



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 24TH FEBRUARY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 3171]

Price Shs. 820

Friday, 24th February, 1995

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

P R A Y E R S

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

LAYING OF PAPERS ON THE TABLE

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

CHAPTER 12 - PUBLIC SERVICE.

ARTICLE 193-FUNCTIONS OF PUBLIC SERVICE COMMISSION

THE DEPUTY CHAIRMAN: Delegates, we stopped when we last adjourned, after we completed Article 192. Now we are going to Article 193. And I see that Hon. Sabiiti has a Motion to move- has an amendment to move on Article 193 (a).

MR. BAGEYA GEORGE (Kigulu North County): Point of procedure. I am wondering, the chairman who is supposed to be leading this committee is not around, neither is the vice chairman around.

THE DEPUTY CHAIRMAN: But I thought we abandoned the report and now we are discussing individual Motions following the Draft Constitution.

MR. SABIITI JACK:(Rukiga County): Thank you very much, Madam Chairperson. The fact that this amendment was based on the draft of the committee, since that report was not endorsed by the Assembly, certainly now, my amendment is no longer relevant. We could therefore, continue to discuss the amendment in the Draft Constitution.

THE DEPUTY CHAIRMAN: Okay. Hon. Sabiiti's Motion has fallen by the way side due to what was decided on the report. So, it seems we shall go back to the original draft. I will have Article 193 (1)(a). Do we have any other view, other than what appears in the Draft? If there is none, how about (b)? On (b), number 17, there is a Motion by the Hon. Chebet Maikut. Is the Hon. Chebet Maikut around? Hon. Byaruhanga.

DR. BYARUHANGA FABIUS (Kitagwenda County): Thank you, Madam Chairperson. Hon. Chebet Maikut asked me to move this amendment on his behalf. The amendment wishes to delete 193(b) and replace it with the following: " *That the Public service Commission will be responsible for appointments, promotions, and disciplining of persons holding office in the Public service of Uganda, as provided in Article 197 of this constitution and in so doing, may delegate some of its responsibilities to the District Service committees.*" I beg to move.

THE DEPUTY CHAIRMAN: There is a Motion on the Floor. Can we have some reactions? Because the House is so silent, - Okay you proceed.

DR. BYARUHANGA: The purpose of this Motion is mainly to permit the Public Service Commission to delegate its duties to District Service Committees. And in the past, this has been the practice that the local - for example the employees of the low cadre in the district administrations are interviewed by the local District Service Committees. Then secondly, the 197 does not give the powers of appointing heads of departments to the Public Service Commission, so that if we leave (b) reading as it is now, it will mean that, we have a contradiction when we come to 197. Because (b) we are just talking of appointments into the Public Service of Uganda. Now, if you leave it at that, it will mean that, the Public Service Commission, has even powers to appoint a permanent secretary. When in 197, we are saying it does not have those powers, although it has the powers to advise the President. So, that is why, Hon. Maikut was pointing it out, that these powers of appointment are limited in Article 197. Thank you, Madam Chairperson.

MR. ETUKU ONYOK (Moroto County): Thank you, Madam Chairperson. Madam Chairperson, I would like to draw the attention of the Mover of the motion. Hon. Byaruhanga to Article 197 (3). Because if you reflect 193 (b), it says: " *To be responsible for appointments, promotions and disciplining of persons holding office in the public service of Uganda, as provided in Article 197 of this Constitution.*"

Now, when you look at Article 197, Clause 3, it says: " *Subject to the provisions of this Constitution, the President may delegate any of his powers*

under this article by directions in writing, to any Service Commission, Committee or Board to any other authority of public officer as may be prescribed by Parliament and may in like manner revoke the delegation."

Madam Chairperson, I am not sure whether he is aware of this Delegation since the Commission will be handling the appointments as per article 197

MR. OKALEBO HENSLEY (Bukedea County): Thank you, Madam Chairperson. I would also like to draw the attention of the movers. Since the amendment seeks to have some powers delegated - powers and responsibilities delegated to District Service committees. And I would like to draw the attention of the movers that, there is a specific provision under Article 225 - Under Local Government which gives specific powers to District Service Committees.

So, there is no need to give a provision of Delegation under this particular article we are considering Madam Chairperson.

