on the first Monday of December, nearest to the date of the 5th Anniversary. Because we are not sure how soon we have the next elections immediately after the promulgation of this Constitution. Unless the Hon Elly Karuhanga or Prof. Kanyeihamba, can answer that position that they do not want to fix a date for Parliamentary elections, I do not know how else it can be done without the provision of Clause 4. So, for that reason, I definitely oppose the deletion.

MR. KAYIZZI ASANASIO (Kassanda North): Thank you very much, Madam Chairman. I beg to support this Motion on grounds that, the fixed date, the first Monday of December seems to bring Parliamentary elections first before the Presidential elections, which is not at all the wish of my people who feel very strongly to electing their President first before any other person. Therefore, being the case, I propose that we do delete this Article as Hon Karuhanga has suggested. Thank you very much.

MR. BATEGANYA DICK (Bukooli Central): Thank you Madam Chairman. I wish to oppose Hon Karuhanga's Motion on the following grounds. Many people in this country would like to see a date fixed in the Calendar on which we would hold either general elections or Presidential elections and Clause 4, is doing that exactly. The only problem with my dear Colleagues who are maybe opposing this Motion, is that, they are maybe having problems with figures, arithmetics and all that. But this Motion is very clear, it is telling us that, elections will be held on the first Monday of December, every five years. Now, in the current circumstances we do not know when we are going to hold the next elections after this Constitution. That is why we have to put in this provision such that, we can time the next elections to fit in. If we happen to hold elections, say, in October this year, then the next elections will not be in October five years from then, they will be on the first Monday of December. So, the term of the first Parliament will be slightly more than five years by two months, that is the arithmetic involved in this thing. And I would like to urge Hon Members especially those in our learned profession - the learned lawyers, maybe who do not like mathematics or arithmetics to just stretch their imagination a bit and accept this Amendment for that particular bit. So that we can be exact in what we are going to give the people of Uganda an exact date for elections. Thank you very much, Madam Chairman.

MR. RUZINDANA AUGUSTINE (Ruhama County): Thank you Madam Chairman. Madam Chairman, I would like to oppose the deletion of this Clause. Madam Chairperson, I think we should be sure of the date for our general elections. Madam Chairman, the elections after the Constitution comes into force, no one knows whether we shall start with the Presidential elections or with Parliamentary elections and therefore, that one should not be an issue. But we should have a definite date. My problem is with the Monday, first Monday of December. The first Monday of December, we still have all children of voting age in school. Secondly, we know that most people go away for holidays - for Christmas holidays soon after that. Now, we shall have two interruptions in December. In the sixth year of elections we shall have elections on the first Monday and then Christmas holidays thereafter. My problem is about (*Interruption*)

MRS. RHODA KALEMA (Kiboga County East): Point of information. Thank you Madam Chairman. I just want to inform the Hon Member holding the Floor that the excuse of holidays for school children and students is very weak. Because recently, during the last elections, last year, for the CA, the Minister for Education re-arranged and re-programmed the holidays of the students in all schools, so that is once a year, that cannot be an excuse. Thank you. Once in five years, that cannot be an excuse at all.

THE DEPUTY CHAIRMAN: Hon. delegates, let Hon Ruzindana, then we see what to do.

MR. RUZINDANA: Thank you Madam Chairman. Madam Chairman, I was aware that it would be once every five years, but then, there is that other problem of the Christmas holidays soon after. Now, that we are programming this before hand, why do we not programme without that inconvenience, because we can do it. It can be the first Monday of January for example, that would give us a month before the Presidential elections, that is the main disadvantage. But are we assuming that there will be problems with our elections all the time? Have we not seen elections in other countries? Do they have appeals which spill over for several months? Why do we not have elections which are convenient? Therefore, Madam Chairman, although I oppose the deletion, I also find a problem with this Monday of December and it has got problems which are foreseeable and I am not moving an Amendment Madam Chairman. But I would like the members of the committee to see what I am pointing out and make consultations among themselves and since they have considered the problem deeply, they can suggest another convenient day of the month. For example, the 3rd Monday of December, that can be convenient, the first Monday of January, could be convenient. That is what I wanted to point out Madam Chairman.

THE DEPUTY CHAIRMAN: Let us first clear the Amendment of deletion, so that if it stays, then you can move the substantive Motion.

DR. MUGYENYIPONSIANO (Isingiro North): Thank you Madam Chairperson. Madam Chairperson, the Mover of the Motion did not really provide good grounds for deleting this very clause. First of all, procedurally, I do not know why the Mover really moved to delete an Amendment which is actually not yet acceptable.

Secondly, Hon. Karuhanga tried to convince us on the problems envisaged if this particular Clause is passed. He created a situation of problems without specifically identifying what problems will be there if this Clause is passed and that particular day is accepted. What problems? Although he created an atmosphere of problems that may erupt if we pass this particular Clause. Madam Chairman, in his submission he clearly tells us that it is very problematic to have Parliamentary elections before Presidential elections. I would have liked him to give us an alternative date for Parliamentary elections not just to say, let us remove this one and we say five years from this time, you will have Parliamentary elections. How many people are as clever in mathematics in Uganda are there to calculate, to know Parliamentary elections will be on this day and this day? If we manage to fix a date for Presidential elections, why do we not put a date for Ugandans to know that on this day we shall be having - *(Interruption)*

LT. COL. GUMA (Bukanga County): Point of information. Thank you Madam Chairman and Hon Mugenyi to give way. Suppose we fix the date and the incumbent fails to fulfil that day, in the Constitution here, but circumstantially the conditions on the ground really dictate and the date is not really fulfilled. That is already abrogating a given Article in the Constitution. What do you think would happen?

DR. MUGYENYI: Madam Chairperson, I think we are making a Constitution for normalcy and we are not making a Constitution for people who are going to abrogate. We are definitely making a Constitution for provisions which are going to be followed.

Secondly, Madam Chairman, if we are creating a date for Presidential elections, let us create a date for Parliamentary elections. Hon. Karuhanga would have convinced me if he had said, no, I am not convinced about 1st December, let us go to 1st January or 31st December, I would have moved with him. So, to go with him, I think I would appeal to members to seek this deletion first and then we set a date which is conducive for us and Hon Karuhanga. So that if he is not convinced about this 1st December, then we can have what is conducive for all of us - Madam Chairman, there is a fear, he said it in his submission, that we should not have Parliamentary elections before Presidential elections. Madam Chairman, I think it may sometimes

help where Parliament may have to provide stop-gap services in case this Parliament has expired and there is some confusion around Presidential election. Parliament, if it is already elected, can come in and save a crisis because we are giving Parliament powers to even amend the Constitution. So, we can - once we have the Parliament in place, it can sometimes come in and save a crisis. So, I strongly oppose this deletion, let us defeat the deletion then we can agree on a particular date, if Hon Karuhanga feels 1st December is not convenient. Thank you.

