



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

MONDAY, 22NDMAY 1995

MOTION:- Consideration of the Draft Constitution of the Republic of Uganda [Pg 4412]

Monday, 22nd May, 1995.

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

NATIONAL ANTHEM

PRAYERS

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

(The Assembly was called to order)

PRESENTATION OF REPORTS FROM
COMMITTEES.

THE CHAIRMAN: I would have expected that Committee Five would present their report by laying it on the Table this morning. We can get any Member of the Committee to lay it.

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

CHAPTER SIX - REPRESENTATION OF
THE PEOPLE.

Article 84 - Right to Vote.

THE CHAIRMAN: The Chairman of Committee Five has laid the Committee's Report on the Table and I would now like to give him the Floor to present the report now. He may have general observations to make and then we go on to do the report article by article.

MR. OKULA CHARLES (Soroti County): Thank you Mr. Chairman. It is not my habit to disrupt business but, Mr. Chairman, having observed the numbers in this House and looking at the Order Paper, the matters to be discussed are very crucial, I would like to raise your attention to the lack of quorum in this House. I think this House cannot continue in these numbers. I thank you Mr. Chairman.

THE CHAIRMAN: Well, we shall proceed to count, but one can also argue that Members are not interested in the subject matter, otherwise they would be here. It is 10.00 O'clock, where are they?

MR. OKULA: Mr. Chairman, that is no reason why we should break our rules.

MR. KABUGO (Nakaseke): Mr. Chairman, when we adjourned on Thursday we were considering Hon. Kaberuka's report and we never decided on it. Now we seem to be leaving it uncompleted and moving to discuss a different Chapter altogether. Are we in order, Mr. Chairman?

THE CHAIRMAN: Yes, we are in order. The matters which were just being considered are just a mop up operation on matters which we stood over as we got ourselves ready to discuss more substantive matters of this nature. Now, according to our Time Table we are behind schedule. We are supposed to be finishing the consideration stage according to the time-table we were given by our Task Force on the 24th of this month but as you can see we are lagging, because we took more time on land than we thought we would take. I had, in fact, informed many Members here that we would start today on Chapter Six, that message had gone out and even the Clerk sent out a circular that we would start on Chapter Six today. We shall mop up those matters, when we have finished Chapter Six together with all the other small outstanding matters such as the question of election of women and the question of Ministers whether they are to remain Members or not. Now, the count is that we have 65 Delegates present which is even less than half the quorum. I will suspend the House for 15 minutes and if by the close of the 15 minutes we do not have the numbers we shall adjourn the House. That is what our Rules say. Once you start the machinery into motion then you must follow the machinery. So we are now suspended for 15 minutes. We will remain here, those of us who would like to stay can stay in here as others come in and we watch the 15 minutes. I thank you.

(The Asssembly was suspended for 15 minutes)

THE CHAIRMAN: It is more than 15 minutes since we suspended. If you take into account the Members just arriving, we have 81 Members and therefore in accordance with the rules, I will adjourn the House to 2.30 p.m. We stand adjourned. Thank you.

*(The Assembly was adjourned to 2.30 p.m of the
same day)*

THE CHAIRMAN: When we adjourned this morning for lack of quorum, I was about to call upon the Chairman of Committee Five who had laid a copy of their report on the Table to present the report by making general remarks. After the remarks, we shall proceed as usual considering each recommendation from the Committee article by article as required by the Rules of Procedure. I, therefore, give the Floor to Hon. Sam Kutesa, Chairman of the Committee, to introduce the report of Committee Five on Chapter Six - Representation of the people. Hon. Sam Kutesa you have the Floor.

MR. SAM KUTESA (Mawogola County): Mr. Chairman, thank you very much. Mr. Chairman, Committee Five had two Chapters to consider The first one being the Representation of the People and the other one being the Transitional Clauses in this Draft Constitution.

The Representation of the People is in Chapter Six and it has eighteen articles. It originally had sixteen but we have added another one as you will see in our Report.

Mr. Chairman, when we started our deliberations as a committee we decided to re-open general debate on the provisions of this Chapter. We could only do this by suspending the rules because there could not have been a general debate entertained in the consideration stages. The intention was that we could then in a more cordial atmosphere be able to discuss the provisions of this Chapter.

We also elected our own internal synchronisation committee which was composed of Hon. Faith Mwendha; Hon. Winnie Byanyima; Hon. Kawanga John; Hon. Patrick Mwendha; Hon. Lagada Beatrice; Hon. Obiga Kania and Hon. Aston Kajara. The function of this sub-committee was to synchronise the amendments on every article or clause that came before the committee. All the amendments, Mr. Chairman, which were brought before the Committee were considered.

Amendments were also moved from the Floor directly even without having been synchronised sometimes but this was okay in accordance with Rule 15 of the Rules.

We proceeded to debate article by article and I must say that our discussions were straight-forward. Every view point was put across as frankly and as

forcefully as it could be, but sometimes as I said, we did as it were get hot under the collar and for a short period, Mr. Chairman, some Delegates objected to a ruling I made and they moved out of the committee.

After your intervention, Mr. Chairman, the Members who walked out of the committee returned and deliberations continued until the committee completed its task.

Mr. Chairman, this report shows what has been recommended by the committee. We also tried to write out the rationale behind that recommendation. We have also, so as to give the Plenary the opportunity the full picture of what transpired in our committee, reproduced all the amendments that were tabled and we have shown whether they were rejected or accepted and the rationale used by the committee to accept or reject them. Mr. Chairman, there is no motion that was moved, and no proposed amendment that was moved, that is not shown in this report.

Our progress, Mr. Chairman, was very smooth up to Article 94 of this report and it was when we reached Article 94 that certain, disagreements emerged and after your intervention it was agreed that Members should come back and we debate these Articles so that a minority report if any could be filed alongside and these issues may well be re-discussed at this level.

Unfortunately, Mr. Chairman, according to the rules, only people who were present and participated in the discussions and voted and became either a majority or a minority can file a report.

There is a minority report on Article 94 to 100, but that could only have been moved by either Hon. David Mwaka or Hon. John Kawanga who did oppose those Articles or some of those Articles. We are due to verify whether this minority report which has been handed over to me and to the Clerk was indeed filed by Hon. David Mwaka or Hon. Kawanga. It is certainly not filed by hon. John Kawanga but as soon as we establish that the report is by Hon. Mwaka we shall in accordance with the rules circulate it before we get to Article 94 where it falls appropriately.

Mr. Chairman, I take this opportunity to thank the Delegates in Select Committee Five for their par-

icipation and cooperation. On my part, I must say that I strove to attain some consensus on every clause, but by the nature of the subject matter this was not possible and we were forced to resort to voting on a number of occasions. This, of course, introduces what we least wanted having to have a majority or a minority on any particular issue. Our desired goal would have been to reach consensus but this was not possible as I said, and we must appreciate as I believe Sir Winston Churchill once did, that democracy is the worst form of government except that there is none better.

Mr. Chairman, in concluding my remarks let me draw the attention of this plenary session to the fact that the recommendations that had been originally made by the committee in Article 85(1) and (2) have been rephrased by the technical committee, by dropping the word “independent electoral commission” and that the committee has transferred that to Article 87 in this report.

Article 88(2) has also been re-drafted by the technical committee to reflect the fact that the commission is to demarcate the constituencies after Parliament has determined their number. And in Article 97, Clause (1) has been re-drafted to eliminate the word “abeyance” in relation to political parties.

Mr. Chairman, the rest of the Articles are presented in this report as they were passed by the committee. There is a minority report which is contained in this report also under Article 94. This was allowed in by the technical committee although it was never properly presented before the whole committee.

That notwithstanding, Mr. Chairman, I believe that where there is a minority report it is only appropriate that we consider it rather than waste time in waiting for it to be moved as a separate amendment.

Mr. Chairman, Hon. Delegates, I beg to move that we consider the report of Committee Five on Chapter Six of this Draft Constitution entitled Representation of the people. I thank you.

THE CHAIRMAN: Thank you Hon. Kutesa and Members of your Committee for your work in producing this report which will guide us in considering Chapter Six of the Draft Constitution. As I indicated earlier we will proceed recommendation by recommendation appearing at various Articles, and where we have a minority report we will first consider the minority report.

Our practise has been that we take advantage of the depth of the work done by the committee and not to repeat full debates as if matters were never considered in the committee but, of course, this does not mean that the House abdicates the right to revisit or re-open a matter, the importance of which so requires. Because what really we should do is to find answers to issues rather than be tied down by procedure.

I will, therefore, now be calling upon the Chairman to be introducing the various recommendations. Hon. Kitariko, you have just arrived. Are you sure your question has not been answered by the Chairman?

MR. KITARIKO: No, Mr. Chairman. I believe, Mr. Chairman, we must have proper recording of these proceedings and I believe that on Page 3 paragraph 2 on top, does not cover what really transpired. Mr. Chairman, you will recall that we met you in the Nile Hotel and we agreed on certain issues, that paragraph 2 on top of that page is incomplete.

THE CHAIRMAN: What does it read?

MR. KITARIKO: After Delegates had walked out and had sought the opinion of the Legal and Drafting Committee, an understanding was brokered, Mr. Chairman, with your Committee and the Drafting Committee but you will remember that we were agreed that what had brought us there was to discuss Article 94 as passed by the Committee and that it will be re-opened for discussion when we resume the plenary.

THE CHAIRMAN: Yes, but you see that cannot be part of the report. That was an undertaking between the Chairman of the plenary and some Members who came to visit him with the Legal and Drafting Committee. So this cannot be part of the Report of Committee Five except to say as they do say that some Members walked out and when the Chairman intervened, they came back. When we come to that point, then you can remind the Chairman of the Plenary of his undertaking. I think that is the better procedure.

MR. KITARIKO: Fine. My point has been made.

MR. OMARA ATUBO (Otuke county): Mr. Chairman, in the report just presented by Hon. Sam Kutesa, he mentioned an incident which took place

when some Delegates did walk out and this is contained in the second last paragraph of page 3. It reads, "after the Delegates who had walked out had sought the opinion of the Legal and Drafting Committee (LDC), an understanding was reached between the LDC, the Chairman of the Constituent Assembly, the Chairman of the Legal and Drafting Committee and the Chairman of the Select Committee Five, which made the Delegates who had walked out to return to the proceedings of the Committee."

Furthermore, the committee Chairman, Sam Kutesa also said that the minority report technically could only be filed by either John Kawanga or David Mwaka, I do not know why he thinks only these two people should have filed the minority report. Is it because of what he perceives as their ideological inclinations?

He also went ahead and talked about the legal validity of the minority report. Mr. Chairman, since this is an introductory report, an introductory remark by the Chairman of the Committee and we were not in that committee, I would be pleased, Mr. Chairman, if you or him could guide me and others what this understanding was, because it is contained in the preface, that is one and two. Further clarification is also needed on this issue of who filed the minority report and his legal validity. I think these are very fundamental issues. If they could be cleared before we proceed, I will be pleased. Mr. Chairman, thank you.

THE CHAIRMAN: I will give the Floor to the Chairman of the Committee. Since you are quoting his statements.

MR. SAM KUTESA: Mr. Chairman, with regard to the first question raised by Hon. Omara Atubo which is what is this understanding that was reached between the various parties at the meeting which you chaired.

First of all, let me say that this was not a meeting between Members of Committee Five and you and the Legal Drafting Committee and myself. It was a meeting which you called and was attended by the Chairman and Deputy Chairman and Members of the National Caucus for Democracy, and I attended it as Chairman of Committee Five and there was the Chairman of the Legal and Drafting Committee.

It is, therefore, very difficult and I think not right that in the report of the Committee Five I should include matters that were being discussed between the Chairman of the Assembly and the Caucus for National Democracy because this is not a report of the caucus for National Democracy.

That be as it may, Mr. Chairman, what was understood was that the Members who had gone out of the committee would return to the committee and deliberations would continue and that if they wished to re-open any matter that had been decided upon in the committee in their absence they would seek your indulgence which you said you would generously grant. That I understand was the understanding to my recollection of what was in the meeting.

With regard to issue No.2 as to who files a minority report, my understanding of the rules strengthened by your communication to the Caucus for National Democracy, with regard to a meeting that we subsequently held and was chaired by you, my understanding was that unless there is a minority on any matter, that matter cannot be a subject of a minority report.