MR. SABIITI: Thank you, Madam Chairperson. Now, this amendment to me is trying to do the impossible. Because Article 197, says it is the President who has the power to appoint. Now, he delegates his powers to the Commission. Now, Maikut's amendment is saying that, the commission should delegate. I think it is the President who should do that. So, I find this not relevant amendment. We could retain what is in 193(b) and then when we reach Local Government Chapter 13, I think we shall find a cure for it.

DR. BYARUHANGA: Thank you, Madam Chairperson. I want the Members of this CA to read the provisions of this Chapter very, very carefully. This Chapter has actually created an executive Public Service Commission. It has created an executive Public Service Commission. In the past, the Public Service never appointed anybody. They would interview you and then you would get your appointment letter, from a Permanent Secretary in the Ministry, quoting powers of the President, and the Public Service. But according to the Odoki Report, the submissions of the population to the Odoki Report and the conclusions of the Odoki Report and this Draft, we are creating an executive Public Service Commission. And therefore, the Public Service Commission, has got its constitutional powers to appoint. The Constitutional powers under this

Chapter to appoint Public Servants who are below the rank of Head of Department and Permanent Secretary is in the hands of Public Service Commission. It is not in the hands of the President as was the case in the past. It is with that understanding that we found it useful to move this Maikut amendment. So, if that is not the case, or if you do not want it to be the case, then you have got to move a specific amendment to 193(b) removing the powers of appointment from the Public Service Commission. Because what we have now is an executive Public Service Commission.

MR. BAGEYA GEORGE: Point of information. Thank you, Madam Chairperson. I only wanted to inform the mover of the Motion that even if the president appoints anybody, the body that writes the appointment letter, is the Public Service Commission. It is not the Public Service Commission who is going to appoint. But the responsibility of writing appointment letters, interviews and what have you, falls on the Public Service Commission, which is an arm of the executive. So, I do not see any controversy here.

MR. MASALU' MUSENE (Manjia County): Thank you, Madam Chairperson. Madam Chairperson, I support this amendment. But before I state my reasons, I would like to comment on what Hon. Okalebo has stated about 225 about Article 225 of the Constitution Dealing with Local Government. Whereas it is true as he has said, that the District Service Commissions are under Article 225, to exercise their functions in accordance with the constitution. And so, according to him, he feels that, there is no need of delegation from the Public Service Commission. I wish to inform him that although I am in Committee 4, which has been dealing with this Local Government and we have had a number of amendments which will be tabled in the plenary among which is the fact that, members of the District Service Committee will be appointed subject to the approval by the Public Service Commission. Why this was felt necessary, was because we wanted uniformity in the Members of the various District Service Committees all over the country. So that there are uniform standards maintained all over the country. So, there is that link between the District Service Committees all over the country, and the Public Service Commission.

Further more, besides uniformity, the policy of decentralization does not mean that, the functions performed by the district like especially the District

Service Committees, are completely independent of the centre. Because we have had already in some districts where there is decentralization being practiced. Some people have mistaken it for indigenisation of jobs. So, we are trying to correct this impression by connecting the District Service Committees to the Public Service Commission. So that, there is link, especially when it comes to people who may want to change service say, you are working in one district. It does not mean that, once you have been appointed by Arua District Service Committee, you work in Arua for ever. You may wish to go to Bundibugyo. So, the Public Service Commission must come in, as a link between the two District Service Committees for purposes of people who want to change from one place to another and for purposes of ensuring that we are all serving under one country and under one government and not necessarily this impression that, decentralization means indigenisation of jobs. So, Madam Chairperson, I feel this amendment which adds that the Public Service Commission in doing its work may delegate some of its functions to the District Service Committees, is necessary for purposes of uniformity and continuity and unity in the Civil Service of this country. So, I support the Motion. I thank you, Madam Chairperson.