THE DEPUTY CHAIRMAN: Hon Delegates, I give Hon Kavuma, and then we shall see what next.

MR. KAVUMA STEVEN (Kyadondo South): I thank you very much, Madam Chairperson. Madam Chairperson I support the amendment by Hon Karuhanga. Madam Chairperson, there are reasons given by some delegates who were contributing, that we should try to avoid to be ambiguous, especially when we are writing this Constitution. It is not a simple legislative Act, but it is the Constitution of the Republic of Uganda. And to my mind, judging from what is going on the Floor here, I am convinced that many of our fellow delegates, are yet to sort out in their minds what exactly is the likely interpretation of this provision. So, Madam Chairperson, I think for the sake of avoiding ambiguity, we should not provide the Clause as it is proposed by the committee and for that reason, I support its deletion.

Secondly, Madam Chairperson, even the whole idea of fixing dates, to me, is objectionable. First of all, we are in a young country, where institutions are very, very, fragile still, you go and fix dates in the Constitution which, the logistics on the ground may never allow you to meet. *(Applause)* And, by a simple failure by the logistics, the Act will be unconstitutional, I do not think we should take ourselves as if we are legislating for the United States of America, the U.K or Germany. We are legislating for a small country, a young country.

So, Madam Chairperson, I think we are really writing a Constitution that is going to cause us problems leading us into crises politically and constitutionally. We should allow flexibility to allow normal development of our society without putting state jackets which we will find we are unable to fulfil. Madam Chairperson, I am saying that if we are to avoid ambiguity, we should defeat

this Clause from the committee. But if members just wanted to have a full back position, I think my candid advice, would be that if we do not want to defeat it now, if we do not want to vote on it now, we can seek authoritative interpretation of what we are trying to provide. So that when we take a decision, we are all aware and we know what we are deciding upon. Otherwise, the best alternative, Madam Chairperson, and I would appeal to this House, is to delete this provision. I thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon Delegates, okay I had said that we have had enough but this side, I picked only one person, that was Hon Nekyon. So, let me give this side only two people, then we will have heard enough, we heard quite a number here, but here there was only one.

LT. COL. KIIZA -BESIGYE (NRA Delegate): Madam Chairperson, thank you for giving me the opportunity to speak on the Motion. First of all, I find it rather surprising that some people find the provisions of Clause 4 of 130 unclear. I do not find anything unclear at all about it, except of course, the observations which seems to be concretising that lawyers seem to have difficulty with numbers. Madam Chairperson, I think the argument, as I discern it, is a simple one. Whether we should provide in the Constitution that parliamentary elections should always be held before Presidential elections. I think that in my mind is the matter of contention, which is what this Clause is definitely doing. This Clause is providing not only that elections will be held on a specific day, of a specific year, but also that they will be held before the Presidential elections. The first sitting which was raised by Hon Nekyon of Parliament, is actually fixed. It is also clear, not fixed on the date, but it is provided by Article 148, Clause 3 in the Draft or Clause 1 in the report of committee 2 and Committee 2 recommended that the first sitting should be in seven days after the elections. So, I do not find that in the arithmetics, in the provisions of the writing, there is anything unclear. Having said that, Madam Chairperson, I think that - *(Interruption)*

PROF. KABWEGYERE TARSIS (Igara County West): Point of clarification. Thank you Hon. Besigye. I am seeking clarification regarding the time span between the election of Parliament and the election of the President. The election for the Parliament is recommended to be in December

on the first Monday of December, the President is elected on the first Monday of February. Now, if you have a Parliament elected in December, how will it work between that time and the time a new President comes in? What will happen to a President? He cannot use that Parliament, because it is not his.

LT. COL. KIIZA BESIGYE: Madam Chairperson, the President does not own any Parliament. The President is the executive and Parliament is the legislature and once elections have taken place two months before his election, his term of office ends. He will be duty bound to proclaim the date - for the first sitting of that Parliament. The Parliament - *(interruption)*

PROF. KABWEGYERE: Madam Chairman, let me get my point clear. We have already passed Madam Chairman, Clauses saying that Parliament shall approve the appointment of the President. Now, the Presidential appointment will be approved by Parliament. Now, within - the Parliament will have resigned before a new one is elected. Now, there is a period in which the President will have no Parliament to which he can submit appointment, because the members of Parliament, we have already agreed, are going to be Ministers. The moment Parliament has expired, there will be no Ministers, the President will be alone in that period.

LT. COL. KIIZA BESIGYE: Madam Chairperson, I have got the point which is being raised by Hon Kabwegyere. I think I would like to - I can help him by advising him to read the provisions on the legislature fully. Because there will be no single day when there will be no Parliament. The Parliament, in other words, Parliament will continue to be in place until elections are actually held according to the provisions which are being made, yes. And if the President wanted to appoint new Ministers during the time between the election of Parliament and the election of the President, then the new Parliament would be the one to approve those appointments which is what you are asking. Madam Chairperson, having said that, as I said, I discern the political import of this provision as that of providing to fix the election date of Parliament to be before the election date of the President. I have a political problem with this, and it is on that account that I oppose the provisions of Clause 4. I believe that the Presidential election was fixed because of the powers of the President which have been abused before

and which can be abused. The power of the executive to extend itself in office, but I do not find that there is such a problem for Parliament to extend itself in power beyond the provisions of this Constitution. Therefore, trying to fix a particular date around the end of the five years which is the only time that they can serve up to, is not necessary at all as compared to the election of the President. The President because of the presidential powers, because of controlling the Army, because of controlling the various organs of Government which can cause him to stay in power, are the reasons that compelled us to fix the date specifically. But I do not find any compelling reason why we should specifically determine that the election of Parliament must be before the election of the President. I therefore think that we should put a question even if - in fact, if we are to simplify it, to put a question. There was earlier on a debate that the election should be on the same date - that election of Parliament should be on the same day as the election of the President. For reasons again, which I do not understand or a little that I understand do not support. Now, having moved from that, now the position is here is that, we should have elections of Parliament before the elections of President and my contention is that it is not necessary to fix. There is nothing to fear in letting only the five year term be the determinant factor. Therefore, I do not find that the provisions of this Clause 4, the provisions which were put in Article 134, Clause 1, as necessary. To that extent, Madam Chairperson, I support the deletion of Clause 4. *(Applause)*

MR. TIBAMANYA URBAN (Kashari County): Thank you Madam Chairperson. I support the deletion of this Clause Madam Chairperson. The Hon delegates who have talked against this Motion have expressed the desire to have the date of the election of Parliament fixed. If that was to be so, then the proper home is not Article 130 which is only fixing an establishment and a term. If that was to be so, the proper home would be Article 134 which talks of election of Parliament and for that reason it becomes obvious that Clause 4 of Article 130 should be deleted and considered under 134. I thank you.

