



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

FRIDAY, 24TH MARCH 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda . [Pg 3565]

Friday, 24th March, 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)

(The Assembly was called to order)

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

CHAPTER 8 - THE LEGISLATURE.

ARTICLE 144 - MODE OF EXERCISE OF
LEGISLATIVE POWER.

MR. MULENGA: Thank you, Madam Chairman. Madam Chairman, Select Committee Two recommends that Article 144, Clauses 1 and 2 be retained; 3, 5, and 6 be amended; 5 be deleted and two new clauses be added. Clause 1: *"Subject to the provisions of this constitution, the power of Parliament to make Laws shall be exercised by Bills passed by Parliament and assented to by the President."* Madam Chairman, the Committee recommend that this clause be adopted without amendment. I beg to move.

THE DEPUTY CHAIRMAN: There do not seem to be any query. I put the question.

(Question put and agreed to)

Clause 2.

MR. MULENGA: Clause (2): *"A Bill passed by Parliament shall as soon as possible be presented to the President for assent."* The Committee recommends that this be adopted without amendment.

THE CHAIRMAN: I put the question.

(Question put and Agreed to)

MR. MULENGA: Clause (3): It is recommended that, Clause (3) be amended to read as follows: *"The President shall within 30 days after a Bill is presented to him or her (a) assent to the Bill or (b) return the Bill to Parliament with a request that the Bill or a particular provision of the Bill be consid-*

ered by Parliament or (c) notify the Speaker that he or she refuses to assent to the Bill."

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and agreed to)

MR. MULENGA: Clause (4): The Committee recommends that: *"Following a new Clause (b) inserted where a Bill has been returned to Parliament under paragraph (b) of Clause (3) of this Article, Parliament shall reconsider it, and if passed again, shall be presented for the second time to the president for assent."*

THE DEPUTY CHAIRMAN: I now put the question.

(Question put and agreed to)

MR. MULENGA: The Committee recommends that this new Clause (5) be inserted to read as follows: *"When the President returns the same Bill twice under paragraph (b) of Clause (4) of this article and the Bill is passed for the 3rd time with a support of more than one half of all Members of Parliament, the Speaker shall cause a copy of the Bill to be laid before Parliament, and the Bill shall become law without the assent of the President."*

THE DEPUTY CHAIRMAN: I have an amendment proposed by Hon. Mukwaya Abbey and Hon. Kisembo Muleju.

MR. MUKWAYA: Thank you, Madam Chairperson. Madam Chairperson, I would like to move certain amendments to this Article 144 as recommended by Select Committee Two in the following areas first, and Clause (5) by deleting one half and replacing that with the words: *"at least two thirds of all Members of Parliament"*, and then delete all the words from *"the Speaker"* up to the end of *"President"*, and replace with the words: *"The President shall notify the Speaker that he or she refuses to assent to the Bill."* I wish to move so that the new clause now reads that: *"Where the President returns the same Bill twice under paragraph (b) of Clause (3) of this Article and the Bill is passed for the third time with a support of at least two thirds of all the Members of Parliament, the President shall notify the Speaker that he or she refuses to assent to the Bill."*

MR. BAGEYA: Thank you, Madam Chairperson. Whereas I agree with at least two thirds, I do not agree with the last amendment.

THE DEPUTY CHAIRMAN: But he had not finished. I thought you had a complaint. Hon. Mukwaya had not finished making his statement.

MR. MUKWAYA: Madam Chairperson, as we go deeper into the discussion of this article, we want to bring in the element of the President appealing to the people when there is an impasse so that we do not leave all the powers to Parliament to decide on such matters of such national importance. My justifications are - *(Interruption)*

MR. NABUDERE: Point of order! Is it in order for the Member to try to explain a Motion he has not presented properly? It is not completed. He was talking of the President instead of the Speaker and so on and so on. And we do not know exactly what the amendment is about.

THE DEPUTY CHAIRMAN: It is being circulated and if you listen, we have been bringing Motions on the Floor, and people have been listening. It is coming. Perhaps let me give you some time to have the paper circulated. And now that we have the paper before us, let Hon. Mukwaya lead us.