Now, it is those who attended the meeting and who constituted a minority that could write a minority report such that if I was absent and I disagreed with a matter I could not, in accordance to your guidance in that letter and according to the rules, not submit a minority report. That does not stop me as a member of the committee to subsequently move an amendment, but to be able to file a report of a committee which must be the majority report and a minority report, my understanding is that the minority must have existed and must have said we have strong feelings on this matter and we shall submit a minority report and in the case of Articles under 94 where minority report does arise, the only people in our Committee who were present and voted against some of those recommendations that are contained in this report were Hon. David Mwaka and Hon. John Kawanga.

Whether you are one person or two people you can constitute a minority, but I think it was a requirement that you be there and you vote against and then say that you feel strongly about this and it should be included in a minority report. Mr. Chairman, of course, I am subject to your guidance of the interpretations of these rules but such is my understanding. I thank you.

THE CHAIRMAN: I think let us not waste time on matters before we come to them. When some Members of Committee Five walked out, their leadership wrote to me pointing out their unhappiness with the way the Chairman of the committee had handled the proceedings in relation to Article 94, and in that letter they said that unless the situation was rectified, they would have no choice but to submit a minority report. I wrote back to them and I said that having looked at the names of those who wrote to me there are some of those who walked out.

When the decisions were being made in the committee on those Articles, some of these members were not there and it is quite simple you cannot write a minority report of a meeting you have not attended. You can only write a minority report where you have taken part in the decision either disagreeing or agreeing with it but being defeated. Now, if you have not been there to be part of the decisions either for or against then you cannot file a minority report and I put those things in writing.

Subsequent to that is when I called a meeting, which Chairman Kutesa refers to, where we discussed the way things were handled. We do not have to go into those, it is a very detailed matter and that at the end of the day we agreed on a number of things.

The Chairman of the committee would report the proceedings of the committee as they are to the plenary. That one we agreed. The Members who had walked out would go back and pick up where the committee was and proceed; and that because of the gravity of the matters involved in Article 94 either we can re-open it by way of a minority report if any of the Members who attended are prepared to submit one, but even in the absence of a minority report we could reconsider or re-open the subject matter on 94 and have a full debate on this subject. That was the understanding. So now we have not reached there yet, let us not get excited.

Let us start the report as it is, and work towards that, and when we reach there please do not forget to remind the Chairman that he made some an undertaking. It is at that point that you should remind the Chairman but not now. It is a bit too early. I think let us do it this way. There is a report before us, we are at Article 84. Let the Chairman of the Committee take us through the report and other matters will unfold as we go along.

MR. SAM KUTESA: Mr. Chairman, the Committee recommends that Clause 1 of Article 84 be retained as it appears in the Draft Constitution to read that "*Every citizen of Uganda of eighteen years of age or above is entitled to vote and to be registered as a voter for the purpose of public elections and referenda.*".

MR. PATRICK MWONDHA (Bukooli County North): Thank you, Mr. Chairman. I am a member of Committee Five but I am just seeking the indulgence of the Chairman on a second thought, that does he not think a difference exists between entitlement and a right? And if it does, could we not rather say that every citizen of Uganda of eighteen years of age or above has the right to vote? After all I see the marginal title reads the right to vote.

THE CHAIRMAN: Hon. Sam Kutesa, what do you say to that?

MR. SAM KUTESA: Mr. Chairman, we did see that one, and Hon. Mwendha was present as he has told you, but we felt that if you are entitled to vote then indeed you have the right and we did not see any need to interfere with the construction by the Constitutional Commission.

But also there are instances I think where even if you are eighteen years old you may not be able to register and vote. Suppose you were in prison, you may not be able to vote although as a citizen you are entitled. You could not go to prison and enforce your right that they must bring a ballot box and you vote there because I think that is one of those circumstances where you lose some of your liberties. So we thought that the word "*entitled*" did indeed guarantee the rights, but you do not have to say that you have a right to vote. Otherwise, we have no hard feelings about it.

MR. SAM RINGWEGI (Padyere County): Thank you very much, Mr. Chairman. Mr. Chairman, I rose my hand because I was getting disturbed by what the Chairman of the Select Committee Five is telling the Assembly. Mr. Chairman when we talk about an entitlement, to my mind we are talking about a privilege but not a right, and since he seems to be conceding that he does not have any hard feelings I therefore, do not see any reasons why he should try to confuse the Assembly by saying that even prisoners do not have the right to vote.

I recall very well that, only last week, when we were debating on the fundamental human rights and certain rights which should not be derogated upon, we said that even prisoners have the right to vote only that they have not been brought in because the Electoral Commission which is the administrative unit has not been making arrangements.

We have not provided anywhere in our laws neither in any Constitution or a Statute that prisoners do not have any right to vote. Therefore, that should not be used as an argument now to try and deprive them. I therefore would second if Hon. Mwondha would move that instead of having the word "Entitlement" we replace it with the phrase "Right to vote". I thank you Mr. Chairman.

MR. DAMIANO LUBEGA (Lubaga Division South): Thank you very much Mr. Chairman. Mr. Chairman, the meaning attached to the word "Entitle" implies that one has to give or be given a right, whereas in the other expression one has a right. It is inherent. The Dictionary meaning of "entitle" is to give a right to but the other meaning is you have inherent the right. So probably this august Assembly may decide in the light of this clarification.

MR. OKULA (Soroti): I thank you Mr. Chairman. I have one observation to make. As other Delegates have observed, an entitlement is revocable. It can be revoked. A right cannot be revoked. So I would rather go for a right. Thank you.

THE CHAIRMAN: I think we can take this one. We put there the word "right", since the Chairman has no strong feelings either way. So the rest should be for the technical committee actually. Agreed. Next.

MR. SAM KUTESA: Mr. Chairman, the Committee recommends that Clause 2 of Article 84 be retained as it stands in the Draft Constitution to read "It is the duty of every citizen of Uganda of eighteen years of age or above to be registered as a voter for public elections and referenda".

Mr. Chairman, the intention here was that we should try and create a civic duty on the citizens of Uganda who are qualified to vote to do so. Originally there was one about voting but we did not want to appear as if we want to compel anybody to vote but we thought that registration should be as much as possible be made a civic duty to every citizen of the age of eighteen.

MR. BEN WACHA: Mr. Chairman, I have a problem with the word "duty" as it appears in Clause 2. We have already passed under Clause 1 that every Ugandan has a right to vote and to be registered. Now, I do not see why we are contradicting ourselves by bringing in a punitive provision under Clause 2. If I have a right I think I am entitled to utilise my right the way I like, and I should not be seen to be penalised for not utilising my right if I do not want to.

THE CHAIRMAN: I thought that where you have a right you have a duty but, of course, this sounds more of what we wrote in the general principles. Didn't we say something about it, in the Directive Principles of National Policy? I think it was amended to make it less obligatory.

MR. BEN WACHA: Mr. Chairman, under what we have now agreed to be Chapter One I do not think the provisions there are enforceable. However, you are now providing an enforceable provision under this Clause, where I can be subjected to legal charges if I do not exercise them. It is not purely correct to say that in every instance where you have a right you have a duty. There are certain circumstances, yes, but not in all of them.

MR. ATAMUVAKU (Arua Municipality): Mr. Chairman, I speak from where Hon. Ben Wacha has left. It will appear to be in general terms, that whenever you have a right to have a duty imposed upon you. But in some situations the contrary may be correct and right.

Mr. Chairman, in an exercise which involves voting, or casting of a vote in a referendum, sometimes the citizen may best express his or her opinion by abstaining from voting. For instance, the options offered in a referendum could be to choose between the devil and the gipsy, and so the voter will say that since it is my right to vote I therefore vote against both situations by abstaining. So the duty of voting may silently be imposed upon him by the mood of that expression may be by divorcing him or herself from the whole electoral exercise.

If we put this provision as it is, it follows that such a citizen will not enjoy the right fully. You will have constrained the citizen from abstaining from choosing between the devil or the gipsy. I therefore beg to say that it ought not to be put as a duty. Thank you.

THE CHAIRMAN: I think we are discussing whether there should be voting or not, but the provision is talking about registration actually.

MR. GEORGE MASIKA (Mbale Municipality): Thank you Mr. Chairman. If Clause 2, is approved as it is, it would mean that the State or Parliament will make a law which will force every Ugandan of eighteen years and above to register. Is that the purpose for which this clause is intended? I think, Mr. Chairman, that a person who has a right to vote has also a right not to vote if he chooses not to. To force him to register, I think, is not in the good interest of this Constitution and it should not therefore be a duty to register unless we want every adult of eighteen years and above to register and vote.

THE CHAIRMAN: Okay, let me hear one or two Delegates before we make a decision.

MRS RWABYOMERE (Presidential Nominee): Mr. Chairman, I would like to support this Clause as it is, because it in no way connotes the idea of coercion in voting. Infact, this Article - sub-clause for that matter does not refer to voting, it refers to registration of voters. It is very important, even if there are those people who are not going to vote, that we know who voted and who did not vote. Also, Mr. Chairman, in this age, for the purposes of statistics we must have a register. If we have mentioned that every one of the age of eighteen and above has a right to vote, we therefore should have them registered so that we shall know how many people voted and how many, abstained. That is that. It is just that a duty in no way implies that you have to force people to vote. Thank you Mr. Chairman.

MR. BEN WACHA: Mr. Chairman, I wanted Hon. Rwabyomere to clarify, what the position would be for any abstainee, after we make a provision under this clause and then Parliament enacts a Statute which obliges everybody to register in a registry of voters.

THE CHAIRMAN: Before we go into arguments, is there any Member who remembers what we agreed to in the General Principles? Anyone with a memory of this? Yes, can Hon. Byarugaba read to us, what we approved.

MR. BYARUGABA (Isingiro South): Thank you very much Mr. Chairman. If my memory

serves me right, Mr. Chairman, I would like to refer you to page 17 of the Draft Constitution, Article 47, sub-clause (h) - Clause 1 (h) which reads "*It shall be the duty of every citizen of Uganda to register for electoral purposes*". As I remember, we properly passed this one. Don't you think we are wasting a lot of time on this one, Mr. Chairman?

THE CHAIRMAN: But I think that was amended by Hon. Moses Ali who is just arriving. Could Hon. Moses Ali hurry up and give us his memory of this, after Hon. Kivagama?

MR. KIWAGAMA: Thank you very much Mr. Chairman. In fact, I seconded Hon. Moses Ali to move an amendment to this, but the amendment was defeated, since we were seeking to make even voting compulsory. We retained compulsory duty to register for electoral purposes. This one was retained.

DR. CHEBROT (Tingey County): Thank you very much Mr. Chairman. Mr. Chairman, I feel very strongly that this Clause should be retained as it is, because there are unique situations which can occur, whereby a voter or voters can be intimidated by a certain group of political leaders within their own area against voting on a particular issue, but with this, the populace can equally intimidate them. So now it is important that they should be actually forced to register as voters.

MRS. KALEMA (Kiboga): Thank you, Mr. Chairman. Mr. Chairman, I feel that this clause should be retained.

Looking on Page 5, Clause 3 and 4, I remember that when we were debating this Article, we considered it necessary to make it obligatory or rather see that the State takes every possible steps to facilitate all the citizens to be able to vote; because one of the complaints particularly during the recent elections was that people were not given enough opportunity to register and many people were not given enough opportunity to vote, including some who had registered.

Mr. Chairman when we look at Clause 3, I would like Hon. Delegates to look at Clause 3, Page 5, which we are coming to after this one, you will find it written that the State shall take all the necessary steps to ensure that all citizens qualified to vote exercise their right to vote and no impediment shall be placed on the exercise of that right.

Now, Mr. Chairman, if the government is going to be given this responsibility and commitment to see that it helps every citizen to vote, how will it be able to plan in order to make this possible, by implementing the facilitation if it does not have the number of Ugandans who have registered? So I think it is out of place for some Members to feel that even registration should be optional. Mr. Chairman, this Clause should remain. thank you.

MR. MEDI KAGGWA (Kawempe Division South): Thank you Mr. Chairman. My prayer to the Members is very simple that I appreciate the worry that the word "duty" imposes an obligation, but also as the learned friends will know, to every general rule there is an exception.