MR. CHEBET MAIKUT (Kween County)

Thank you, Madam Chairperson. First of all, Madam Chairperson, I think I must apologise for little bit coming late. I would like to take the opportunity to thank my Colleague here, Hon. Byaruhanga for having moved this motion on my behalf. I have got to listen to some few arguments and words of advice and I am convinced that, we have to provide for a link between the centre and those authorities or the district service committee, at the district level. Madam Chairperson, already, you are aware that, we have put in place, the decentralization statute, has already been effected and we have already seen some of the negative effects of the decentralization statute in as far as the public servants are concerned. Madam Chairperson, it is dangerous to assume that, there will be harmony between the district service committees and the National Public Service Commission. My Colleague, Hon. Musene has just illustrated one point of already trying to indigenise the staff of the Public Service, at the district level. Because of some misunderstanding or some errors in the provision of the decentralization statute, Madam Chairperson, I need not to give so many examples, but there are

already living examples of the problems associated with solely giving power to the district, in as far as the Public Servants are concerned. I will quote another example. Recently, I think it was last year, the National Public Service Commission did interview and employed a number of graduates in various fields, including the environment officers. Now, in between before they were fully absorbed in their respective stations, more so those who were posted to the district level.

The decentralization Statute came into place, and the result of that was that, many of these young women and men who had just come from Makerere have been rejected by the District Service Committees. So here we are, we are really at a dilemma. And we felt that, right now there is no coordination between the District Service Committee, and the National Public Service Commission. And this amendment here, seeks only to provide for a link, a kind of coordination between the respective district service committees and the National Public Service Commission. This is really the principle objective of moving this amendment, Madam Chairperson. Because somebody was quoting the provisions of Local Government, And having gone through, there is no mechanism, Madam Chairperson, to where the independent District Service Committee, at the district level, can coordinate effectively with the National Public Service Commission. And in that respect, Madam Chairperson, I feel this amendment simply provides for only coordination. Not one section hijacking the powers of the other one. I think that is when she will be understood properly. So, Madam Chairperson, I wish to appeal to Hon. Delegates, to look at the merits of this Motion, and kindly accept to provide - put in place a mechanism that will provide for rationalization, harmonization of the human resource base. Both at the centre here and at the district level. Thank you, very much, Madam Chairperson.

LT. COL. SERWANGA LWANGA (NRA Delegate)

I thank you, Madam Chair. Madam Chair, I am seeking clarification from Hon. Maikut. In his explanation he is saying that, this amendment seeks to give coordination with the district service committees. But the words he has used say 'may delegate.' How is delegation and co-ordination - do the two mean the same or what? Because I am a bit confused. Once the Public Service Commission has delegated its duties, or some of its duties to the district service committee, it means that, that district service committee will be the one to perform those duties. Not

just to coordinate. It will be the one to perform those duties. So, I want a clarification from him. He is saying this is coordination. But the word he has used in his amendment is 'may delegate.' I am a bit puzzled.

MR. ONGARIA STEVEN (Tororo Municipality): Thank you, Madam Chairperson. I intend to agree with Hon. Serwanga Lwanga. And I want to propose to Hon. Maikut that, I have a similar sort of amendment to make under 193, and I was introducing clause (e) and it was reading: *"One of the functions of the Public service Commission among others, will be to guide and advise District Service Committees in the performance of their duties."* Now, the idea I had in mind is similar to form a link between the Public Service Commission and the District Service Committees.

Madam Chairperson, there has been an outcry in the past, especially from the lower cadres of the Public Servants at the District level, where the gap between the District Service Committees and the Public Service Commission has been prevalent. Such that, if the employees, the Public Servants at the District Service Committee level are aggrieved in any way, they have not been having any institution to air views either through an appeal or through complaints. So, my idea here, Madam Chairperson, is one, to form a linkage between the Public Service Commission and the District Service Committee in such a way that, the Public Service Commission, will be able to give guidance and advise to the District Service Commission when the need arises. On the other way round, the District Service Committee also, should be able to seek guidance from the Public Service Commission, when the need arises. The second reason, Madam Chairperson, is that, now that, we have decentralised, we have so many District Service Committees in the country, and therefore, so many public servants under them. So, for the same reasons I have given, I would like to see that, this junk at the lower level *-(interruption)-*

MR. BASALIZA HENRY (Fort Portal Municipality): Point of clarification. Thank you, Madam Chairperson. Will Hon. Ongaria clarify to me, whether he is moving an independent Motion, or whether he is supporting Hon. Maikut's amendment? Because the way he is debating, it seems he is moving his own Motion. Let him clarify to me. Thank you, Madam Chairperson.