MR. MUKWAYA: Thank you, Madam Chairperson. After having read these, and they consulted my amendment on Clause (5), I wish to maintain the deletion of "one half" and maintain my "at least two thirds" then go to the rest and maintain what is in the report. I beg to move.

THE DEPUTY CHAIRMAN: I now put the question. So we have it as amended.

(Question put and agreed to)

MR. MUKWAYA: Madam Chairperson, I would like to move another amendment up to 6 (a).

MR. MULENGA: Point of procedure, Madam Chairman. I think Hon. Mukwaya should not take over - I am still presenting the report. We have just quickly amended Clause (5). I wanted to present Clause (6)! - Thank you, Madam Chairman. Madam Chairman, the Committee recommends that Clause (6) should read as follows: "*When a President (a) refuses to assent to a Bill under paragraph (c) of Clause (3) of this article, Parliament may recon-*

sider the Bill, and if passed, the Bill shall be presented to the President for assent."

THE DEPUTY CHAIRMAN: Any problem? I now put the question.

(Question put and agreed to)

MR. MULENGA: (b) "Refuses to assent to a Bill which has been reconsidered and passed under paragraph (a) of this Clause, and Clause (4) of this Article, the Speaker shall upon the refusal, if the Bill was so passed with a support of more than - I suppose now, consequentially we say, two thirds. "*More than two thirds.*"

THE DEPUTY CHAIRMAN: In the first one it was "*at least*" according to Hon. Mukwaya.

MR. MULENGA: The same really.

THE DEPUTY CHAIRMAN: Okay. No, for consistency anyway that will be a drafting matter.

MR. MULENGA: Let me repeat this one. (b): "*Refuses to assent to a Bill which has been reconsidered and passed under paragraph (a) of this Clause or under Clause (4) of this Article, a Speaker shall upon the refusal, if the Bill was so passed with a support of at least two thirds of all Members of Parliament, cause a copy of the Bill to be read before Parliament and the Bill shall become law without the assent of the President.*"

MR. MUKWAYA: Thank you, Madam Chairperson. I would like to move an amendment on 6 (b) by deleting the entire 6(b) and replacing it with the following. (b) "*Where the President refuses to assent to a Bill, if it has been reconsidered and passed under paragraph (a) of this Clause or under Clauses (4) and (5) of this Article, the President shall refer the matter to the people by way of a referendum.*" I beg to move.

HON. DELEGATE: Can I justify my -

THE DEPUTY CHAIRMAN: Let me justify because it was moved by Hon. Mukwaya and I see Hon. Kisembo Muleju. So, you give them time to substantiate their Motion.

MR. MUKWAYA: Madam Chairperson, the justification of my amendment is that, since we are all agreeable that the power belongs to the people,

in case of an impasse of this nature which is likely to bring chaos in the country, I think the matter should be referred to the people for final judgement because the President is directly elected by the people, so is Parliament. But the two organs have failed to come to an agreement. Therefore, it should call the people for a final judgement in case of such an impasse. And this kind of prolonged impasse without adequate conflict resolution mechanism in place, can easily create problems and turn into turmoil and suffering of our people. The other alternative will be that since the Parliament now seems to have powers of veto, that even the president should have power of veto but my argument is that, both Parliament and President should not have these powers. The powers of veto should remain with the population who should at least decide ultimately on which way to take. And, Madam Chairperson, we have talked to a number of people and they find that, unless we have a way of bringing such important matters to the population, then we shall not have given them the respect they deserve. Because if the President refuses to assent to a Bill two times or three times, then it means that the matter is of a serious nature. I beg Madam Chairperson that the Members listen to my argument and support this amendment. Thank you.

MR. KATENTA APUULI: I thank you, Madam Chairperson. Hon. Delegates, I am speaking to oppose the amendment. I think what is provided for in the Clause we have just passed, that the President should have veto power is adequate to protect the interest of democracy in our country. If a matter is so serious, as the Hon. Member, Hon. Mukwaya has suggested, there are two areas of recourse the president can take. One area is that, if he feels so strongly about it, he should resign and test his popularity back with the people. Secondly, if he feels very strongly about that matter, he should wait until his term expires and makes that an element of his re-election if he is eligible to be re-elected. However, to say that every little matter that the President disagrees with should go to a referendum is to flaunt the principles of democracy. Parliament has an equal, and may be, overriding responsibility to the electorate. In areas where there are Political Parties, and a number of presidential candidates are running, you may find that a president gets elected with a very small majority. The aggregate of all the elected - whatever number of parliamentarians we shall decide in this Constitution to have, will be by far greater than a President who was elected by a small majority. In my view, you cannot run a