THE DEPUTY CHAIRMAN: Hon delegates, let us hear from Hon Mulenga so that we round up. We have listened to many people talking, let him tell us the view of the committee.

MR. MULENGA: Thank you Madam Chairperson. If I may answer Hon Tibamanya first, the inclusion in this is - rather the insertion of this Clause in Article 130 is simply to qualify Clause 2, which says the term is five years. In 4, we are saying the term may be less or more than five years in those two circumstances. Madam Chairperson, Article 134 does provide for the election. Now, I think the best way for rounding up the submission on behalf of the committee is to say this. Many who have supported this proposal Madam Chairperson, and objected to deletion have explained very clearly the purpose for it and the consistency with the provision about election for the President. As Hon Kiiza Besigye has mentioned, the original idea that was considered was to have the election at the same time, because after all, it would have been cheaper to run. But the prevailing view was that in our stage of sophistication or absence of it, our people may be confused. That prevailed although it is still questionable. Now, the question was, if we do have elections separated, when should we hold the ones for President? We fix that, for Parliament, we have recommended as in this Clause. Hon Kabwegyere raised a query which was answered but I want to make it even clearer. The election of Parliament is recommended to be the first Monday of December and that is anticipated to be one month before the end of an existing or the outgoing Parliament. Therefore, the first sitting of the new Parliament would be seven days, not later than seven days from end of that month, so in January and at that time, there would still be the old President. Now, if you are talking about reshuffle about that time, who will approve the reshuffle? It will be the Parliament in place. By end of December, it will continue to be the old Parliament, because elsewhere, we are saying, we should not have co-existence of the two Parliaments as was proposed in 148 of the Draft. We shall reach that later. But the arrangement by the Odoki Commission was that there would be election, while the old Parliament is still in existence and the first sitting for electing speakers, would be before end of term of the old one and we have said, no, this can lead to confusion. There should be one Parliament at a time. So, for purposes of approving reshuffle, the Cabinet Ministers or newcomers, by the out going President, would be by the Parliament is (c) (ii). Either the old one or the new one, there should be no problem about that. But I do not think that we can base our deliberations from that, because I do not anticipate too many reshuffles in the last month of the Presidential term.

The position is that, the Parliament will be in place for the President who is elected in February so that when he comes up with his own proposal (*Interruption*)

MR. KANIA OBIGA (Terego County): Thank you Madam Chairperson. I definitely would like to be assisted I wanted a clarification from the Chairman of that Select Committee. If he says, as he has already said that the motive of sub-section 4, is really to fix a date for the Parliamentary elections. Does he not think it would be better under Article 134 which deals exactly with the elections rather than Article 130 which is talking establishment and the general term of Parliament? I just wanted that clarification.

MR. MULENGA: Hon Madam Chairman, Hon Kania has not obviously read Article 134 and I will do so. So that it is clear to everyone that what he is asking is - it says, a general election of members of Parliament shall be held not less than 30 days before the expiration of the term of Parliament on the first Monday of December, that is 134. So, if anything, you can talk about duplication, but do not say that in 134, we have not provided for that. Madam Chairperson, I was trying to explain to Hon Kabwegyere that the arrangement is such that, there should be no embarrassment to a President who wants to get approval of the appointed Minister. And that by the time the new President comes and wants to have approval, the Parliament, the newly elected Parliament which the Hon Kabwegyere would like to call his Parliament, will be in place.

Lastly, as has been observed Madam Chairperson, as has been rightly observed, if the real concern of Hon Karuhanga was about whether the election should be before the Presidential election or after, then, the Motion should have been moved in those terms. Only Hon. Kayizzi was clear, he said his constituency would rather have presidential election first and then Parliamentary elections after. But Hon. Karuhanga is saying delete and I also want to disagree with Hon. Kanyeihamba when he says that this clause does not add anything because Clause 2 is sufficient. With due respect, it is clear that this Clause is needed in order to tie up that position of wanting to fix date. If we say, we do not want to fix a date for Parliamentary election although we have done it for Presidential election, let us also use it that way. But the clause has a purpose and it is clear from

its content. Madam Chairman, I urge the House to support the insertion.

THE DEPUTY CHAIRMAN: Hon Delegates, I think we have really had enough discussion on this and I want to put the question on Hon Karuhanga's Motion.

(Question put and consensus not reached)

THE DEPUTY CHAIRMAN: I think that calls for a division. It is for the deletion. Those for the deletion because that is the Motion, the ayes are on this side and the nays are on this side.

(The Assembly went in Division)

THE DEPUTY CHAIRMAN: Hon. delegates, can we get orderly and get the results from the voting? Hon. delegates can retain our seats, I do not want to name individuals, let us retain our seats. Actually it seems whichever way I may have pronounced both sides had more than 50 people to stand up. But according to the results, we are following Rule 27 and we need a two thirds majority in order to carry a Motion, but then, the opposition should be more than 50 per cent as to cause contention. The results are, the nays got 57 and ayes 125, the two thirds majority will need 120. So, the Motion to delete is carried by five votes. *(Applause)* So, we can now pronounce the results. So, Clause 4 is deleted and I think now we can pronounce ourselves on Article 130, that Article 130, it seems 1, 2 and 3 went through without any Amendment. So, I put the question that Article 130 minus Clause 4 do stand part of this Constitution.

(Question put and agreed to)

MR. MULENGA: Thank you Madam Chairman. Madam Chairman, Select Committee 2 recommends that Article 131 of the Draft should read as follows: *Clause 1 - Composition of parliament: Parliament shall consist of:-*

- a) *Members directly elected to represent Constituencies,*
- b) *One Woman Representative for every district,*
- c) *Representatives of the Army, Youth, Workers, Persons with Disability as may be defined by Parliament and such other groups as Parliament may prescribe and define and;*
- d) *The Vice President and Ministers who shall be ex-officio members but not entitled to vote.*

Madam Chairman, I beg to move.