If the registration is going to be made mandatory and circumstances do not allow a person to register, I do not see a State going out to prosecute that person. But if we are to take active participation in the running of the country I think it should be a duty which corresponds with the right we have just passed in (1). So I beg the Members to appreciate and to pass this provision. Thank you Mr. Chairman.

MR. NASASIRA (Kazo county): Thank you very much, Mr. Chairman. As we were discussing this Article, the Chair and some people referred to what we passed under the National Objective. In fact when you look at the National Objectives, the Committee was advised that they should shift the duties of a citizen under National Objectives to Chapter Four which deals with citizenship, and unless I am corrected otherwise, under Chapter Four, Article 47, (1) which states "it shall be the duty of every citizen of Uganda (a), (b), (c) and so on under (h) it says, to register for electoral purposes. Mr. Chairman, therefore, I feel that unless I have got the wrong part of Chapter Four, Article 47 in this report which I have, Article 47 (1) (h) is stating what is stated in Article 2 of the current Chapter we are considering.

BRIG. KYALIGONZA (Buhaguzi county): Thank you Mr. Chairman. I am a member of Committee Five and during our deliberations in the committee, there were a number of issues that we had to put into consideration. One of them was to refresh our minds, on how not long ago some Members found themselves barred from participating in any electoral process because of differences

in political beliefs. Some Members were said to be uneducated when they were actually lecturers in the university. This is a situation that is likely to happen to future organisers of elections.

The first step was to guarantee the right of every adult citizen to vote; then as a second step we were creating an obligation to this citizen who had been given a right to vote to register. Then we also made it a condition to government to ensure that it is a duty of the State to make all the necessary provisions for the population to exercise their right to elect their leaders.

In short, Mr. Chairman, this has nothing to do with interests. We were considering the possible scenarios that could happen. Either the State could be an impediment to allow some of its citizens to vote, or as one Hon. Member has put it, some Members of the opposing political beliefs could intimidate or cause some members not to go and even register. But at the same time, it was also put into consideration that the obligation is not justiciable. One will not be taken to court when he has registered but he does not vote, because it was not implied that when you have registered you are obliged to vote. I am only highlighting the situation as it was during the meeting, which culminated into this recommendation. So I propose that Hon. Members consider this recommendation without bias and accept it as recommended. Thank you Mr. Chairman.

MR. RINGWEGI (Padyere County): I thank you Mr. Chairman. Mr. Chairman, I think we are just flogging a dead horse. We have already agreed in Clause 1 of this Article that we are giving a right. This right is a right to vote and also a right to be registered. I would like Hon. Delegates to read clause 1 very carefully. The argument has been that we have only given a right to vote but not a right to register, therefore, we need to go further and now provide for a duty to register.

We have in Clause 1, Mr. Chairman, said "every citizen of Uganda of eighteen years of age and above has a right to vote and to be registered as a voter for the purpose of public election and referendum". This, Mr. Chairman, to my mind, means that we have empowered every citizen of Uganda of a certain age to vote and also to be registered. Now, if we go ahead to provide for a duty to register, we are contradicting the right to register which we have given in one.

Mr. Chairman, by imposing this duty we are making it a penal requirement. We are, in other words, saying that any citizen who has this right to register as a voter and does not register as a voter must be penalised. Is that what we intend to do to our citizens?

MR. MULENGA (Democratic Party): Thank you Mr. Chairman. Mr. Chairman, a number of Delegates have drawn the attention of the House to Article 47 under citizenship. Article 47 provides for duties of a citizen. Among those duties is a duty to register for electoral purposes.

The question, therefore, should not be whether we should make that a duty or not, we have already decided on that. The question now is whether we need to repeat it in another Chapter, and in my view there is no need to do so and I think the Chairman to committee 5 can concede this point without any need for a Motion. If he does not, Mr. Chairman, I would move that we delete it.

THE CHAIRMAN: Hon. Sam Kutesa, do you not think that we are repeating ourselves, having approved it elsewhere as a duty for a citizen to register for electoral purposes?

MR. S. KUTESA: Mr. Chairman, from the face of it, it would appear as if it is a repetition but I would like to confirm, before I respond to Hon. Mulenga's remarks, whether 47 (h) was retained and also to know whether it does cover all public elections and referenda. Because clause 84.2 does actually spell out that it is for all public elections and referenda. Mr. Chairman, if I may just add, even if that had been passed, maybe, we should leave it to the Technical Committee to determine, whether this provision should be under the citizenship Chapter or the Chapter of people's representation. As long as it is covered and as long as it covers the entire subject, then I would only concede that we leave it to the Technical Committee to place it in its rightful home.

THE CHAIRMAN: I think that solves the matter. We do not want to state the same thing twice in one document. Let us leave it to the Technical Committee as the Chairman suggests, to find a home for it. If they think it is better here they leave it here, if they think it is better under the duties of citizenship they leave it there. Then we go on to the next one.

MR. S. KUTESA: Mr. Chairman, the committee recommends that clause 3 of article 84 be retained as it appears in the Draft Constitution to read as follows: "*The State shall take all necessary steps to ensure that all citizens qualified to vote exercise their right to vote and no impediment shall be placed on the exercise of that right.*"

THE CHAIRMAN: But Hon. Sam Kutesa, could I ask just for curiosity as Chairman; What is meant by 'no impediment shall be placed on the exercise of that right' supposing someone insists on voting at 8.00 p.m. and there is a law which says you can only vote up to 5.00p.m. and yet the Constitution says there shall be no impediment?

MR. S. KUTESA: The impediments we were contemplating, Mr. Chairman, were not when people come late, but when they come early and you have set up road-blocks until time for nomination has passed then you release them. That was our major worry. You see, it looks like it the only impediment with historical inkling in our circumstances.

THE CHAIRMAN: Don't you think that sounds more like something which we should put in the penal provisions of the electoral law, to handle any person (s) who hinders another from going for nominations..?

MR. S. KUTESA: Then I think, Mr. Chairman, we are putting in a clause for Parliament to create an offence. At least, the Constitution guarantees that and, maybe, the penal code shall prescribe a punishment.

THE CHAIRMAN: Are you suggesting, therefore, that it will be a useless argument to insist on voting at 8.00 p.m. because you have that right to vote and there is a law which is inferior to the Constitution saying vote only up to 5.00 O'clock?

MR. BAGEYA (Kigulu North): Mr. Chairman, the impediment being referred to here is very historical, at least in the African context.

THE CHAIRMAN: No, but I think we are not understanding each other. I am not saying that the provision is bad, but I am asking whether this is the proper home for it. Would it be in form of offences?

MR. BAGEYA: Mr. Chairman, I am strong about this. I think, we should leave it in this place because if it is not constitutionalised and we rely on what Parliament will put in place, they may not have a strong case to refer to. But if it is constitutionalised, that law will be respected. I am of a strong feeling that this is the right place for this particular case.

MR. ERESU ELYANU (Kaberamaldo): Mr. Chairman, we should realise we are writing a Constitution for a long time to come, and it must stay in place. It is also true as some Members have stated that there have been occasions in this country and in some other countries, that we may think of, where elections and nominations have been interrupted by some impediments that we have in mind. The question is, we must have good faith when we are writing a document of this kind, and I think, if we begin to prejudice our minds by quoting impediments in a Constitution, we are deviating from a good purpose. I propose that electoral laws that will be made by Parliament will cover some of these impediments that we think of, and I think, Parliament at that time will have the ability to draw up the necessary laws that the Electoral Commission will have, so that these impediments we think of will be dealt with there - *(Interruption)*.

COL.P. KUTESA: Point of clarification. Thank you Mr. Chairman, thank you. I would like the speaker to clarify on this; suppose a given Parliament of the day is full of people who are in that particular government, pro that impediment as they say it and there is an opposition; now, what guarantee do we have that Parliament will not pass some regulations which will facilitate the impediment? Thank you Mr. Chairman.

MR. ERESU: I would like to say that we have already passed a clause that every citizen has a right to vote. Therefore, if the Parliament of the day, Hon. Pecos Kutesa is imagining, passes laws which promotes the impediment the citizens have the right not to vote.

MR. SSEMOGERERE (South Busiro County): Mr. Chairman, as the Chairman of committee 5 has explained, what is being sought here is a constitutional protection against any impediment. This means, for instance, that when you make an electoral law this can be a measure as to whether that electoral law is really creating obstacles to voting. If you are deploying security agents under law, it

may be judged to be hurting or causing some difficulties regarding voting of citizens, and as to what to do, obviously that kind of law will then be seen to ultravire the Constitution and there can be remedy in the courts. I think that is the essence of this provision which I support.

MR. NDEGE (Luuka County): Thank you very much, Mr. Chairman. We have already passed a law requiring a citizen as a duty to register, and Hon. Rwabyomere said if she was President she would look for those who registered but did not vote. I, therefore, think that sub section 3 is giving the State the obligation that if you have registered as a duty, the State should in no way make it impossible for me to physically vote. So, I think, 3 is supplementing 1, the right to vote. We are telling the State that since I have a right to vote you have no right to fail me to vote by certain impediments like Nekyon faced at one time or another; all of us during the 1980 election, were subjected to so much ridicule. So, if we have already told the citizen to have a duty as a constitutional provision, we should also put a constitutional provision for the State not to make it difficult for me to exercise my right. I beg to move, Mr. Chairman.

THE CHAIRMAN: Let us hear from the Chairman of the committee. After these comments, what is your stand.

MR. S. KUTESA: Thank you Mr. Chairman. I think the question you posed was if someone came after 8.00 O'clock and the voting would have ended at 5.00 P.M., and you told him voting is over, would that be an impediment? Mr. Chairman, what is envisaged here is that there shall be time for voting and for end of voting. It is within that time when citizens are allowed to lawfully vote, that we are saying that no impediment should be placed before them, that will stop them from voting. It is not envisaged that if an election takes place in March and someone turns up in May he should say I want to vote. But it has to be within the time that is allocated by law that somebody's rights to vote should not be impeded. Mr. Chairman, I would appeal to Hon. Members that we pass this clause because it is meant to protect the ordinary citizens from the State causing the impediment.

MR. KIGAYE: Point of clarification. Mr. Chairman, I want the Chairman to clarify to me what would happen in case government failed to deliver

the voting materials in time? Because during the C.A. elections one of my subcounties had to vote the following day, because these voting materials were not delivered in time. In other areas they delivered some voting materials without the ballot papers!

THE CHAIRMAN: Anyway, Delegate, I think we have had an explanation from the Chairman of the committee. His understanding is that this is not an impediment. Hon. Katureebe, you do not seem to be happy.

MR. KATUREEBE (Bunyaruguru County): Thank you Mr. Chairman. Mr. Chairman, the question you raised earlier on is the exact difficulty I had with this clause, and maybe, the committee Chairman could help me understand it. It contains two principles a positive and a negative. On the positive side you are imposing an obligation on the state to ensure that a citizen exercises his right to vote. Then you bring in a negative that no impediment shall be put there.

Does this mean that all impediments are always put there by the State? What about your opponent who may organise his supporters and stop your supporters from voting? Is that not an impediment? is it envisaged here?

Mr. Chairman, I believe that as you pointed out, what we need to write here is the principle obliging the state, and then in the electoral law you would have to spell out that any person, any authority that imposes impediments would then suffer some penalties. That bit should not be in this Constitution.

THE CHAIRMAN: You see, to be fair the way it is written it assumes that all impediments come from government, because it goes on to spell out that the State shall take all necessary steps. The only thing that the state can do is to put Police on the way to make sure that you go and vote, if someone is trying to interrupt you.

But I think what we are looking at a situation where the State has made all the arrangement for you to go and vote, and either agents of the state or other people other than the state - if you remember the case of Minister Ngeyi in Kenya. I think he wanted to be returned unopposed like President Kenyatta, so he arranged for the arrest of his opponent, Ambassador Muli, who arrived with his papers, but he was held up and released soon after so that Ngei was also declared winner unopposed. Muli went to

court, they found that the facts were correct and under the electoral law conduct of that nature, you were prevented from taking part in politics for another five years. Ngei was as a result not only removed from the position, but he was not allowed to contest and was not available for contesting any election for another five years, except that the President pardoned him. So, that is what I was considering. You do not have to make it appear as if everything is coming from the State. There should be a provision which broadly covers conduct of that nature.