parliamentary system, under a presidential type of administration - subjection to French type of referendums we had under De Gaul. Those kinds of referenda are not the type that our country can afford. A referendum is a very expensive matter and I would like to also, although I do not underrate the intelligence of our electorate, I do not think that the electorate will be adequately sensitized over matters of intricacy like this, of parliamentary procedure as to why Parliament refuses to pass a Bill or passes a Bill and the President refuses to assent to it. They may not be in a position to adequately internalise the issues and be able to judge. Because they will be subject to the same manipulations of the politicians; one side saying, support this position, the other side saying, support the other position. If the president is so serious about the matter, he should really resign and let us find out from the population if the population would side with him over that matter. With those words, Hon. Chairperson, I beg to oppose the amendment. What is provided for in the Constitution as we have just passed, is adequate to protect our democracy. I thank you.

MR. ZZIWA: Thank you, very much, Madam Chairperson. I would like to add my voice to that of Hon. Katenta Apuuli in opposing the Motion. Madam Chairperson, we have just amended the previous clause and we gave a larger latitude of two thirds of Members of Parliament, having considered that, two thirds of Members of the Parliament have refused to assent to the Bill, have refused to agree with the President, I know it is a very serious matter. But this one goes to point out that really two thirds of the people in the country are likely to agree with their representatives. And going to the referendum under those circumstances would really be very, very costly and the most likely results would be that the people will decide with the Members of Parliament. Madam Chairperson, I know it is a very grave situation the country would be in at that stage, to have a conflict between Parliament and the President, But the tester, the point that two thirds have really expressed the wishes of the people, I think is good enough and we should not go to the full extent of spending so much funds and resources to have a referendum. Madam Chairperson, I beg to oppose the amendment. Thank you.

MR. NASASIRA: Point of clarification! Madam Chairperson, I am seeking clarification through you, may be to the mover. If my understanding of Clause (3) (c) is that the president refuses to assent

to a Bill the first time. And my understanding of Clause (5) is that the President after two attempts finally refuses to assent to the Bill. Now, what I am seeking clarification on is that, whether you are talking about refusing to assent to the Bill the first time or the third time, in both cases, it is refusing to assent to the Bill. Therefore, the treatment for that refusal should be the same. Are we not going to find ourselves in a situation where Clause (5) and Clause (6) (b) will be conflicting? I just wanted this clarification from the Mover.

MR. MUKWAYA: Thank you, Madam Chairperson. My intention of moving this amendment was actually to alleviate a situation where the President has refused to assent to a Bill more than twice. Because (5) says, "*where the President returns the same Bill twice under paragraph (b) of Clause (3)...*" Then 6 says: "*when he refuses to assent to the Bill under paragraph (c) of Clause (3)...*" But I want to add "*and even under Clause (4) and (5) of this article.*" So, you see, he has refused to assent to a Bill not only once or twice. It appears he has refused to assent to the Bill three times. That is my understanding of these clauses.

MR. MULENGA: Point of information! Madam Chairman, I would like to give information to Hon. Mukwaya, by way of explanation. There are two scenarios; there is where the President refuses from the beginning to assent the Bill. That is under 3 (c). He notifies the Speaker that he has refused. There is also where he returns the Bill with a request that the Parliament should reconsider his views on the matter about the entire Bill, or part of the Bill. That is 3 (b) - returns the Bill to Parliament with the request that the Bill or a particular provision of it be reconsidered by Parliament. Now, it is when he returns the Bill under (b) that we are saying, Parliament should consider his views, first time and then, if they passed the Bill again or that part he has referred, they send to him for assent. And we are saying, he can still want to negotiate and say no, you have considered my views but, I still want you to - you know, he gives his point again. And we are saying, Parliament should consider again. That is to say, for the third time. So, in (c) it is only once, when he says No! That is the real veto. But in (b), we are talking of negotiation, let us put it that they are exchanging the views. He has not refused entirely, but he wants his ideas to be taken into account may be for amendment and so forth. So, there are two scenarios that are involved here.