THE DEPUTY CHAIRMAN: Hon. delegates, I have a Motion here by Hon Atwoma. Hon Atwoma can you move your Motion.

MR. ATWOMA TIBERIO (Chua County): Madam Chairman, my Motion that is before you there is very simple one, is that in (c), I will only ask that the word *Army* be deleted.

THE DEPUTY CHAIRMAN: Is it seconded? It seems Hon Atwoma your Motion is not seconded. *(Laughter)* So, any other comment?

MR. AMAMA MBABAZI (Kinkizi County West): Thank you Madam Chairperson. Article 131, Clause 1, paragraph (d) on this question of Ministers being ex-officio Members of Parliament. I think in light of the decision we took last week on Article 116, we should stand over this one like the others until we have decided this question on Thursday.

THE DEPUTY CHAIRMAN: Hon. Kiwanuka - is it a different issue?

MR. KIWANUKA: No, I am trying to clarify Hon Amama Mbabazi. Madame Chairperson, it is not straight forward. You see, there will be ministers who will be appointed from outside Parliament and these are the ones who are affected. For the other ministers who are Members of Parliament - *(Interjections)*-

THE DEPUTY CHAIRMAN: Hon. Kiwanuka, I think it will be quite in order to be consistent. It does not do us any harm to consult the Technical Committee and the Legal and Drafting. So, what we do, we agree that 131 (a) - is that one okay?

HON DELEGATES: Yes.

THE DEPUTY CHAIRMAN: The one is okay. (b) is okay, (c) is okay because Hon Atwoma's Motion was never carried and we stand over (d). Yes, what is your problem, Mr. Youth?

MR. SEBALU KENNEDY (Youth- Central): Thank you very much Madame Chairperson. I would like to seek clarification from the Chairman of Committee 11 about (c). He is talking of representatives of the army, youth, workers, persons with disabilities as may be defined. But as we are right now, we have this representation in parlia-

ment as already prescribed. So, if you subject it to the next parliament, I agree with the principle but then what is the minimum yardstick already which is going to be applied, because already we have a given number. So, are we tearing it apart straight away or they just begin from there and think of the revision because we have five already and I would like to get this assurance.

THE DEPUTY CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Thank you Madame Chairperson. We are not tearing apart anything. There is current law and in this constitution, there is a provision. I think it is in the transitional provision that existing law will be carried on. We are not either amending or terminating the existing laws. So, that representation will continue until parliament provides otherwise.

THE DEPUTY CHAIRMAN: Hon. Karuhanga.

MR. KARUHANGA: Thank you Madame Chairperson. I wanted to get clarification from the chairman of the committee on 131 (a) and 131 (3). Because in the draft, there is a superior formulation than what the committee has come up with in the sense that they say Parliament shall consist of (a) Members directly elected to represent constituencies on the basis of universal adult suffrage and by secret ballot. That is what the Odoki Draft had provided. Now those sentences on the basis of universal adult suffrage by secret ballot, instead of accompanying 131 (a) and completing the sentence have been broken up. And the phrases taken and transferred to 3 as an independent Clause 3 with so many words. Like the representatives referred to in Paragraph (a) of Clause I of this Article shall be elected on the basis of universal adult suffrage and by secret ballot. Can we not put those words - just that phrase together in 131 (a) and finish and delete 3 instead of having such so many words and which really look like bad drafting to me?

THE DEPUTY CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Madame Chairperson, I do not agree that it is bad drafting and we took advice from technical committee. Clause I deals with the membership. Clause 3 deals with the manner of electing one group. Clause 4 deals with parliament shall prescribe the manner of electing others. I think it is better drafting and so does the technical committee.

THE DEPUTY CHAIRMAN: Hon. Magezi. I think he satisfied Hon Karuhanga.

DR. MAGEZI: Thank you Madame Chairperson. I seek the chairman of the committee to clarify to me why he does not think that the police and prisons need to have representatives in Parliament. I am aware that at the end of his sentence in (c), he is saying and such other groups but I have a strong feeling that for a long time these two institutions of the police and prisons have been marginalised in our Parliament. I have a strong lobby to make sure that we include these two institutions to have representatives in Parliament. Could he clarify to me before I move an Amendment to that Clause?

THE DEPUTY CHAIRMAN: Hon. Mulenga.

MR. MULENGA: Madame Chairperson, there was attempt to introduce representation of what Hon Magezi has talked about. It was defeated but because of - that we have included the phrase 'and such other groups as Parliament may prescribe and define in future.' For the time being in Committee 11, those two groups were defeated but recognised that as time goes on, there may be some to be dropped, others to be brought in, hence, this new clause. So, police and prisons, there was attempt to introduce in the committee and it was not successful.

THE DEPUTY CHAIRMAN: I think you are satisfied with - Hon. Kuteesa.

MR. KUTEESA SAM: Thank you Madame Chairperson. Just a small construction amendment in 31(I) c, the words 'persons with disability as maybe defined by parliament,' it seems to me that, you do not define the representatives of the army. You may determine their number but you are also likely to define the representatives of the youths. Because as Hon Mulenga says, we do not know when the youth stops being a youth. That one may be defined. I have checked with Hon Mulenga and he tells me he has no objections to adding the words as 'may be determined and defined by parliament.' If he would like to accept that insertion, I would like to move that Paragraph be amended by adding the word 'as may be determined and defined by Parliament.'

THE DEPUTY CHAIRMAN: So, are you removing 'as parliament may prescribe and define?'

MR. KUTESA SAM: Determine and define - as determined and defined by parliament.

THE DEPUTY CHAIRMAN: You are on 131 (c)?

MR. KUTESA SAM: Yes.

THE DEPUTY CHAIRMAN: The last part is - other groups as Parliament -

MR. KUTESA SAM: "*Representatives of the army, youth, workers, persons with disability as may be determined and defined by parliament and such other groups as parliament may prescribe and define.*"

THE DEPUTY CHAIRMAN: Is that good drafting? Hon. Kanyeihamba.

PROF. KANYEIHAMBA: Thank you Madame Chairperson. I believe that his needs improvement but I think we should just use one word, 'as parliament may determine.' i.e. inclusive of defining, determining and so forth. So, one word - if Hon Sam Kuteesa would agree, we just 'as parliament may determine.'