MR. ABU MAYANJA (Busujju County): Mr. Chairman, it seems to me that we are trying to limit the capacity of Parliament to make laws that derogate from these rights. We cannot in the Constitution provide for all sorts of administrative situations like timing, and I think, what Odoki's Commission wanted to say would be that the second leg of the clause should read to something like, 'Parliament shall make no law that makes impediments on the exercise'. I think it can also become unreasonable, if you think that even time situations, stopping drunkards and riots, should be carried by that clause.

But, Mr. Chairman, the action of people who are not government or Parliament cannot be prevented in the writing of the Constitution, because they will be unlawful in themselves. If Hon. Kalikwani comes and stops me from going to the polls, I may resist her using no more force than is necessary, and if I cannot I can look for assistance. The problem as I said is that we are trying to stop in the Constitution action by Parliament to unreasonably impede the exercise of the right to vote by the people of Uganda.

MR. NEKYON (Maruzi County): Mr. Chairman, I would want the Chairman of the Committee to consider this angle of this proposal. It seems to me that this provision is an off shot of what we have already decided on. When we are to put a duty on the citizen to register as a voter we are actually displacing the duty.

The duty properly lies on the state to register whoever has got a right to register as a voter. I say this because elsewhere we would have provided that we are going to have registers of births, register of death and, of course, register of those migrants outside Uganda.

Once this one is done, registration of voters will become an automatic matter, because whoever

reaches the age of 18 and has not died his name will be transferred from the birth register to the voters register, even without the knowledge of the voter, because it is his right to vote. This is what I am seeing for the future.

We are debating the present because we are still working on rudimentary systems, where somebody must go to a centre and say I want to be registered since he was hitherto not known to be a citizen. The only role that he would play would be to check whether his name has appeared or not. If his name is not there then the State is at fault. The duty is actually on the state and not on the individual citizen. So, when we say we must not allow the state to put impediments, we are contradicting ourselves.

For the case when a state puts an impediment like arresting me and locking me up, so that I may not register; this should not be provided by the Constitution. It has never been provided for in any Constitution. It is an illegal act in itself and constitutes an offence. So, do not think you will make anybody suffer this by leaving it out. If the state wants to commit any offence, whether you write it in the Constitution or not it will still commit any offence, because offence is outside the Constitution. So, I do not see any reason why we are providing this after having provided that we are going to have free and fair elections. Free and fair means I have to express my right freely and fairly as others are exercising theirs. That is why the Chairman brought in the question of, if somebody comes in at 8.00pm and says I want to vote do not put any impediment against him; he has to vote if you provide for that. But once you say it is free and fair, he has to come within time which is provided for all, and that is why we say it is fair because we are given the same time, and nobody allocates time on his own. We have had electoral laws and these impediments are provided in those laws. The electoral dos and don'ts are already incorporated. I, therefore, do not see the purpose of this provision.

MR. MALINGA (Usuk County): Thank you Mr. Chairman. Hon. Delegates, I see nothing wrong with this clause. I think we should accept it as it is. Unfortunately, as it appears in the report, the punctuation makes it difficult to accept it. I support this provision because, in spite of the remarks that the Chairman made, in the Constitution we are making limits as to what the state can do and what it cannot do.

Whereas the conduct of an individual participator in the election can be covered in the other law, it is important to limit the powers of the state in the Constitution. So, what we are saying is that we are imposing a duty on the state as onto what limits will be placed on an individual like Malinga in the electoral process. I think, this can easily come in the general law covering elections. I suggest that we accept this clause as it is, because it is only limiting or prescribing what the state can do or ought to do. Thank you.

DR. MIYINGO-KEZIMBIRA (Bukoto Mid-West): Thank you very much Mr. Chairman. Mr. Chairman, I find this provision very fitting to be here, because we have provided citizens and given them a duty to register and eventually we are giving them a duty to vote. In this provision, we are saying that while the citizens have also got a duty to register and vote, this State has also got an obligation to ensure that they do vote. So, I think the state should find all means to ensure that the citizens are not prohibited from voting.

Coming to what Hon. Nekyon has stated, registration of people at birth, yes I think even in developed countries that is what they do, and this is where they do it most. But I think they also register. Despite the fact they have got all the registers, these people come and register, and registration for the people is to be facilitated and any impediment even if that impediment is being produced by the ordinary citizen, maybe, opponent, government should use its machinery to ensure that the person who is going to vote is not impeded. So, Mr. Chairman, I support this clause to be retained.

MR. BIDANDISSALI (Nakawa Division): Mr. Chairman, first of all many of the Members who are supporting inclusion of this seem to focus at the experiences we have gone through in Uganda. I would like to point out that none of those experiences were put in place by the state, these were put in place by the actors in the individual political parties. Therefore, the inclusion of this particular clause does not necessarily answer the experiences which we think we are trying to address.

Mr. Chairman, some Hon. Members are saying that, a case like you have quoted, will be taken care of by the laws put in place by Parliament. I would like to say that I, as a citizen, can go on even to challenge a law put in place by Parliament if it is

against the Constitution. The Constitution says no impediment and you are now saying, but if you have an Ebola virus you can be prohibited and I can go and say under this law, 'no you have no right, the Constitution says no impediment.' So, Mr. Chairman, we should not hide behind this illusion that Parliament shall make necessary laws to take care of things like you are talking about, and this is only one example, there are so many others, like we have said the Ebola and so on.

Mr. Chairman, I concur with those who say that so far what has been provided in the statement that the state shall take all necessary steps to ensure that all citizen who qualify to vote exercise their rights to vote; if we stop there, it automatically means that the state is not entitled in any way to put any impediment of the nature that we are talking about, but at the same time it allows for the Parliament to put in place laws that will govern the exercising of these rights including impediment to the extent of timings. It is a situation that will endanger the other members of society. If it is a situation that your going to vote will prevent a hundred others not to vote, you know, Parliament can always put a law in place as long as this general provision is in place. Therefore, Mr. Chairman, I beg to officially move that this clause be amended by deleting the words '*and no impediments shall be placed on the exercise of that right*'.

THE CHAIRMAN: Is it seconded? It is seconded yes, I think, we have more or less debated it really. I will hear Hon. Loote first.

MR. OGWEL-LOOTE (Moroto Municipality): Thank you Mr. Chairman. Mr. Chairman, I oppose the Amendment because to the contrary of what Hon. Bidandi Ssali explained that there is no state that will bar the citizens from exercising their rights of voting - if I could remember, in 1980 there was UNLF which was to have been neutral, which was supposed to have been in transition, and during that time so there were parties, and so it was alleged that elections were rigged. This state power barred other parties or other electorates from voting, because it had an interest. So, if we have provisions as this one here, it provides the protection of the citizens to vote. We have given them the right to register, then those rights should be protected because these others - if the state power has interest in a political party - will automatically work means and ways of barring these people from going to

vote, and eventually, they will become impeded. So, I oppose the Amendment.

MR. TIBAMANYA (Kashari County): Thank you, Mr. Chairman. I support the Motion on the Floor. Perhaps the best argument presented by the Delegates wishing to retain the recommendation as it is, is that somebody in future may come and say to Parliament that you cannot make such a law because it is unconstitutional, it is an impediment. But, Mr. Chairman, having said in clause 1 that every citizen has a right to vote, and then saying in clause 3 that the state shall take necessary steps to ensure that all citizens qualified to vote exercise their rights to vote, then it follows automatically that no impediment should be legislated by Parliament or put in place by any state. Somebody automatically can come up and say such and such action is against the Constitution by virtue of clause 1 and clause 3 stopping their right to vote. So, this is just repetition and it should be removed. I thank you.

MR. ELYAU (Karaki County): Thank you Mr. Chairman. I have a problem with the Amendment for one thing; this word impediment it appears to me, that since we are now asking the state to be serious on the issue of registration and voting, and making sure that there shall not be any complaint of askaris being deployed to stop somebody from exercising his right of voting or even nomination.

I remember in one case in 1980 election, somebody hid a DP box in my area, and then voters were told that a DP box was rejected. Now, because the other man was very junior in politics he just surrendered. So, instead of voting for DP people then voted for UPM. You see, that something can happen and so this provision is addressing the state. I do not see why we fear these words. They are just being addressed to the state to make sure that the exercise is done without impediments, that is all. I oppose the Amendment.

MR. LULE WASSWA (Rubaga Division North): Thank you, Mr. Chairman. I support the Amendment of my brother Hon. Bidandi Ssali. As far as the wording at the end is concerned, I believe it is implicit that he who has been given the duty to take all necessary steps to ensure cannot at the same time be in a position to put impediment, it will be a contradiction. So, it is unnecessarily worded and it is actually confusing, and it will bring a problem of interpretation as Hon. Bidandi Ssali said.

There are circumstances where there are limitations. In Chapter 5 we passed article 72, the general limitation clause that enumerated circumstances under which there are limitations to whatever rights you have in the Constitution. Some of those rights as enumerated in that chapter indicate that there are certain limitations on the government, and I really do not believe that is actually necessary. As far as penalties and whatever law is made; I have had some arguments about penalties, but any law that is passed must have penalties, because that is the nature of law, you cannot have a law have penalties, because that is the nature of law.

I think there was a misunderstanding at some point and I contend that we delete those words, since they are confusing and can be subject to misinterpretation. They are likely to cause a lot of confusion in circumstances where there could be derogations that are necessary as Hon. Bidandi Ssali observed; like in the case of having a serious disease, an outbreak of some virus whereby you might need to contain people, which is of a greater interest to the public than simply to say that I have got to ensure that people have to vote. Hon. Chairman, with those few words, I would like to support the Motion.

THE CHAIRMAN: Can we decide on this? I think we have gone round and round. The Motion by Hon. Bidandi Ssali is for deletion of the words 'and no impediment shall be placed on the exercise of that right' - Hon. Karuhanga what Amendment?

MR. KARUHANGA: Mr. Chairman, I have discussed with Hon. Bidandi Ssali, I hope he does not have any objection to my Amendment. My Amendment would be that I support Hon. Bidandi up to the point where he stops and I would like to add the words as earlier on proposed by Hon. Nekyon, the words are; 'being in a free and fair atmosphere' so that the whole thing reads: "*The State shall take all necessary steps to ensure that all citizens qualified to vote exercise their right to vote in a free and fair atmosphere.*" Mr. Chairman, I beg to move.

THE CHAIRMAN: Is that seconded?

AN HON. DELEGATE: Seconded;

MR. KARUHANGA: Without those words this Amendment is the same as in 1 and 2;

THE CHAIRMAN: Okay, it is seconded. Let us hear George Patrick Kasajja who is a seconder.

MR. KASAJJA (Bulamogi County): Thank you very much, Mr. Chairman. Mr. Chairman, I support the Amendment as moved by Hon. Bidandi Ssali and the addition as brought by Hon. Elly Karuhanga. I support Hon. Bidandi Ssali because our objective is to reduce areas of conflict. One of the areas of conflict that we are trying to reduce here, Mr. Chairman, is the interpretation by the lawyers or anybody who will be looking at, say the electoral law in comparison to the Constitution. Because if we make an electoral law and we include say a time limit, somebody might come up and say it is unconstitutional for you to prevent me from voting, assuming we have included the word '*impediment*' in the Constitution.

Mr. Chairman, as Hon. Bidandi Ssali says, it is clear that this does not leave the state in a situation where somebody will come up and say, maybe, the state is trying to prevent so and so from voting or being registered. In that situation, this provision does not necessarily give an area where somebody can come up and confuse or bring up a case and say that there is a situation where somebody has been prevented or unduly treated in a situation of voting. Coming to the words of my brother Hon. Elly Karuhanga, Mr. Chairman, his words added do not have any conflicting situation they cause this Amendment, because it is a free and fair atmosphere we are trying to create.

We are trying to give a voter a climate where he can happily say that nobody has unnecessarily mistreated him. Hon. Karuhanga is, therefore, trying to say that in a free and fair atmosphere we are trying to give equal rights to any member who is going to vote.

Mr. Chairman, with those few words I say that this Amendment should be supported strongly because there is no harm in adopting it the way it is. Thank you Mr. Chairman.