MR. MUKWAYA: Madam Chairperson, I had finished with the clarification to Hon. Nasasira, so, I think the House should proceed. Thank you.

MR. ATWOKI: Thank you very much, Madam. Madam Chairperson, first of all, I want to discourage this impression which is always created by some delegates here that power belongs to the people and therefore, they think that every detail of conflict must be referred to the people. I believe that democratic institutions like Parliament which is put in place by the people, is mandated to make decisions on behalf of the people. I believe that Parliament as a supreme organ in a democratic governance should be respected, especially after going through all those procedures of negotiation with the President as the Chairman of Committee Two has stated. Madam Chairperson, it is also important to notice that our civil society is not well developed to the extent of sustaining the rigours of a referendum on each other matter on which conflict might arise. I believe that we cannot subject every Bill which is a matter of disagreement between the President and the Legislature to the people in form of a referendum. I believe that -
(Interruption)

THE DEPUTY CHAIRMAN: Information.

MR. ATWOKI: I am developing my point, Madam Chairman.

THE DEPUTY CHAIRMAN: Okay, you are not given the Floor, Hon. Bageya.

MR. ATWOKI: I believe even our society which has a very weak civil structures can easily be subjected to manipulation of competing ideas. I also have respect for Parliament in the sense that it is the body which is normally mandated to discuss Bills and then pass them into laws. So, Madam Chairperson, I do not think we should really continue discussing this matter. I beg that you put the question.

THE DEPUTY CHAIRMAN: No, can I have those people who are supporting the Motion. Hon. Leander, are you supporting the Motion? Anybody supporting the Motion? Okay, Sebi is supporting the Motion.

MR. SEBI: Thank you, Madam Chairperson. Madam Chairperson, I support this Motion, and I

would like to look at it in terms of Historical materialism, in terms of class struggle. Madam Chairperson, as politics becomes highly competitive, and monetarist, chances are that people who will ascend to power, people who come to Parliament will be those who have the means - will be those people who have the money. You might end up having a Parliament that is extremely rich whose interests do not really tally, they do not tally with the constituencies they represent which is the majority of the peasants and the workers. Now, a Bill could come up in Parliament, which Bill endeavours to serve the interests of the Parliamentarians who happen to be mostly the rich and the President may be who has sympathies with the peasants and workers, and he is opposed to that Bill. You can easily get an impasse between the President and the Parliamentarians and the only way to sort out the impasse is to throw it back to the people, by way of a referendum. These class interests may continue to be tabled in the House and unless you really take the issues back to where they belong, to the peasants and workers, you will not sort out this problem. So, madam Chairperson, we said in Article 1, the very first article, that power belongs to the people. And here, at the same time, we are also saying, that the Parliament alone is supreme. I do not challenge that but I am saying that where you have a class struggle within the Parliament, the best avenue is the people themselves. Thank you, very much.

MR. NYAI: Point of clarification! I have a little fear which I think the Speaker who has just been in the Floor can allay. Yesterday, we passed a clause empowering the constituents to withdraw their Members of parliament for either non performance or other sundry offenses. Now, the scenario he has just laid out seems to indicate that it is only the President who has the people's interest at heart and that the parliamentarians do not have the people's interest at heart. I would like him to clarify how this is. If I am an MP and I am likely to be recalled, how I go out of my way to do things against the people's interest? I would be very happy if he could clarify that one.

MR. SEBI: Thank you, Madam Chairperson and my brother Hon. Dick Nyai. I think it has ever happened that Parliament may sometimes pass Bills that are not quite in the interest of the majority of the people. It has ever happened where Parliament, for example demands an increment in emoluments and whatever. Which - Madam Chairperson, could you protect me, I am being harassed.

THE DEPUTY CHAIRMAN: By who?

MR. SEBI: So, I was saying, in answer to my brother Hon. Dick Nyai that we have had cases whereby for example what is presented in the House does not quite tally with what the interest of the people are on the ground. And I was sighting an example where for an example - *(Interruption)*-

THE DEPUTY CHAIRMAN: I can see, Hon. Nasasira's hand persistently. Is it for a substantive contribution or you are asking Hon. Sebi?