THE DEPUTY CHAIRMAN: So, you are saying that we have two 'as parliament may determine.' One - after disability and then another one 'such other groups,' Is that what you have?

PROF. KANYEIHAMBA: Yes, Madame Chairperson - (*interruption*)

THE DEPUTY CHAIRMAN: Is it not repetition?

PROF. KANYEIHAMBA: No, it would read as follows: "*(c) Representatives of the army, youth, workers, persons with disability as parliament may determine and such other groups as parliament may determine.*"

DEPUTY CHAIRMAN: Hon. Kaggwa. Is it on the same issue - on the drafting part?

MR. KAGGWA MEDI (Kawempe South Division): Yes. Thank you Madame Chairperson. I would prefer it reads: "*Representatives of the army youth, workers, persons with disability and such other groups as Parliament may determine.*"

That will be neater because I do not see why we give prominence to other such other groups when they are in series. So, I think it will be neater the way I have put it.

THE DEPUTY CHAIRMAN: Hon. Kavuma.

MR. KAVUMA: I thank you very much Madame Chairperson. I am seeking clarification. Whether in view of the serious shortage of time we have, it may not be better if we really debate principles and we agree on the principle we want to be embodied in a clause and then the Drafts people do the drafting. Otherwise, Madame Chairperson, I think we shall continue losing time this. I wanted to have this clarified.

THE DEPUTY CHAIRMAN: I thank you very much. I note that but also the drafting Committee needs guidance. Otherwise, the meaning can be changed. So, we agree that I (a), (b) and (c) as amended, should stand part of this constitution Article 131 Clause I but we stand over (d) to match it with an earlier provision in Article 116 as has been proposed. Can we go to Clause 2.

MR. MULENGA: Madame Chairperson, I am not quite clear what amendment we have accepted on (c) because the last one of Hon Kaggwa really would lose the meaning intended. I had conceded that what Hon Kuteesa suggested was agreeable.

THE DEPUTY CHAIRMAN: Okay, and Hon Kavuma is suggesting that one is an editorial issue as long as we agree that these groups should be represented.

MR. MULENGA: Madame Chairperson, Clause 2 is recommended to read as follows: "*Upon the expiration of a period of 10 years after the commencement of this constitution and thereafter every 5 years, parliament shall review the representation under Paragraphs (b) and (c) of Clause I of this article for the purposes of retaining, creating or abolishing any special representation and any other matter incidental to it.*" The purpose is obvious. This representation is intended as affirmative action and at least in respect of the women, youth and the persons with disability. However, it is hoped that in the future, the affirmative action will have had the desired impact and therefore, special representation may not be necessary. It was proposed that we allow ten years

because within 10 other years, it is hoped that the impact desired will have been achieved. But Parliament should review and if it is not - if the results have not been achieved, then after 5 more years, another review is done. Madame Chairperson, I beg to move.

MR. BAGEYA PATRICK (Kigulu North): Thank you Madame Chairperson. I just wanted to - I had wanted to query the same thing. The essence of ten years other than five years because my suggestion would have been to make it five years.

THE DEPUTY CHAIRMAN: Are you through?

MR. BAGEYA: I am through, Madame Chairperson. I just gave my view.

THE DEPUTY CHAIRMAN: Hon. Ambrose Atwoki.

MR. ATWOKI AMBROSE (Youth - Northern): Thank you very much Madame Chairperson. When I read this Clause 2 of Article 131, I feel that we need to rephrase. First of all, Madame Chairperson, the Article reads that: "*Upon the expiration of a period of ten years and after the commencement of this constitution and thereafter, every five years parliament shall review the representation under paragraph (b) concerning the women representatives and (c) concerning other interest groups of this article for the purpose of retaining, creating...*"

Madame Chairperson, my problem is with fixing years in the constitution. My understanding is that we should avoid as much as possible to put into the constitution what I would call transitory provisions. When we tag years to the constitution we are actually trying to make the constitution more rigid. I would have been comfortable with the provision in the draft which would give room for flexibility, a wider latitude and it reads that: "*Parliament shall, from time to time, review the representatives of interest groups and may, by Act of Parliament, approved at the second and third readings by at least two thirds of all Members of Parliament increase, reduce or abolish all or any of those representatives or substitute representation of other interest groups.*" Madame Chairperson, I feel this is a superior provision if you compare it to the provision which the committee has recommended. And more so you will also notice that we are not going to subject our constitution to

amendments each other time that comes. That is why there is a provision to make it even quite harder by saying - 'approved at the second and third readings by at least two thirds.' This one will give much more quality to our constitution. Madame Chairperson, I believe that we should also try to avoid ambiguity especially when it comes to the issue of interpreting the constitutional provisions. So, Madame Chairperson, I would feel it is better we go by the provisions in the draft - Article 131 (3) rather than go by this recommendation which I feel is a bit transitory. So, I would move that we should delete the recommendation of the committee so that we revert to the draft. Thank you.

THE DEPUTY CHAIRMAN: Is that seconded? Okay, Clarification.

AN HON. DELEGATE: Madame Chairperson, unless we go back and withdraw our consent to 131. It is now no longer possible to go by what was in the draft. Because in the draft, Odoki had gone ahead and established the numbers of the representatives of this special groups and then said that parliament can later vary those numbers. Today we have already said that Parliament will determine the numbers. We cannot now go back and say - that the parliament which has determined the numbers can go ahead and consider them from time to time. Even tomorrow, the same parliament consider that even tomorrow to change the very same number it has varied and then request for two thirds majority because parliament will have created these numbers by a simple resolution of parliament. To change them, we are saying that the very same parliament which created them by simple resolution should now go for two thirds majority. I think there is a technical problem there. I am not a lawyer but I think there is a technical problem.

THE DEPUTY CHAIRMAN: Hon. Ambrose was still on the Floor. Can you respond to that?

MR. ATWOKI: Thank you Madame Chairperson. My understanding on the provision is that - the review is referring to interest groups, not Members of Parliament elected by universal adult suffrage.

THE DEPUTY CHAIRMAN: I think that is clear. Hon. Atwoma.

MR. ATWOMA: Thank you Madame Chairperson. I think here I stand to support the Mover for deleting the Committee's report and to revert to the

original draft. Because in the original draft you can see some trace of reasoning that it is from time to time but while here it is specific - giving it ten years. On what ground that was arrived at, is not explained. Madame Chairperson, if I am to speak on this Motion, I would say that for whom is this Constitution intended? Because everything here seems to be very temporary to suit a situation for a moment and not for the entirety of this country. Even the Odoki's report had that in mind that this is not going to be permanent. That it is not going to be any good to Uganda but all the same we must insert it in our constitution, to satisfy that particular need of the few individuals.