DR. MUGYENYI (Isingiro North): Thank you Mr. Chairman. I support the Motion moved by Hon. Karuhanga in that it tries to make the statement complete. Otherwise, Mr. Chairman, if we remove the initial phrase as proposed by Hon.

Bidandi Ssali and left it at that, I think, we would be missing an important point which, according to our past history, has shown sinister circumstances in our electoral exercises.

I was opposed to the formulation as it was before Hon. Bidandi's amendment, because it has got a negative connotation. Even when it comes to interpretation, as lay persons, it may be very difficult for some of us to interpret the impediments, and as a result, the laws that may come thereof may, actually, be seen as impediment.

Hon. Karuhanga's Motion is trying to explain the import of what Hon. Bidandi Ssali has removed and to make it more meaningful, otherwise if you are just to leave it as 'exercising the right to vote and leave it there,' the voting atmosphere may be made so horrible that the man or woman may not be able to exercise his right although it may be guaranteed by the Constitution.

I appeal to Members to support this Motion, because it does not in any way harm the existing structure but it only adds on the meaning of the clause that the exercise of the right must be done in a fair and free manner. I thank you.

MR. LIIGA: Point of clarification. Thank you Mr. Chairman, I am seeking clarification from the movers; Hon. Bidandi Ssali and Hon. Karuhanga. We had a situation in 1980 where after the elections and during the counting of votes, a Decree or law was passed by the late Paul Muwanga stopping anybody from announcing the results of the election on a penalty of being imprisoned for five years and a very heavy fine. If the Movers can convince me that by deleting the words 'and no impediment shall be placed on the exercise of that right' that particular situation will be covered, I might be persuaded to support them. Can Hon. Bidandi Ssali clarify on this issue before I can fully contribute? Thank you Mr. Chairman.

THE CHAIRMAN: But did we not pass something which talked about who would announce results? We mentioned him in the Electoral Commission.

MR. LIIGA: Did we?

MR. WACHA: Point of clarification. Thank you Mr. Chairman. I want clarification from Hon. Elly

Karuhanga or any one of his supporters. My little knowledge of English 'else' means that in writing a full sentence all the words and clauses must relate to a certain subject. I think, I am right, to say that the meaning of everything before the phrase 'and no impediments,' relates to election, and the voting and the necessary steps to ensure that all citizens vote relate to elections. I am, therefore, clear in mind of what a free and a fair elections will be, but I am rather perturbed about a free and fair atmosphere. Now, as a lawyer, if I were to be asked in court what a free and fair atmosphere in respect to an election is, would it mean the absence of rain?

MR. MASIKA (Mbale Municipality): Thank you very much Mr. Chairman. I agree with Hon. Karuhanga in the thinking that there should be a free and fair atmosphere. But when you add that phrase to the Motion as it stood, you are actually, qualifying free and fair atmosphere only, perhaps, on the day the elections are being held. You are not relating to all the events and actions that take place before the actual day of voting.

As I see it, Mr. Chairman and Hon. Delegates, the fairness of the Amendment as it stood by Hon. Bidandi Ssali was for the state to facilitate and actually remove impediments. 'Facilitation for the state to ensure...' caters for the removal of any impediments and this rendered the last clause superfluous. That is to say, the clause reading 'and no impediment shall be placed on the exercise of the right to vote' is negatively repeating what the earlier phrase had said.

But if you add what Hon. Elly Karuhanga has said, you are limiting the full force and effect of the actual Amendment as it stands, to only one day or that part of voting and nothing more. For example, Mr. Chairman, an Hon. Member mentioned the right of the prisoners to vote. Now, here is a clause which in my view requests the State to ensure that prisoners, and Ugandans abroad are facilitated to vote. If they are not facilitated, there is an impediment. To my thinking, if you simply say 'and there shall be a free and fair atmosphere' you are not relating to these other Ugandans whose rights to vote are, actually, being impeded not on the day of voting but on all the processes before that particular day.

I suggest to the Hon. Delegates that while we delete the last one because I think it is superfluous, it is covered by the positive side of the earlier statement.

I do not agree with the addition of a fair and free atmosphere which restricts the full force of the earlier provision. Thank you Mr. Chairman.

THE CHAIRMAN: Can we decide on that now? The position is that there was a Motion by Hon. Bidandi Ssali seeking to delete the words 'and no impediments shall be placed on the exercise of that right' then Hon. Elly Karuhanga came in with a statement seeking to say in effect, delete those words but insert in their stay the words 'in a free and fair atmosphere'. The only way we can do it so that we are not unfair to Hon. Bidandi Ssali, is to take the one of Karuhanga first. He moved and it was seconded by Hon. Kasajja Patrick and a number of other Members including Hon. Mugenyi, but it was opposed by a number of others. Hon. Bidandi Ssali have you given way? Let us hear Hon. Bidandi Ssali.

MR. BIDANDI SSALI: Mr. Chairman, my Motion still stands please (*Applause*).

THE CHAIRMAN: Hon. Karuhanga, are you withdrawing or you want to continue and we vote on it?

MR. KARUHANGA: Mr. Chairman, if we could vote on Hon. Bidandi's first, and after that you allow me to improve on mine or you allow me to improve on mine now and then we vote on it.

THE CHAIRMAN: No. Hon. Elly Karuhanga, you came on the Floor on the vehicle of Amendment of Hon. Bidandi Ssali's motion, and now you want to ride another one?

MR. KARUHANGA: No. Following Hon. Masika's contribution which was very brief and brilliant, I thought that I could improve on my Amendment but it would then require a little debate. So, I want us to first get through Bidandi's and then maybe, Mr. Chairman, you allow me to -

THE CHAIRMAN: But you see, if we vote on Bidandi's motion and it is carried, then we cannot begin revisiting the same subject. Because if we took Bidandi's first and it was carried, you will have to suspend the rules to allow us go back to -

MR. KARUHANGA: You see, Mr. Chairman, if Hon. Bidandi's motion is lost then really we retain what we have and then I have no chance to present mine. So, can I go ahead and amend mine?

THE CHAIRMAN: Just a moment, we shall eventually hear from the Chairman of the Rules Committee but first, let us hear Hon. Lt. Col Kiiza Besigye.

LT. COLONEL KIIZA BESIGYE: Point of clarification. Mr. Chairman, I am seeking clarification on procedure. I support Hon. Bidandi Ssali's Amendment as it is, but I would like to introduce a new clause 3 which now would help to separate both arms as are presented in the current 3, so that Hon. Bidandi Ssali's motion is voted on as it is, but I introduce one which talks about impediment in a separate clause. I do not know whether by voting Hon. Bidandi's I will be regarded as out of order, if I come with a new 3. I wanted to bring a new 3 to say that subject to law no impediment shall be placed in the exercise of the right to vote, as a separate clause.

THE CHAIRMAN: Okay, let us first hear from the Chairman of the Rules Committee.

MR. OMARA ATUBO: Mr. Chairman, I think we are getting into a bit of problem because we are treating two Motions at the same time. Mr. Chairman, if you will recall Hon. Karuhanga and Kasajja moved their Motion on the assumption that the one of Bidandi Ssali was carried. In fact, what Hon. Karuhanga's motion is doing is to substitute the phrase 'and no impediment shall be placed on the exercise of that right.'

Since the Motion by Hon. Karuhanga is on that assumption, it will be better procedure if we first vote on the Motion by Hon. Bidandi Ssali, and then if Hon. Karuhanga would like to introduce further Amendment, which is not bad by that, because I also have a slight Amendment on this after the one of Bidandi Ssali, he can bring it, because it is not in conflict at all.

We have been confused over these two motions because we are debating them concurrently and Karuhanga's assumes that we have already carried the Motion of Bidandi Ssali. For procedures sake, let us dispose of the Motion by Hon. Bidandi Ssali and see if there are other Motions including that of Hon. Karuhanga, and Lt. Col. Besigye on the Motion or in addition to the Motion. Thank you Mr. Chairman.

THE CHAIRMAN: But, of course, Hon. Karuhanga did not say that. Hon. Karuhanga said he would like to amend the Motion by Hon. Bidandi Ssali if he did not mind and if he did not object. So, his was a Motion of Amendment seeking to amend, and therefore, in a way saying take the one of Bidandi Ssali and add the following words so that it is- delete 'and no impediment shall be placed on the exercise of that right', and substitute it with the words in a free and fair atmosphere. After debate, particularly, following Hon. George Masika's submission, it has become very clear that Hon. Elly Karuhanga is not very firm on his previous wording. Now, he says he would like to rephrase it. Let us first hear his rephrase and then we shall continue from there.

MR. KARUHANGA: I am grateful to you Mr. Chairman, and I want also to inform you that I have also discussed with Hon. Masika who has raised very good points, and he has now no objection with what I am going to say, (*Applause*) because I have taken into account his fears which were valid.

I would now like to change the word 'atmosphere', in order to accommodate Hon. Wacha as well. So that, my addition would read; the state shall take all necessary steps to ensure that, all citizens qualified to vote, exercise their right to vote, in a free and fair electoral process which is supposed to be open and free. So that it is not a one day affair, it is an entire programme.

MR. MASIKA: Thank you, Mr. Chairman. I did not move any Motion. I merely acted to what I thought was a limiting phrase to a very wide and effective Motion. I have indicated to Hon. Karuhanga that, I would not really object to that. It is the question of whether Hon. Bidandi Ssali also accepts to leave it where it is. But I think adding to what Hon. Omara Atubo said, Mr. Chairman, we can easy out this debate if we decide out on Hon. Bidandi Ssali's Motion to delete that last portion. If that passes, then I should imagine the rules still allow other Members to amend it. And in which case, Hon. Karuhanga's amendment, can then come in.

THE CHAIRMAN: Okay, let us do it this way. There is a proposition from Hon. Bidandi Ssali, that we drop those last words from *and to right*. Let us make our minds on that one first. I want to put the question on that. That the words 'and no impedi-

ment shall be placed on the exercise of that right' be deleted. Let me put the question, first.

(Question put and agreed to)

THE CHAIRMAN: The phrase now stops at the word vote. Now let us pick up other ideas.

MR. KARUHANGA: Thank you Mr. Chairman. Mr. Chairman, I beg to move an amendment to the one we have just passed, and immediately after the word 'vote', add the words " in a free and fair electoral process."

The reason is that, those who were supporting the old wording had expressed justified fears about impediments. And now, if we put in a positive way requesting that, the state should ensure that, such right of citizens who are qualified to vote exercise their right to vote and they do so with putting an obligation on the state that, the steps being taken to achieve that voting are ensuring a free and a fair electoral process.

This will also go through the entire spectrum of the law making exercise. It will go through to the Electoral Commission, the Parliament, returning officers, the people drawing the boundaries, supervisors of election, the Police and all the organs of state.

I think it is also important, considering our background, that our elections are grounded on the hard rock of the free and fair electoral process. Otherwise, there is no need for us even to engage in an election, if the free and fair electoral process is not guaranteed. We will no longer go around looking for Common Wealth people to come here and stamp, that elections were free and fair, in order to justify an election that was not. Mr. Chairman I beg to move.

MR. BATEGANYA: Thank you Mr. Chairman. I wish to support hon. Karuhanga. Because, with what we have witnessed in this country, it is impediments that have made it impossible for either voters exercising their mandate, or for candidates to present themselves to the electorate.

By defining that the state should facilitate the wananchi to exercise their mandate, either by presenting themselves to the electorate or by participating in the electoral process, we shall have gone

a long way, in implementing here, what the people sent us to do. I think it is high time that, we really said exactly what the people wanted us to have in this constitution.

The case is well put in the Odoki report, where the draft comes from, and I am sure that, if we pass Hon. Karuhanga's amendment, we shall have gone a long way in cementing the hopes that the people had when they sent us here.

Additionally, we have seen in this country, various opportunists trying to frustrate other Ugandans from exercising their mandate. And when we put the state in charge of affairs, I am sure in such an amendment we shall be achieving the fact that, it will give a state to ensure that, even opportunists and other people of whose intentions are taken care of by the state, to ensure that they do not frustrate Ugandans, from exercising their mandate to choose their governments freely and fairly. I think we are now tired enough of people who come in power through unconstitutional means.

If we clearly state it here, that wananchi in this country will now exercise or choose their leaders, through an electoral process, I am sure we shall be doing away with the people who grab power by unconstitutional means or retain it unconstitutionally. Thank you very much Mr. Chairman. I beg to support.