MR. NASASIRA: Madam Chairperson, I was putting up my hand for substantive contribution.

THE DEPUTY CHAIRMAN: Then you better wait.

MR. SEBI: I was saying, that let us take this example. A hypothetical example which might not have happened. That the MPs may be demanding for a raise in their welfare. The President comes up and says, the country cannot afford the rates that you are demanding but the Parliament insists. Because as I said, their interests are not exactly the same as the interests of the people on the ground. I said this is a hypothetical situation. So, when you have a situation like that one, the only way you can sort it out is actually to throw it out back to the people and let them answer whether they are in agreement with Parliament or not.

MR. KANIA: Thank you, Madam Chairperson. I would like to contribute on this Motion. Madam Chairperson, I am aware and in my view, we have already created a very powerful Parliament which has a lot of machinery to control the Executive and particularly the presidency to an extent where in my view, the President relies quite a lot on the good will of the Parliament. And yet, under a different set up, for example under a Party System of government, we can have a Parliament that may be hostile to a President because the President will be directly elected and MPs may be elected on Party lines. Those are two different scenarios where you have a House dominated by a Parliament that is hostile to a given President. In those Circumstances, the issue that the Parliament and the President may disagree on may be very fundamental to both. The Minor issues in my view are already taken care of by section 4, 5 and 6 (a). So when they reach 6(b), it must be a fundamental issue of which none of them is willing to budge. Therefore, I find it very

difficult that in those circumstances, you only assume that the Executive or the President for that matter is wrong and therefore, the matter be settled in favour of Parliament. And that is where I would prefer that such a matter be referred to the referendum. I do not think that every small issue is going to be referred to the public through a referendum. That is why we have so many of these steps from Section Two up to section 6(b). That is to give Parliament and the President chance to resolve the issue. So when they reach that final decision of impasse where there is absolutely no decision, in my view, the only legitimate fora that could solve that issue should be the people. I am aware of the issue of the cost and also the issue of manipulation of the civil society, but who is in a better position to manipulate the civil society? If anything, it is the so many Members of Parliament who will go into the country side and campaign against the decision of the President. And therefore, in my view, you cannot say that the interest of the people will be prejudiced if we had a referendum because it will be affected by a manipulation from the President. I am strongly in support of this provision as a reserve force for settling issues which both the Executive and Parliament may be unable to resolve. Thank you.

MR. NASASIRA: Thank you very much, Madam Chairperson. I think before we really conclude this issue, it is important, may be, to start from the way Bills are brought to Parliament. I am first of all very uncomfortable with 3(c) which says that: "*the President shall, within 30 days after a Bill is presented to him, notify the Speaker that he or she refuses to assent to the Bill.*" In most normal circumstances, Bills are brought by government, in other words by the President, to Parliament. Now, she seems to think that bills come from parliament. Under a few circumstances, you have a Bill that is brought by the private Member of Parliament. Now, that is a situation where you see a Bill where the President will not have known anything about it. But most Bills are brought by government to parliament. Now, if the Bill is going to be substantially changed, then the government has got a right to withdraw it, even before Parliament passes it. That is one point I wanted to clear. Secondly, if there is a case of Parliament rejecting or wanting to amend it, then Clauses (4) and (5) have set up a process, Clauses 3(b) 4, and 5 have set up processes where negotiations can take place between government and Parliament on that Bill. So, where will

this situation then arise where the President looks at the Bill and says, "No, I reject it"! That will be a Bill that will not have been initiated by government in the first place. May be a Parliament has decided to make life difficult for government and a Member of Parliament raised a Bill and the Bill is discussed in Parliament, it is passed and then it is sent to the President for assent. Then in that case, that will be the only case when the president can say "No! I do not want to give my assent to this Bill." You will know straight away now that there is a serious conflict between Parliament and government or the President. It is only in that case that may be we can qualify that then the case is taken to the people. So, if (c) could have qualified where the Bill is coming from, or who initiated the Bill, then we can go ahead, maybe to consider when the matter cannot be resolved between the President and Parliament. And in that case - *(Interruption)*

DR. BYARUHANGA: Point of information! The information I wish to give to my Colleague Hon. Nasasira is that, when the Bill comes from government and comes to Parliament, Parliament debates it and can amend it anyway they wish. So that although the Bill came from government, the statute may be very significantly different from what the government had proposed.