MR. ONGARIA: Madam Chairperson, I was just little while saying that, if Hon. Maikut would agree with me, we could synchronize his amendment with mine, to come out with one. Now, that, his is casting doubt in the minds of some Members, whether the delegation really means - the delegation he is talking about means a direct performance in terms of - between the Public Service Commission and the District Service Commission. I had wanted Hon. Maikut if we can agree together. Thank you, Madam Chairperson.

MR. MAIKUT: Madam Chairperson, first of all, I would like to respond to a clarification sought by Hon. Serwanga Lwanga (NRA) about these two words, Delegation and Coordination. Essentially alright, there may be a problem of drafting, but in our view, the principle that we would like to see enshrined here, is first of all to provide as I stated before, a link. Secondly, I believe that, by providing a link, there will be some element of delegation of those powers to those other authorities at the district level. So, I think the draftsmen could tell us better. But the principle is by giving - providing a link. Definitely, it is also a need to provide for a delegation so that, the District Service Commission will not function very independent of the other National Public Service Commission. And coming to what Hon. Ongaria has said, as I said, I have no any problem, as long as those two principles are enshrined here, as a method of drafting. Any other person can help us with that.

MR. RUZINDANA AUGUSTINE (Ruhama County): Thank you, Madam Chairperson. Madam Chairperson, the idea in Hon. Maikut's amendment is a welcome idea. But I think it is not right to combine it with (b), as it is in the draft. And I would like to request him to agree with Hon. Ongaria to remove his amendment from 193 (1)(b) to separate sub article either a new (c) or subclause, either as a new (c) and in coordination with Hon. Ongaria. I think the idea is right that we should somewhere connect the Public Service Commission, with the District Service Committees. But not as he is trying to do. And so, I would like him to agree with the suggestion of Hon. Ongaria. So, that we do not waste time discussing this in combination with what is in the draft, and perhaps reject it, because of the wrong formulation when it is a good idea.

MR. BYARUHANGA: Thank you, Madam Chairperson. Madam Chairperson, there are some that I

would call hidden meanings which I would like to call upon in this Assembly to look at very carefully. You see, when you say that, 'it may delegate some responsibilities to the District Service Committees,' you are actually assuming that we are going to have one Public Service for the entire country, at the National level and at the District level. But when you take for example Hon. Ongaria's amendment and tie it to what we have in 225, you would have actually created many services, that you have a National Public Service and then the District Services. So, the amendment of Hon. Maikut has more serious repercussions.

MR. BAGEYA: Thank you, Madam Chairperson. Madam Chairperson, I am wondering whether the mover Hon. Maikut, has taken trouble to look at Article 197 Clause 3. If he can be listening, Clause 3, Article 197 reads as follows: *Subject to the provisions of this Constitution, the President may delegate any of his powers under this article by directions in writing, to any Service Commission, Committee or Board to any other authority or public officer as may be prescribed by Parliament and may in like manner, revoke the delegation.* I think this takes care of the amendment Hon. Maikut is seeking to move. I would therefore, find it rather redundant if we concentrate on that Motion.

MR. MALIRO GASTON (Mwenge North County): Thank you, Madam Chairperson. Madam Chairperson, I fail to see how this new addition will agree with what appears in Article 225. What we discussed in Committee 4, is a District Service Commission which is more or less independent in its functions - District Service Commission which is independent in its operation. The only relationship between the District Service Commission and the Public Service Commission is the way the officers to the Commission at the District are appointed. They are appointed by the District Council only with the approval of the Public Service Commission. After that, in their activities, there is no connection between the District Service Commission and the Public Service Commission. I cannot envisage what power will be delegated or what function will be delegated to the District Service Commission. Because in their sphere of influence, they are as independent as the Public Service Commission is. Now, the powers of the Public Service Commission is to appoint people who are going to work under the Central Government. They are not going to appoint people to work in districts. So, what

kind of function will they delegate. But what I would think, I would may be talk about, would be Hon. Ongaria's Motion if he tables it whereby he is trying to seek a relationship in form of guidance. Whereby may be some laws some regulations could be made, and which the District Service Commission can follow in its appointments. Otherwise, I think I oppose the amendment. Thank you, Madam Chairperson.