THE DEPUTY CHAIRMAN: Hon. Atwoma that is why you are here to debate and that is exactly what are you doing. Then what are you complaining about?

MR. ATWOMA: I am still - because I hear orders, that is why I am keeping quiet.

THE DEPUTY CHAIRMAN: Okay, proceed.

MR. ATWOMA: Thank you. Well, Madame Chairperson, you see here, we are not playing fools of ourselves. We are here entrusted by the people to come and make a Constitution which is going - *(Interruption)*.

THE DEPUTY CHAIRMAN: Hon. Mukwaya has a burning information - either what she wants or what she wants to give you. Mukwaya Janat.

MRS. MUKWAYA JANAT (Mukono South County): It is exactly for those reasons which Hon Atwoma is giving that made some of us actually agree to the committee that time may come when we may have a hostile Parliament who might prematurely kill the representation of the interest groups. Exactly, it is what Hon Atwoma is talking about that particularly because of this interest, 10 years is not actually enough period to prove affirmative action for any of these interest groups. So, I would rather say 15 or 20 years before we evaluate.

THE DEPUTY CHAIRMAN: Hon. Atwoma, you had better complete your presentation.

MR. ATWOMA: Thank you. I appreciate the information given to me by Hon Mukwaya but if she looks very carefully and she is mindful of this

country, the word that Odoki report has it here - that 'from time to time.' It can be at any length of time. She is now talking of 15. It may be of 50 years. *(interjections)* Well, we are making a constitution and which we are going to judge by the time. Why time limit it to 10 or to 15? Let us leave it to the rationale of the time that we have decided now we do not need any more of these interest groups representation. Because we are here almost trying to work down the work of the real substantive representative of the counties - *(Interruption)*

THE DEPUTY CHAIRMAN: Hon. Atwoma, I can see a persistent hand from Hon Elyau.

MR. ATWOMA: I know when I always speak it is always like that. *(Laughter)*.

MR. ELYAU: Thank you Madame Chairperson. Mzee Atwoma should accept me, I am his friend. I wanted clarification from Mzee Atwoma. When shall the disability in Uganda stop? This is going until the last world. So, it is very difficult to determine when these people will be - I do not think Uganda will have no polio, will have no what. So, this is the reason why we say, let us give it to consider these unfortunate groups and also when I want to go back to the unity of youth. There is no day the youth will not have to come. If now we give the youth of today the opportunity and we reject the youth of tomorrow, then we are not also in order! Can I get clarification please?

MR. ATWOMA: Well, exactly, I will give this clarification, Madame Chairperson. It is that if there is no limit to our youth because we are giving birth every night and if there is not going to be limit to our disabled people because that one is to occur in the world, then it is even much better. Safer to have to leave it from time to time than to set a limit of time like 10 years or 15 years or 20. Let us leave it wide open. That is my contention. But here, what I was trying to make Madame Chairperson, is this - what is the purpose of these counties representatives? Do they not have disabled in their counties and are they not going to represent them? Are they not having women in their constituencies, that they are going to represent them? Are they not having the youth in their constituencies that they are going to take care of them and in case, they are the fathers of those children.

THE DEPUTY CHAIRMAN: Clarification from Hon. Sebalu.

MR. SEBALU: Thank you very much Madame Chairperson and for Hon Atwoma to give way. I have been in this august House ever since we began and as Hon Atwoma is saying that he is got those people in his constituencies. The youth and the women but I have never heard him a single day coming out to articulate an issue exclusively for those groups. He is always for his other business, which you know very well. *(Applause)*

MR. ATWOMA: Well, Madame Chairperson, if I may say here - *(Interruption)*

THE DEPUTY CHAIRMAN: There is a point of Order from Hon. Kabwegyere.

PROF. KABWEGYERE: Point of Order. Is the Hon Member on the Floor in order to actually repeat exactly what he has said before which is totally against the affirmative action and which have already accepted in this House? Is he in order to take us back?

THE DEPUTY CHAIRMAN: No, he had not forgotten. That is his view. We are debating a new Chapter. Well, we have discussed it earlier on but this is a new chapter.

MR. ATWOMA: Thank you very much for your wisdom, Madame Chairperson.

THE DEPUTY CHAIRMAN: But better be brief and we move to somebody else.

MR. ATWOMA: Well, I am closing now down. Madame Chairperson, I would like to appeal to this very august House, very responsible House to the people of Uganda that let us not have the mind of making a constitution, pre-restrictive constitution aiming at a particular time only and not aiming for perpetuity in Uganda. Thank you Madame Chairperson.

THE DEPUTY CHAIRMAN: Hon. Lubowa.

MR. LUBOWA MOSES (Budioppe County) Madame Chairperson and Hon Members, I am tempted to disagree with the provision - Clause 2 as put by the committee. Basically, basing myself on the loopholes I have found in the explanatory notes and also in the provision itself, upon the expiration of a period of 10 years after the commencement of this constitution and thereafter, every five years

Parliament shall review and so on and so forth. The loophole I have found in the explanatory note is that in respect of Clause 2, amendment intended to make review at specified intervals and to avoid hasty or premature abolition. Another one is - also makes room for consideration of other groups that may, in future, appear to deserve special representation. The other one is initial period of 10 years thought to be necessary for impact. Now, if we are talking of certain other interest groups emerging and then they are not given a period of 10 years to cause impact, what rationale is now there? Because every after 5 years in future, we shall be reviewing but then the new groups that will be coming in, would not get the opportunity of being allowed ten years for impact. I, therefore, do not see any reason - the reason given here is a weak one. Let us take the provision in the Draft Constitution and perhaps just modify it somewhere.

THE DEPUTY CHAIRMAN: Hon. Mwesigye.