MR. MASALUMUSENE: Thank you Mr. Chairman. Mr. Chairman, one of the principles of constitution making is to be brief and concise. And I think we have all agreed that, we should make a Constitution which is clearly and easily understood by the population. But, what I see in adding the words 'in a free and fair electoral process,' is contrary to that principle.

This addition means that we have to qualify what constitutes a free and fair electoral process. It is subject to qualification, yet even the electoral process itself is a long matter. It starts from appointment of the Commission, it involves registration of voters, civic education and many other things. So, I feel all these are details which can be worked out by Parliament.

In a Constitution like this one, however, it is just smart and good to say that, 'the state shall take all necessary steps to ensure that, all citizens qualified

to vote, exercise their right to vote.' That is very clear and concise, and brief and to the point, all these other details, I feel should be left out for Parliament. Otherwise, they will make the whole thing, a bit ambiguous, which may necessitate more qualifications, resulting into here and there. Mr. Chairman, I oppose the Motion.

DR. OBUA OTOA: Thank you Mr. Chairman. Mr. Chairman, I also oppose this Motion. I do not see the necessity at all, in adding the words being proposed. It is just mere repetition. In any case, Mr. Chairman, we said we should not repeat ourselves so much in this Constitution. I do not know how many times, free and fair elections is going to be repeated.

We have it in article 86, that the duties of the Commission shall be to organise free and fair elections, and so on and so forth. Now, we are adding free and fair electoral process. Now, voting is part of a process, and it is very much, at the end of that process. Must we say that, at the end of a certain process, people have to be facilitated to vote. I think it is not necessary.

Having passed the Bidandi Ssali Amendment, Mr. Chairman, I think it is quite adequate for us to stop there. And there is no need for us to simply add words as if those words are absolutely necessary. I do not think they are, Mr. Chairman. I beg to oppose the amendment. Thank you.

MR. ATWOKI: Thank you Mr. Chairman. I raise to oppose this Motion. Mr. Chairman, the kind of impression I get is that, our mind has been thoroughly imprisoned by the experiences of the past, such that, whenever we try to make any provision in a Constitution, we are always suspicious. This has gone a long way to destroy our capabilities to write a concise and precise Constitution.

Mr. Chairman, my understanding of the provision in Clause 3 is that, it provides a general coverage of all the activities which are necessary to ensure that, all citizens who are qualified to vote, exercise their right to vote. Mr. Chairman, the provision covers activities like ensuring that; our least developed civil society is given enough civic education, that disabled people are availed with opportunity to vote and more. The provision as earlier moved by Hon. Bidandi Ssali also says that, it covers the aspect of updating the voters register.

Mr. Chairman, I feel the provision which states that the state shall take all necessary steps to ensure that, all citizens qualified to vote, exercise their right to vote, is enough. With this, I beg to oppose Hon. Karuhanga's Motion.

THE CHAIRMAN: Shouldn't we decide on this one? The Motion by Hon. Elly Karuhanga is, that we add words to the effect - Could you please help the Chair since your Motion was not in writing. The words you would like to be added.

MR. KARUHANGA: That the state shall take all necessary steps to ensure that, all citizens who qualify to vote, exercise their right to vote in a free and fair electoral process.

THE CHAIRMAN: Let me put the question on that one.

(Question put and negatived)

MR. OMARA ATUBO: Mr. Chairman, in Clause 1 and 2, we consistently used the words 'to Vote and to register', or 'to register and to vote'. In clause 3, we are saying the state shall take all necessary steps, to ensure that, all citizens qualified to vote, exercise their right to vote. I would like to find out from the Chairman of this Committee 5, why they did not deem it necessary to put in the duty of the state also to ensure that, all citizens qualified to register exercise their rights to register, since you cannot vote before you register.

I think the state also has a duty to facilitate people to register. And if he has no objection, I would move that, the word to register be introduced in the Clause. Thank you Mr. chairman.

MR. KUTESA: Mr. Chairman, I have no objection at all for the state ensuring that, a citizen who is qualified to register should be assisted to do so.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, I am being bothered by the statement, take all necessary steps to ensure that, the citizen does vote. Is it not that we are looking for obligation on a state to facilitate, instead of saying to ensure that, all citizens qualified to vote, exercise their rights to vote? Might it not be more appropriate to say that, the state shall take all necessary steps to facilitate all citizens qualified to vote to register and to vote? This would even cover the next clause of the disabled. Otherwise, I do not know what steps

are envisaged in this sense. Is it to go and drive them to the registration centres, make sure that they are there, and make sure that, they cast the vote? What steps are envisaged? Mr. Chairman, I would like clarification.

MR. KUTESA: Mr. Chairman, this statement as it has been explained before, comes from past incidents, where impediments have been put before citizens, and sometimes to the state itself not to help citizens to register.

What do we mean by the state here? We mean the Electoral Commission, which is carrying out the conduct of elections. We are saying that, the Electoral Commission should do everything possible to make sure that, a person who wants to vote can vote, provided he is doing it within the law.

We are not talking about giving vehicles to lift him to a polling station, although that could be facilitating of sorts. But we are saying that, every requirement for him to vote is guaranteed to this citizen.

The only other interpretation that, I have heard some people complain about, is that, the state shall take all necessary steps to ensure, would be subject to interpretation that, it can even force you. But that is not the intention. The intention is to make sure anybody who wants to vote can vote in accordance with the electoral process as laid out by the law.

Facilitating seems to be more towards enabling in the sense of being able to help them vote, but may be even help them physically. This, I think, may be a little more appropriate in the next article rather than this article 3.

MR. MOSES ALI: Thank you Mr. Chairman. I want to strongly support this clause, because in away it has brought back my amendment. It is only the state which is going to determine, or ensure that every qualified citizen or qualified voter votes.

Suppose at the time when everybody is ready to vote, I have changed my mind, and I do not want to vote, then you find a CGR or somebody on behalf of the state asking everybody to close shop, and go to vote. Who is going to restrain this man, right in the country side?

Who is going to stop the people from interpreting, that actually these people have been forced to vote. To ensure the voters vote is a case of you must. This

means that in whatever condition you are in, whether the ferry has broken down, you have to board a canoe, and cross to vote. Suppose you fear to board the canoe, because you might capsize, how are you going to explain this? I support this Motion very strongly because it has actually brought back from the back door the amendment that was defeated last time. Thank you.

THE CHAIRMAN: Hon. Moses Ali, I do not think it is mentioning any road blocks here. For the words 'to ensure' yes, but when you go to the words exercise their right, then it is facilitation moreless, as Hon. Mulenga said, rather than compulsion of the Members to vote. That is how I understand it. But I think we can say, we have spent quite a bit of time on this one. This is really wording for the Technical Committee to handle.

What is important is, that we should introduce into 3, the concept of registration so that, we are consistent as we were in one and two. That is to say the right to register and vote. But that again is for the Technical Committee. So, I take it that, we approve it as amended subject to re-drafting by the technical committee to bring in the concept of registration and as well to look at whether the word should be ensure or facilitate.

MR. ABU MAYANJA: Thank you very much Mr. Chairman. I wish the Chairman of Committee 5, could clarify this to me. You see we are imposing this obligation to ensure that people's rights to vote are not impeded, but the state has not been defined yet article 286 suggests that the state consists of many organs. There are those which were defined by president Museveni the one called the pillars of the state, as being the Police, the Army, the Civil Service, Judiciary. Now, the Chairman Hon. Sam Kuteesa, said that, the state means the Electoral Commission in this particular context. But it does not say so, and I would not like us to wake up only to find that this duty falls some where in between and there is nobody specifically responsible. May I know, and can we really be sure on what or who we are imposing this duty? If it is only government, would it not be better to say the government. That the government shall take heed. Or if it is an organ of the state to do this, let it be known so that when it is not done, an aggrieved citizen knows where to seek remedy. I thank you Mr. Chairman.

THE CHAIRMAN: Hon. Abu Mayanja, my understanding of this is that, it is a deliberate intention to use the word state. Because a multiplicity of state organs would be involved in the whole exercise. I would move away from the narrow interpretation of the Committee Chairman. For instance, let us assume, that there will be need for a law. What will have to be done? The Minister in charge of Constitutional matters or Electoral matters, will have to move cabinet that they approve a draft piece of legislation, providing for elections, that is to say, the organ of government. And then, you move on and see that, that law will eventually end up in Parliament, and therefore; Parliament will pass it. So, another organ of state is mixed up with it. And then, the Electoral Commission will implement it. Therefore, another organ of state is involved.

Therefore, in my view, it is safer to use the word state knowing that the governance of Uganda is in the hands of a set of people who will have to set the Motion. But if we say government, we may be even narrowing it, because we may later say, the Electoral Commission is independent of government. So, we want to leave it in that form knowing that all organs of state which are relevant will have to take part in making the arrangements necessary, to ensure that people vote, those that have the right, and also do register. If that be the case, I do not think we need to change it. But Chairman of the committee.

MR. MULENGA: Mr. Chairman, I agree with your interpretation, but it even goes beyond just Parliament. Because you may find that, for example on voting day itself, it may have to involve parts of the Local Government to enable people. So, we cannot really say, it is one particular agency of state. So, as you said, it is much safe to leave it as state, and then when it is being defined in the electoral laws, then we can point out exactly who is in charge of this machinery.

THE CHAIRMAN: Because even other organs like the police will have to come in, to protect the polling process, and so on. Okay, if we agree that way, then I call on the Committee Chairman, to go on the next clause.

MR. MULENGA: Mr. Chairman, the committee recommends that, a new clause 4, be introduced under article 84 to read; the state shall take all necessary steps to ensure that, all citizens with

disabilities or of advanced age quantified to vote, are facilitated at the place of registration, display of voters register and polling station. And Mr. Chairman, just like we did in 3 above, I would also have added the word in voting, registration, display of voters register and polling station. To make it complete, so that even at voting, they are facilitated.

MR. RWABIITA: Mr. Chairman, this is a good affirmative action for the old aged and the disabled. But could the Chairman of the committee clarify to us who is going to do this? Mr. Chairman, from the experience of last elections, it is the very people who are supposed to help these people who mislead them. For example, when the presiding officers see an old woman, and this old woman wants to vote number one on the card, they turn the card upside down and then they say, okay you put the finger print here. And she puts on number 4. This has happened during the last elections.

With this, who is going to see that this law is put in force? The very agents of government who are the presiding officers are the first offenders to mislead these old people. And when they get them, they have made their fake extra votes since they know, this old woman or the blind person, will just be manipulated. So, I would like the Chairman to tell us what guarantee he has to show that these presiding officers, will be fair and just to the law. Thank you very much Mr. Chairman.

MR. NGOBI: Thank you Mr. Chairman. I want to raise the same point for clarification. Because when you talk about advanced age, how far do you go? Are you going to list people who can no longer walk and carry them in order to vote? Are you going to take, although I am an old man - are you going to take people perhaps who are senile, because you want to boost a particular side of votes? I think the question of those with disabilities would include an old woman who is coming on a stick and you can help, because she is disabled to that extent. But to put in all advanced age, is I think taking it too far and possibly encouraging or leaving loopholes for rigging. Therefore, I would like that provision to be removed. But before I can specifically, ask for it to be removed, I would like an explanation from the Chairman, explaining why he thinks it is necessary to add advanced age. Thank you.

MR. TIBAMANYA: Thank you Mr. Chairman. I would also like clarification as to the extent of facilitation, by way of an example. If I have lost my

spectacles and I cannot read, I am at the voters register during display, and I demand that a new pair be bought for me to facilitate me to read the register, I mean this is stretching the agreement far. But suppose someone came up and said, I was not facilitated enough, there could even be more odd examples. So, what is the extent of the facilitation?

MRS. LAGADA: Thank you Mr. Chairman. Mr. Chairman, I think the question of facilitating people with disabilities, to enable them to register and to check whether their names are on the register vote, is quite a legitimate one. And I want to draw the attention of some Hon. Members to the fact, that we are saying these people are to be facilitated at the place. It means, that person of advanced age has already left his or her home and is actually at the centre. Which means that the person is able to vote.