AN HON.DELEGATE: Thank you, Madam Chairperson. My thinking is that, this amendment much as the idea is a good one, by Hon. Maikut. But it seems like putting the cart before the horse. It seems to me Madam Chairperson that, unless you have really determined what functions the centre has, and you know what the role of the districts is, you really cannot be talking about connecting the centre to the peripheral. So, I think, Madam Chairperson, that we ought first of all, to determine the roles of each body, the centre and the peripheral that is the districts before we can think of linking the two.

DR. KABAYO JOHN (Kassanda South County): Thank you, Madam Chairperson. Article 225 provides the power to appoint persons to hold or act in any office in the service of a district including the power to confirm appointments, to exercise discipline and control of persons, holding or acting in such offices, and to remove such persons from office is by District Service Committee. And, Madam Chairperson, the District Service Committee is appointed - the Members of District Service Committee, is appointed in the terms of Article 224 Clause 2 (a), where it says that: *It shall consist of a Chairman and four members, all of whom shall be appointed by the Executive Committee of the District on the recommendation of the District Council, with the approval of the Public Service Commission.* Madam Chairperson, the purpose of the amendment which we are considering is to recognise the importance of the Public Service Commission at the District level. And I think it could be achieved, if the movers of the Motion could agree to quote Article 224, instead of the later part of the amendment. And to say, as they have said, in Article 197, and 224 of this Constitution. I feel that, would crystallize what they want to say, which I consider is a valid point. Thank you, Madam Chairperson.

MR. KARUHANGA ELLY (Nyabushozi County): Madam Chairperson. Since we started the proceedings this afternoon, I did observe that, we

were not enough Members in the Chamber, but I was hoping that, Members will in due time - in due course, arrive. It is very difficult, for me to sit here and we pass the Constitution with Members who are not adequate to pass the provisions of the Constitution of the Republic of Uganda. And as a result, I would like to raise the issue of Rule 9, of our rules of procedure and question the quorum. And Madam Chairperson, I also just would like to say that, while we did enjoy the seminar at the Sheraton, I think it should have been conducted over the weekend. I think that, now I understand on Monday, there will be no sitting because it seems to me - and I am disappointed in saying this, that we are now going to spend so many days without meeting in the plenary, which I find very painful to understand, and - yes, because I think if Members do not want to come and attend the Assembly, we should just wind up and go. Until such a time we have a quorum, we should meet. And we should be assisted to do so. But there are too many interruptions and I am worried about the target we set ourselves, and the seriousness. So therefore, I move that, we have no quorum. It is not right.

THE DEPUTY CHAIRMAN: Okay, let me respond - Hon. Delegates, let me respond to the second one first, on the fact that, on Monday, we shall not have a plenary in the afternoon. That decision was taken, because we are compensating the time of those two committees - committee 2 and committee 1 who have not completed. We took their two days, so we thought we should give them the Monday morning. Then, on that one they should have sat, then the afternoon. The fact that, the other meeting would be here, they could have gone elsewhere. Then Monday could be the same, and in the afternoon - sorry Tuesday, we shall have a plenary. So, it is only Monday, and Monday is a compensation. There will be work. So, your complaint there is a quarter justified. As regards the quorum, the Chair is always requested - the Chairs are supposed to be deaf, and blind and all that. But now, you have raised it, we are far below required number. We are 89 Members. But, we can continue debating - and after all that is why we had prolonged the debate, otherwise this issue should have been solved long ago. But I prolonged the debate so that, we get clear. And should we have a quorum then we just vote, when we come on Tuesday. What do you think about that, Hon Karuhanga? You still feel, you want to go when at least you are complaining about wastage of time?

MR. KARUHANGA: Madam are we continuing officially or informally?

THE DEPUTY CHAIRMAN: We are still debating the issue. I have not ruled.

HON. MEMBER: That is wrong.

MR. KARUHANGA: Madam Chairperson, I had actually counted 93, but since time, it seems some Members have absented themselves, and now you say they are 89 in the House. We are 284 Members, which means that, roughly 200 Members are away - 200 Constituencies are not represented. Madam Chairperson, I move that under Rule 9 of the Proceedings, we adjourn and those Members who are absent to know that, we adjourned because there was no quorum.

THE DEPUTY CHAIRMAN: The issue is an obvious one, we do not have to vote. We cannot vote, because it is a matter of the rules. So, we adjourn until Tuesday afternoon.

The Assembly rose and adjourned until Tuesday 28th February 1995 at 2.00 p.m.