MRS. MWESIGYE HOPE (Women- Kabale): Thank you Madame Chairperson. I would like to oppose the Motion by Hon. Youth and infact I am support the recommendation from the Committee. The need for special representation is not contestable anymore like Hon Atwoma would like us to believe. In fact, it is no longer an issue for debate in this House because there is enough research. There are enough papers written which all point to need for affirmative action to address the imbalance which has been suffered by the hitherto marginalised groups. Another point I would like raise is that we must note that affirmative action is temporary by its nature. So, those of you who are arguing that we are not going to have transitory provisions in the constitution should clearly tell us that you are not in favour of affirmative action. Because affirmative action by its nature is temporary and in fact, should just die when that group has stabilised or reached a level where society believes that at least it has sort of caught up with the other groups. This recommendation from the committee, in my view, is very good because it keeps Parliament active. It keeps Parliament on its toes because once we go with what is in the Draft, Parliament may decide to sleep and it may never review the affirmative action that is in place. Even these other groups that would have come up under marginality, may never be addressed. So, this provision empowers Parliament to account to the nation. Parliament has an obligation to keep reporting. Obviously, Parliament will

know that after maybe the first ten years, it will be required to give its report on the situation of affirmative action and subsequently after every five years. But if you leave it to them to determine when they feel that it is reasonable, they may never feel that it is reasonable enough and in fact, that is reflected in most of the laws that we have now. The laws which have lasted for the last 50 - even 90 years since the reception dates of 1902. Some of them are archaic, some are oppressive, yet we still have them on books and yet we have had Parliaments of this time. Madame Chairperson, the issue of saying that the initial ten years is too long is not very reasonable in light of the fact that we have passed a provision within this constitution to the effect that there will be a commission for equal opportunities. Obviously the functions of that commission among others are, to report to Parliament if another group comes up and is marginalised or disadvantaged. Then the commission will report to Parliament and a law can be enacted so that Parliament will not wait for the ten years if it is working hand in hand with the commission. So, for those reasons and most importantly, for the reason that Parliament will be kept active on its toes and accountable to the nation, I think the House should support the report for the committee. I thank you. *(Applause)*

THE DEPUTY CHAIRMAN: Hon. Kaberuka.

DR. KABERUKA WILLIAM (Ndorwa West County): Thank you Madame Chairperson. Having listened to the previous Speaker, I am inclined to support the Motion that we should revert back to the formulation of the Odoki Commission. First of all, it is true that affirmative action is temporary but it is also true that in Sub Clause (c) which we have already passed - it is envisaged that these groups which we have enumerated are not exhaustive. And therefore, tomorrow there could come a marginalised group which requires affirmative action but from the committee's formulation, we have ten years - we shall have ten years before we can come back to this aspect. So, I am of the view that since we are not exhaustive and since there is a need for affirmative action, we should give Parliament flexibility to review as and when need arises. I, therefore, support that we go back to the original formulation and not specify ten years because it will be limiting Parliament and it will also be unworkable. I thank you.

THE DEPUTY CHAIRMAN: Hon. Kabayo.

DR. KABAYO PATRICK (Kassanda South): Thank you Madame Chairperson. I was present in the deliberations of the committee when they were discussing this point. And I remember that the thought that carried the day was the requirement that Parliament should be kept on its toes so that there is vigil on the activities of the affirmative groups. The onus of proof will be on the representatives of these groups to prove that the aspect of the affirmative action is still necessary. So, the requirement for the periodic reviews of the every five years was supported and I think that is why it was carried in the committee in preference to what is written in the draft. My only quarrel with the formulation is the aspect of the 10 years at the beginning which will preclude for that period any new groups that will come up between now and then. This is why I was wondering whether the chairman of the committee could agree to delete the first sentence so that we put five years as a standard. Then we do not have any requirement for a provisional clause which the first line implies and begin from every five years. Parliament shall review the representatives and so on and we do not refer to the aspect of ten years. So that every five years, every representative of every interest group is required to prove whether the group they are representing needs to be represented further in Parliament in the next Session. I would, therefore, wonder whether the chairman of the committee would regard that as worthwhile so that we do not refer to 10 years but have a standard five years as a review period. Thank you Madame Chairperson.

THE CHAIRMAN: Hon. Mulenga, Hon Kabayo was making a proposal and we wanted your reaction.

MR. MULENGA: Thank you Madame Chairperson. The purpose for inserting ten years and I think Hon Kabayo will agree with me since he was there, was that the committee was convinced that we need affirmative action. That is where we start from and it was also convinced that in order to give it impact, we need at least ten years. That is to say, two Parliaments should translate it into that. We have an election after the constitution comes into force. Then there will be another election five years later and we are saying before the third Parliament, it should be considered whether impact has been made. In the view of the committee, really ten years

would be the minimum that you can have to assess impact. Hon. Kabayo and Hon Kaberuka are for - made a point that during the next ten years there may be groups which have qualified or have come up and they also need affirmative action. And I would suggest that rather than go back to the text of the draft, we suggest an amendment which would allow Parliament to consider new ones before the end of ten years rather than this one of the draft which with due respect is too fluid. The purpose is this, that if you say from time to time Parliament may do this, as Hon Mwesigye Hope has said - that could lead to Parliament not attending to it. Whereas this provision will ensure that every specified period it will, but also conversely, Parliament may advert to it because some substantial group in Parliament are in a hurry to abolish. If that happens, it may prematurely abolish before we have seen the results of this affirmative action that we are, at this juncture, recommending should happen.

THE DEPUTY CHAIRMAN: Thank you. Before we proceed, I have a small question to ask because we are talking about representation in Parliament. Do we envisage a situation when after elections today, then Parliament passes a law and then we have another elections there and then so that the new group comes into Parliament before the scheduled time of Parliament elections? If that is not the case, then I can see a situation why five years - because that is the spun for elections. You prepare before elections or ten years, you prepare before elections. So, which means the original is open ended but they would not be any - you know we are talking about elections, not recognition. I want that clarification. At lest to let us hear from Hon. Kanyeihamba because I feel there is a confusion here.

PROF. KANYEIHAMBA: Madame Chairperson, the committee's formulation is very clear in this article. We have in Clause 1, Sub Clause (c) saying that we shall have representative of the army, youth, workers, persons with disabilities and such other groups as may be determined by Parliament. That, we can determine any time this constitution comes into effect. So, there is no problem about that. But Madame Chairperson, Parliament can include these other groups that people were talking about. The Police, the Teachers or whoever they want immediately when this Constitution comes into effect. So that is not affected. However, I want to emphasise the point made by the chairman of

Select Committee 2, that we analyse the facts surrounding affirmative action. And our view was - that really to have any impact at all, you need at least ten years before you can review this action. And if we allowed Parliament to prematurely terminate affirmative action before ten years is over, then really we would not have done service to affirmative action. So, Madame Chairperson, the point that I was clarifying is that these other groups can be represented at any time when this constitution comes into effect. Secondly, that ten years was really seen as minimum for affirmative action to be really realised and be appreciated. I thank you.