The problem of someone being unable to read because he is blind, or forgot your spectacles, perhaps you ought to be able to say, I want to vote for Mr. So and So, which number is he? I think that is the type of facilitation we are talking about, Mr. Chairman.

Another Hon. Member asked of who is to do the facilitation? I hope that the electoral laws would point this out very clearly. Because I would like to agree that, we have had a lot of problems resulting from not knowing who is supposed to ensure facilitation. The people who were supposed to be impartial in helping people who wanted to vote for particular candidates in a few places, eventually turned out to be quite partial.

I imagine that is something which can be looked into, when Parliament is deciding who is playing which role. So, let us not ridicule this question of facilitation, it is a very legitimate provisal. I saw somebody being carried from Hospital, taken to a polling station, and if he was not assisted by the people who were there, he would not have been able to vote. So, I think this is a legitimate thing, that Committee 5 has put there. Thank you.

MISS. BYANYIMA: Thank you Mr. Chairman. Mr. Chairman, I am sympathetic with these laws. But I think that there are very many people out there who need help at registration and at polling, and these are the people who cannot read or write. They do not necessarily fall in the category of disability or advanced age, but they are there.

I recall very well that, at my election, there were many people who were trying to identify a woman with a head tie and were instead being led to a picture of a man with a beard. Some of these people are not even able to recognise a photograph. Recognising a photograph is already an amount of literacy, but very many people out there do not even have that literacy. I think that, this amendment therefore, needs to be revised so that it accommodates all these people out there, who cannot read or write or even identify a photograph. They are not necessarily people with disabilities or advanced age. I thank you Chairman.

MR. RUZINDANA: Thank you Mr. Chairman. Mr. Chairman, I find this clause unnecessary in view of number 3, which we have just passed. Number 3 covers all voters, all people who are eligible to vote, but Number four undermines the question of secrecy of voting and casting ballot. This is a loophole, that will undermine the legitimacy of an election. Most of us observed, that in the last election, this facility which is necessary to help voters was actually abused. Now, if we make it a Constitutional right, we even make it worse. I think that we should leave this one for legislation.

Mr. Chairman, we should leave this one to Parliament, during the debate or the electoral law. It is a temporary thing. Illiteracy should be temporary and in future we should be able to wipe it out. With it reduced, there may be no need to assist voters. But if we make it a Constitutional obligation on the state to assist voters, we are making it Constitutional to undermine the secret ballot, and I would rather leave number 3, which makes it an obligation of the state to facilitate everyone who is eligible to vote. And this includes people who have disabilities.

It imposes an obligation on the state to assist everyone who has a disability of any type whether seeing badly, whether illiterate, whether inability to recognise photographs and so on. But I do not think, it should be a constitutional obligation of the state to undermine a secret ballot, because we have no limitation.

What are disabilities? I have noticed that, with the spread of an illegal drink crude waragi, the sight of many people is actually, impaired, to the extent that they may not clearly see the person they want to see, because of this disability. It is also a disability.

There are many other such disabilities, Mr. Chairman. I stress, that number 3 caters for number 4 adequately. And I would like to suggest to committee number 5, that we actually delete this, as it is covered by number 3. Thank you Mr. Chairman.

MRS. MWESIGYE: Thank you Mr. Chairman. Mr. Chairman, I think it is a pity that this provision has been reduced to merely obscuring the secrecy of the voters. Mr. Chairman, we must recognise that, we have already entrenched in this Constitution, the principle of Affirmative Action. And we must be seen to promote and protect that principle.

Members who have debated, have failed to mention factors like the sign language with the deaf, which is very important, and should be catered for at the register display centres and at places of voting, and where the registers are displayed. There is what we call, braille, the language of the blind. What can stop the state or the electoral Commission in this respect to make such facilities available for the people with disabilities.

Mr. Chairman, some person has mentioned that the offenders are the officers of the Electoral Commission. But when you read the report of the Mbarara workshop, which was organised by the Electoral Commission, it highlights all those shortcomings that were associated with the last electoral process, and I believe with the establishment of an independent Electoral Commission, these are the issues that must be addressed. Who is the right person to lead an illiterate person, who cannot write, and cannot read? We cannot categorise illiterate people with people with disability. Because we must remember that, even within the illiterate class, you will still have people with disabilities.

So, I wish to beg Members here to support this provision because the facilitating we are talking about is not to transport these people, but it is just to make sure that their languages which they speak, which have been recognised, even at International level, are recognised by the Republic of Uganda. I thank you Chairman.

MR. MAZIMA ELIPHAZ: Thank you Mr. Chairman. Mr. Chairman, we are discussing a chapter on representation of the people. And if I could quote what has been said by the Chairman of the Committee, on page 1, somewhere he said and I quote : *recommending representation, that pro-*

motes and guarantees democratic, effective and particular participation of the people, and further guarantees and promotes accountability, rights and freedoms, stability, unity and development. What we are now saying is, while we are trying to pursue that, to protect that right, there is a problem, there are limitations. And how do we handle them? Now, what are these problems or what are these barriers? Which we can eliminate to enable this person to vote, to enable this person to register? I will cite examples from some specific groups. And what happened during the previous elections.

A blind person is entitled to have a person of his choice or an official, to read what is written on the ballot paper or to spell out, that so and so is number two or number three. For a deaf person, people all around you are making announcements, do this and that. There is nobody to interpret what is going on. This person is at loss. Somebody in wheel chair. You are to cross a certain ditch while going to cast your vote. These are the limitations you are talking about. What are the issues? May be, I should first of all, point out that it is good to generalise, but generalising has got its limitations. It tends to leave out certain details. And when certain details are left out, a problem comes in.

We are talking from experience, and a lot of people can witness to this. During the previous elections, many deaf people were not informed of what was going on. They came to register, but they did not know what to do; they came to vote, they did not know what to do. The blind people too were not properly guided, although there was that law and indeed there was an attempt to enforce it. But due to the fact that, it was done for the first time, people required experience and to get used to it.

We are now saying, that let it bear the obligation of the state, to ensure that, it is done and it is properly done. Some people were saying, who is to do it? Now, if the state can initiate, even relatives of these people can do it, so long as they are allowed to do so. And this one was rejected, during the previous elections. Some polling assistants, or other officials, could take a blind person and make him vote contrary to his wish. It happened. Now, we are saying, this person should be allowed to exercise his or her democratic right by voting through a person of his or her own choice.

The state should know, that there are people with these limitations who need a special consideration

and they should be facilitated at the polling stations, and at the places where they display the registers, and so on and so forth.

Another issue of the extent of disability was raised. What you are talking about is actually a problem, if you want to extend I do not have any problem. We are saying, in society there are problems which might stop or hinder what one is going to do, and how can these problems be addressed? If somebody forgot his spectacles, if this one could also be viewed as a problem and people could be reminded that, if you are using glasses, and if you come to vote, may be come with a spare one or something of the sort.

What we are saying is that the state gives it attention, so that it really addresses the problem other than leaving it generally. You are talking of a right to vote, and to register, but there are some limitations and we want the state to remove these limitations. Thank you Mr. Chairman.

MR. SEKWEYAMA: Thank you Mr. Chairman. I would like to support Hon. Ruzindana who said that, this provision in clause 4 is superfluous, and that what we want to cover here is already covered in Clause 3. In three we say *the state shall take all necessary steps to ensure that, all citizens whether they are disabled or not, all citizens qualify to vote, exercise their rights.* Now, I would think that, more than that, would come in the statute like it was last time when we went for CA elections.

It was provided that, those who need assistance should be assisted and the mode of assistance, was outlined. The only problem was that, some agents of the state, specifically the Electoral Commission whom we are now saying should be the ones, were actually not as impartial as they were expected to be. And even in some cases, where disabled people who wanted assistance brought their own relatives or people they trusted to assist them they were turned away. They were prevented from assisting them, because the agents of state had some vested interests.

I think that, provision number 3, is enough for Constitutional purposes. Mr. Chairman, since we are not agreed on the term, disabled just like Hon. Ngobi also pointed out on the term advanced age, it means that if we made this a Constitutional provision, then I do not see how the state would be able to deploy enough personnel, at each polling

station in order to assist the people who fall in the un defined category of the disabled.

I sympathise with those we traditionally understand as disabled. But what I am saying is that, we can use clause 3, to take care of such people when we are legislating under the election law. So, Mr. Chairman, I would like to support the deletion of clause 4. Thank you.

THE CHAIRMAN: Hon. Mazima had information. But, was it to inform the House or clarify something?

MR. MAZIMA: Point of information. Thank you. I want to inform the Members of the House, that there is a definition which is internationally accepted of who is defined as a disabled. So, the previous speaker should not mislead us. We are not dealing with an unknown. We are dealing with things that are known, internationally and Uganda is part of the International community. Thank you.

THE CHAIRMAN: Hon. Delegates, we have been having general comments on this matter. There is a view that, 3 covers it, but also there is a strong argument that the path we have taken of affirmative action requires, that we specifically talk about this one. Now, I do not think there is a strong feeling that, it should be removed. There is some feeling for deletion, but not very strong as far as I can survey the Floor.

MR. WANENDEYA: Thank you very much Mr. Chairman. Mr. Chairman, this clause must be left in, because of what went on last time in March 1994. Mr. Chairman, some of the state agents were the ones who were misleading some of the illiterate people by pointing to people who they wanted voted in.

The state should come in to assist, but I am saying that they should be assisted by relatives with the facilitation of the state. And therefore, Mr. Chairman, if the Chairman of the committee Hon. Kuteesa, would be agreeable, we could stop at the word disabilities in second line, and go on to say including the illiterates, assisted with a literate relative at the place of registration, display of voters register, and polling station.

Mr. Chairman, why I say a literate relative, is to ensure that, this man or woman or an old lady is

facilitated so that he is shown a person of his choice, as opposed to a polling agent who will twist him around as we have seen in the last elections. I urge Hon. Delegates, to make sure that a literate relative is the one to assist that person as opposed to a state agent. I thank you Mr. Chairman.

AN HON. DELEGATE: Thank you Mr. Chairman. Mr. Chairman, I see this Article is pregnant with so many words which will leave room for suspicion. I appeal to Members to send this article for refining to the legal and Drafting Committee. Take for instance, how can you determine the advanced age here? And who is to determine the advanced age?

I say this, with particular reference to Karamoja region where people do not even know when they were born and you cannot determine because of grey hair that he is old and he can be facilitated. I also get suspicion that, the word facilitating will tantamount to corruption, and rigging, because how many people can be facilitated here?

In Karamoja, you will find 99 percent of the people are illiterate, and definitely they can neither read nor deduce the number of the candidate they are supposed to vote, unless it is in their clear vision that, they see a picture of somebody they want to vote for. How then do you facilitate these people? When you use the word facilitating here, it means that you are to bring all these illiterates, and you show them the direction which may be biased to a candidate.

Mr. Chairman, I would like this article to be refined especially the word facilitation. In my own understanding, it creates a lot of suspicion and rigging.

MRS. MWONDHA: Point of information. Thank you very much, Mr. Chairman, and I thank the Hon. Member for leaving the Floor for the information. Mr. Chairman, I would like to assure the Hon. Delegate, that he should not be worried about how these people are going to be facilitated, because it has already been catered for, in article 101 of our report. It states that; *Parliament may subject to the provisions of this Constitution enact such laws as may be necessary for the purposes of this chapter including laws for the registration of voters, the conduct of public elections and referendum, and where necessary making provision for voting by practicing.*

Further more Mr. Chairman, I want to inform him that, we are making principles of the Constitution, on which the legislature will enact laws, are appropriate for it to implement what we have decided on here. Thank you very much.

AN HON. DELEGATE: Thank you very much Mr. Chairman. I thank the Hon. Member for that information, but I still wonder what you would term a situation of a candidate carrying voters in his lorry to the voting place? That is facilitation. Don't you think that such an act would tantamount to rigging and corruption?

Well, Mr. Chairman, I think this article is pregnant with many things which I am not clear about, and I suggest that it should even be deleted.

MR. KUTESA: Thank you, Mr. Chairman. Mr. Chairman, a number of points have been raised by Hon. Members. One was, how do you guarantee that the presiding officers, do not misguide these people, when they are at the station as they allegedly did last election? Mr. Chairman, that depends on a number of factors. We are talking about the polling or registration centre. These registration officers can in no way misguide the voters, because they do not know whom they are registering to vote for.