THE DEPUTY CHAIRMAN: Let us hear from Hon. Mazima.

MR. MAZIMA ELIPHAZ (NUDIPU): Thank you very much Madame Chairperson. I would like first of all to clarify that the affirmative action we are talking about is in terms of representation. But in as far as affirmative action was given, it wider than that. I would like to quote Article 61 that gives affirmative action which states that the state shall take affirmative action in favour of groups marginalised on the basis of gender, age, disability or any other reason created by history, tradition and custom for the purposes of redressing the imbalance. I wanted to disagree with the people who are saying that this affirmative action is temporary in as far as this article is concerned, it is not temporary. Maybe in terms of political representation, it can be temporary. That is why we are limiting it here. I wanted to say that affirmative action has got a purpose and the purpose as it has been stated is to empower identified groups that have been either marginalised or left out and the pace of being empowered is different and this calls for the need for review. Affirmative action will remain but certain groups will not qualify for affirmative action because empowerment of and that has to be clear. That is why we are saying that impact is important if we allow for ten years, then people can evaluate and say whether women have been empowered. Whether persons with disability have been empowered, whether youth and identify other groups to come in for affirmative action. So, I think it is important that before you evaluate any project or any programme that you give it time to flourish and mature so that it gives you fruits. Either positive or negative results. So, I support the recommendation of the committee. Thank you very much.

THE DEPUTY CHAIRMAN: Okay, let us hear from Hon. Mulassanyi.

MR. MULASSANYI (Rubanda West): Thank you Madame Chairperson. I hope when we talk about affirmative action, we are serious and when we want to give these people affirmative action, we are not giving them air. So, that is why I would like to oppose the Ambrose Motion of deleting the Committee recommendation because although he belongs to this group of youth seeking affirmative action, he is indirectly deleting his own right. As we have been saying any time when you say Parliament decides from time to time. Parliament may come up tomorrow and say affirmative action in terms of representation in Parliament terminated. I do not know whether the youth will have benefitted from this formulation which the youth is putting forward. Madame Chairperson, I think if we want to do something for these groups we must give them ten years of incubation so that after these ten years, then we can assess the results and decide either to continue with this kind of representation or to terminate. But if we leave it open-ended, then we may give them air *-(Interruption)*

THE DEPUTY CHAIRMAN: Hon. Bageya. Oh! you are still going on? Sorry, Hon Mulassanyi, I thought you had stopped.

MR. MULASSANYI: You have cut me short but I was ending. Thank you very much.

THE DEPUTY CHAIRMAN: Hon. Bageya.

MR. BAGEYA: Madame Chairperson, thank you very much. I have no great quarrel about this clause. I have heard Hon Kanyeihamba say that any new groups can come in. I have been reading this thing maybe I may need a lot of help. They are saying here - Parliament shall review the representation under Paragraphs (b) and (c) of Clause I of this Article for the purposes of retaining and creating or abolishing. I am concerned about creating because there is ten years. I have got sicklers in my constituency who need to be also taken care of politically. We have police *-(Interruption)*

THE DEPUTY CHAIRMAN: There is information from Hon. Sebalu.

MR. SEBALU: Point of Information. Thank you very much Madame Chairperson. I would like to

thank Hon. Bageya for giving way. I would like to draw his attention to 131 (c), representatives of the army, youth, workers, persons with disabilities as may be defined by Parliament and such other groups as parliament may prescribe and define. I think such other groups caters for his worry.

MR. BAGEYA: Thank you for that information. With that information, then I ask why have we put 'creating' under this Clause? If you are saying 'creating' after 10 years and I am saying I have got sicklers, police, prisons, tax drivers, name them. They have interest groups and farmers too. Now, we say we include 'creating,' then it means it is after ten years. Therefore, I would suggest that we delete 'creating,' if it is going to stop these other interest groups which will come in.

THE DEPUTY CHAIRMAN: Hon. Kavuma.

MR. KAVUMA: Thank you very much Madame Chairperson. I think we are all agreed that we need affirmative action and I think what we are trying to look for is a way of protecting it in the best possible terms in this Constitution. Madame Chairperson, the provision as given by the committee - the recommendation may have its own problems in writing constitutions. Then you specify these years, then you know - and yet the provision of the draft also may be too fluid as the Chairman of the committee says. In any constitution, there are provisions for normal amendments of the constitution and I can see Articles 287, 288, 289 of this constitution deal with these positions. I am wondering whether it may not be wise for us to go and I note it is a quarter past six now - to have a bit of consultation and see how best we can harmonise these positions and come out with a provision that will be worth putting into the constitution. Taking care of all the groups we want to assist by way of affirmative action. I, therefore, would move, Madame Chairperson, that we adjourn at this moment and allow these consultations between now and tomorrow. So that when come tomorrow, we are in a better position to come out with a good formulation.

THE DEPUTY CHAIRMAN: Okay, the proposal on the Floor is - given the view that we have procedures for the amendment of the constitution in Chapter 19, whether it would be in order to revisit this Clause 2 which is regarded as of an amendment nature and see what we come out with. Usually I

feel that is a good procedure rather than hurrying over things and then later on we find ourselves that we have to do it all over again. So, any query? Hon. Ngobi.

MR. NGOBI MATTHIAS (Presidential Nominee): Thank you very much Madame Chairperson. I have been listening to the contributions on both sides and I think we have got very clear picture. Maybe some people do not agree with the other but the thing is that under (c) we have provided for the groups that may be represented. The committee has also put in a lot of work to bring out Clause 2 whereby they have given time - *(Interruption)*-

THE DEPUTY CHAIRMAN: Hon. Ngobi, you are debating. The issue on the Floor is we have some sort of contradiction which you may understand but others may not on Article 289 which is talking about how things should be amended. And we saying they should be synchronised. So-

MR. NGOBI: Yes, what I am saying Madame, - thank you for the guidance - but what I am saying we have heard for us to be able to vote on this matter instead of postponing it. *(Applause)*

THE DEPUTY CHAIRMAN: It is not a postponement. We want to vote on things which are clear and if Members are not clear, I do not think really there is need to vote on item when some delegates are not clear. So, I would agree with Hon. Kavuma, we adjourn, let us consult and then come up with something clearly done and 9.00 tomorrow, we stand adjourned.

(The Assembly rose and adjourned until Wednesday, 22nd March, 1995 at 9.00 a.m.)