When it comes to viewing voters registers, you can come along with a relative and you ask the presiding officer, and your relative will check the list for you. On the voting day, all candidates will presumably have agents at that polling station, and they are there to ensure that the presiding officer does not confuse the elderly or the disabled.

I want to point out, Mr. Chairman, that to be disabled, is not necessarily being sick. It is not anything to do with sanity or being snail. It is very important for Hon. Members to appreciate what this statement says. You do not have to carry voters from their homes, to bring them to a station, to register them or to show them the register of voters. We are referring to facilitation at the station. If someone is disabled and is in a que, you may assist by sending him to the front. That is facilitating him to be able to vote.

Other Members Like Hon. Ruzindana say that this can be catered for under article 3, because article 3 caters for everybody. Hon. Ruzindana's argument

is that if you help them separately, you may be interfering with secret ballot rules. But if you are going to assist a blind man, when you assist him under three or four, you are already interfering with secret ballot. A blind man cannot vote in secrecy. Mr. Chairman, the point also has been made that -

MR. BYAKIKA: Point of information. Thank you Mr. Chairman. I want to inform Hon. Kutesa that in case of a blind man or blind woman, when he or she is assisted to locate the candidate he or she wants to vote for, he has the option of using a person of his choice to guide him or her. And therefore the question of asking the government agents does not arise.

MR. KUTESA: Well Mr. Chairman, whether you disclose to the polling agent or to a person of your choice the voting is to be secret. That is the point I am making. So, Hon. Byakika's information is welcome but it does not seem to improve matters. The other thing Mr. Chairman is that we have candidates here who represent the disabled. My assumption is that their Constituency is the disabled and probably we are going to have one in Parliament to represent the disabled. Yes, and if these people are not facilitated to vote or to see the register, how are they going to choose this man. There is need to specifically deal with them as opposed to dealing with the general public as we have catered for under 3.

Mr. Chairman, I think that the arguments that have been made against this clause are far fetched. First of all, it does not include corruption of transporting voters. They are facilitating them at the station where the polling or the registration is done. With regard to Hon. Tibamanya's example of his glasses being broken and he asks for facilitation, I think that is a bit far fetched. I have seen my neighbours borrow glasses from each other in circumstances like this. Maybe Tibamanya will do the same in his area. But certainly I do not think that is the kind of disability we are talking about. I think that the disability we are talking about, entails facilitating and not just ensuring.

We are making it easy for these people who are either handicapped by age, or by some other disability to make sure that they can vote quickly and properly, to make sure that they can check the register and to make sure that they can register their names when they want to vote. Mr. Chairman, this

article, as you can see is a new article; this clause too is new. It was brought in basically to cater for a particular category of people whose increased recognition in the country is very evident. As I have said, we already have a Member here representing all of them. My Hon. Friend Sebaana Kizito was asking me, how many are they anyway. But -
(*Interruption*)

THE CHAIRMAN: They are about two million and over.

MR. KUTESA: About two million people and I think it is difficult to ignore two million people in this situation. So Mr. Chairman, I would beg that this article is passed as it is.

THE CHAIRMAN: Hon. Atwoki, what are you suggesting?

MR. ATWOKI: I thank you Mr. Chairman. Mr. Chairman, I want to bring to the notice of the House that there is a provision in the CA Statute 1993 which fully catered for the disabled. Actually all categories of people who are classified as disabled. It reads: "Where a voter is blind or is for any other reason including illiteracy or age or infirmity, unable to fix the required mark of choice on the ballot paper, such a voter may report at the polling station accompanied by a spouse or any other member of a voter's family to assist that voter to fix a mark of choice on the ballot paper on the voter's behalf, or may request the presiding officer or polling assistant at the polling station to assist such a voter in that behalf." So Mr. Chairman, I think this is a subject of subsidiary legislation rather than putting it in the Constitution. Thank you.

THE CHAIRMAN: Now, Hon. Delegates, we have got a recommendation from the committee that a new clause be inserted. So we make up our minds.

MRS. SEBAGEREKA: Thank you Mr. Chairman. I would like to oppose clause 4 being inserted. I would like at least to get the affirmative action for clause 4 to join it to make it a subclause of 3, so that the technical committee can include the facilitation of the people with disabilities and at the same time to disregard the facilitation of the aged because I do not know how you can measure age. If they get to the polling station, and they cannot get their way through, that means they do not know who they are

voting for. So I would like to have clause 4 just taken on the disability and people with disability, take it to the technical committee and facilitate at the point of polling. I thank you Mr. Chairman.

ANHON. MEMBER: Point of clarification. Thank you Mr. Chairman. The previous speaker said that this particular principle requires affirmative action, but the way I understand affirmative action, is that it uplifts someone from one stage to another or it empowers this person to become better. But once you are disabled, I do not know whether if you are facilitated during the election, you will have improved your condition. Could she clarify on that?

MR. BWANIKA BBAALE: Thank you very much Mr. Chairman. You put a question whether we should accept the inclusion of clause 4 in the report. Mr. Chairman, my view is that we as CA, we have really given much provision for the marginalised and even in the past clauses which the committee has presented given assurance to all citizens to participate and vote. I think this is an over-statement of the position of the disabled and my view is that this provision should go under the subsidiary law which is going to outline the method of voting. For example, when I was contributing, I thought I was in Parliament. We should only write principles here and I think principles in the first clauses are enough to cater for the disabled. Therefore Mr. Chairman, I would like to move that we delete this section as proposed in this report.

THE CHAIRMAN: The motion is that it be deleted. Seconded? Let us now vote on that, whether it should be deleted or not, because we have had enough debate on this really. I will put the question. The question being proposed is that clause 4 as recommended be deleted. Under normal rules, if there is a proposition and you tie, then the proposition is lost. But we shall try again. Let me put the question again, that clause four be deleted.

(Question put and negated).

MR. DAMIANO LUBEGA: Thank you very much Mr. Chairman. Mr. Chairman, I would like to move an amendment under this clause 4 to read: "Parliament shall make a law to provide for facilitation of citizens with disability to register and vote." If I am supported, then I will elaborate.

THE CHAIRMAN: Is that seconded?

MR. DAMIANO LUBEGA: Mr. Chairman, this proposition is wide enough as an enabling Constitutional clause just to direct Parliament in respect of this particular category of people. It is Parliament which has always made detailed laws under the Electoral Act to cater for all social eventualities.

Mr. Chairman, we were reminded by one of the speakers that even as we speak, we were elected here under the CA Statute. A Statute which made details coming up with words blind and also indicating what type of action should be taken. It is Parliament which does this work. But for emphasis' sake, we want to bring out an article to talk for disabled people so that they are not swallowed under clause three which talks about the necessary step to ensure that all citizens qualify to vote. This particular emphasis on disabled people is to ensure that we direct Parliament.

Under four, to use the words 'State shall', is too broad. Under legislation of this nature, we should not use a word that just states and takes all necessary action. We just direct Parliament but Parliament shall provide or make a law to provide for and it is such Parliament which will spell out all the details. So this is a sufficient enabling clause which should be supported, even without necessity for voting.

MR. OMARA ATUBO: Point of information. Mr. Chairman, I do agree with the views and sentiments of Hon. Damiano Lubega. But if one looks at article 63 dealing with the rights of the disabled and handicapped persons, it exactly addresses the point which Hon. Lubega is raising now, that Parliament shall enact laws appropriate for the protection of the disabled as well as these other issues dealing with the disabled and handicapped. I wonder whether the proposed amendment is still necessary. Thank you.

MR. DAMIANO LUBEGA: Mr. Chairman, the 63 Hon. Omara Atubo is pointing at reads as: "Parliament shall enact laws appropriate for the protection of the disabled and handicapped persons." Protection is rather wide. This relates particularly to voting. Probably Parliament can also make other laws for purposes of other things in terms of protection, that the disabled should not be subjected to harsh labour and so forth and so on. That clause does not come out specifically in terms

of registering and voting. It may not necessarily occur to Parliament to come out specifically. This is the reason why I thought it is necessary in terms of the wording.

MISS BYANYIMA: Thank you Mr. Chairman. I think that the amendment by Hon. Damiano Lubega is a great improvement on what we had. But I wonder whether he would object if I inserted after disability the words 'and citizens who are illiterate to register and vote.' Mr. Chairman, I wonder whether this would be acceptable because as I have said before, it is not only the aged who are unable to exercise this right. It is so many people who do not have the opportunity to go to school and we need an appropriate law which will enable them to vote.

THE CHAIRMAN: But do you really want to constitutionalise illiteracy?

MISS BYANYIMA: Mr. Chairman, our population growth is even faster than the rate of building of schools all across Africa. It is a fact that we are living with and we should contend with.

MR. HASHAKA: Thank you Mr. Chairman. Mr. Chairman, I wish to inform the mover, Hon. Damiano Lubega that Hon. Faith Mwendha had reminded us that at the end of this composition of this chapter, there is a proposal of the committee that Parliament may, subject to the provisions of this Constitution enact such laws as may be necessary for the purposes of this chapter including laws for the registration of voters. So I want him to clarify clearly what other laws he wants Parliament to make other than what has been provided at the end of the composition of this chapter. Thank you.

MR. MULENGA: Thank you Mr. Chairman. Mr. Chairman, I am in agreement with Hon. Byanyima that this amendment by Hon. Lubega is a better formulation, and I take this opportunity to answer the question raised by Hon. Hashaka. The law envisaged in the amendment by Hon. Lubega is a law regulating facilitation of the people with disability whereas the article referred to by Hon. Faith Mwendha is in general terms.

Mr. Chairman, why I prefer this formulation is that in the proposed clause by committee five, first of all, it has two handicaps. We are putting it as a duty for the State to facilitate and that tends to bring

about what was complained about earlier by other delegates, that when State agents come in, they may interfere yet what we want is to enable the disabled voter to vote according to his or her choice. Now a law properly designed by Parliament with the necessary details would maybe provide for the priority of voting as was referred to earlier. But it may also provide that such a person has a right to come with her eyes because she is blind; that is to say, it should provide for her choosing somebody on the spot rather than be obliged to go by the officials.

Many delegates did refer to this malpractice and I want to share with Hon. delegates my view and observation that this emanates from our continuing to pretend that we can have impartial persons who have nobody they support in an election and we end up talking of a presiding officer and his assistants being called impartial. In reality these people have. I once visited the United States of America to see how they conduct elections. They do not have that pretence. They have political parties and each polling station is manned by agents of the parties as the presiding officers. There is no pretence.

In our case here where we do not use this practice, we could say, agents of candidates are collectively presiding. What the Americans think about human beings is that once you feel that you are at par, you do not try to cheat each other. They argue that it is when you have advantage over your opponent, that you use that advantage to cheat. So this fear that delegates have expressed is real and will remain so unless we address it in those lines. Instead of saying in this Constitution that the State will provide facilities for the disabled citizens, I think it is better to say Parliament shall make law for facilitating the disabled voters to vote according to their choice. I would also like to respond to Hon. Byanyima's request to insert the illiterate. I do not consider that insertion necessary because I think illiteracy is a disability as far as voting is concerned. Unless she is taking the technical interpretation by Hon. Mazima that with disability it is defined otherwise, I would have taken this in its little meaning to say a voting citizen who is illiterate has a disability as far as voting is concerned. Mr. Chairman, I beg to support the amendment.

THE CHAIRMAN: Hon. Delegates, let us vote on Hon. Damiano Lubega's amendment. Could you read it out again please?

MR. DAMIANO LUBEGA: Thank you very much Mr. Chairman. I read the amendment: *Parliament shall make laws to provide for the facilitation of citizens with disability to register and vote.*

THE CHAIRMAN: I put the question.

(Question put and agreed to)

MR. ABU MAYANJA: Mr. Chairman, I want to know whether the amendment by Hon. Lubega was in substitution for clause four or addition to.

THE CHAIRMAN: It was in substitution for. Now, that brings us to the end of article 84. So now let me put the question that article 84 as amended do stand part of the draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: I think this is a proper place to stop and continue tomorrow. We should be here on time and start at 9.00 o'clock. We stand adjourned until tomorrow at 9.00 o'clock. Thank you.

The Assembly rose and adjourned until 23rd May, 1995 at 9.00am)