MR. MALIRO: Point of information! Thank you, Madam Chairperson. I would like to draw the attention of the Member holding the Floor to Article 143, Clause (3), Paragraph (b). *It reads: "Among the functions of the standing committees is to initiate any Bill within their respective areas of competence."* Therefore, our committees can start Bills which are not necessarily originating from the government.

MR. NASASIRA: I want to answer the information from Hon. Byaruhanga. I said that myself. I said that, if a government initiates a Bill, and if Parliament wants to change that Bill substantially, then government has a right. If it changes the principle of the Bill, then the Minister presenting the Bill has the right to withdraw that Bill, if the Bill is going to be changed substantially. As for the last informer, referring to Article 143, I also said that, even a private Member can move a Bill - for that matter the Committee. And it is where I want us to qualify that should a Bill be initiated from Parliament, then that is the only time we should give the President a case for referendum. I want to qualify

a referendum only when a Bill is not initiated through government, it is initiated through Parliament alone and the President finds that he cannot really consider that Bill to be justifiable and he refuses it, then that is when we should go to the people. In other words, I want to leave the referendum case only on special Bills by the President that the government has not initiated, on private Members Bill or a committee of Parliament initiating the Bill. So, Mr. Chairman, I would like to move an amendment which will affect 3(c) that we subject only Bills that go for referendum or Bills rejected by the President which had been initially initiated from Parliament not from government. Mr. Chairman, I beg to move.

THE DEPUTY CHAIRMAN: It is not seconded. Hon. Mulenga, I think we have really discussed enough of this. Let us hear from Hon. Mulenga, then the mover and then we pronounce ourselves on the issue.

MR. KAVUMA: Point of clarification. Madam I was seeking clarification actually not from the Chairman of the Committee, but I was seeking the indulgence of the Chair that it appears this matter requires a bit of more consideration. And I was going to request the indulgence of the Chair so that we allot a bit of more time to discuss the matter rather than winding it up after the Hon. Chairman has talked. That is the indulgence I was seeking, Madam Chair.

THE DEPUTY CHAIRMAN: There is a request that, we stand over this issue.

MR. MULENGA: No. Madam Chairman, what I understood Hon. Kavuma to say was that, more time should be allowed to debate. But, let me see if I can persuade the House, including Hon. Kavuma that really this amendment is uncalled for. The main concern of those moving this amendment and those who are supporting it, is that of the President being directly elected. He also has a mandate from the people almost equivalent to that of Parliament. But let us not forget that the President is elected as the Chief Executive. Parliament is elected to legislate. We have passed a provision that, the executive power of the country is vested in the President and we have passed the provision that legislative power is vested in Parliament and we shall, I hope, pass another one which says, judicial power is vested in the Courts. Now, why did we

provide for the President to have a right to veto, to say no to a Bill? It is in recognition of that fact that he is directly elected, and he may feel that what is being passed by Parliament or has been passed by Parliament is running counter to what he believes is his mandate. But in reality, the primary responsibility of legislation belongs to Parliament. Now, when we say, but the President may refuse to assent to it or may ask Parliament to reconsider, it is to give him that recognition. That he being the number one man, the one leading the country in the executive position - *(Interruption)*-

MISS KALIKWANI: Point of clarification! Thank you, Madam Chairperson. I am just seeking some clarification on something that is disturbing me quite a bit. I notice in Clause (5) that we have passed that actually in the final analysis, Parliament can pass a Bill without the consent of the President. Now, my clarification is, who is the overall in charge of government, is it Parliament or the President?

MR. MULENGA: I thought I was explaining that point. The President is head of government, Head of State, Commander in Chief of the Armed Forces. Parliament is the Legislator. But in the recognition of the position of the President, he has that power to assent so that he may satisfy himself that there is nothing Parliament has passed which is against the country, against the people as earlier on Hon. Sebi was talking about. So, I have explained to Hon. Kalikwano I think, who is who in the state But what I was stressing, Madam Chairman, there is this provision to allow the President to say no to Parliament. That is what we call checks and balances. The provision is saying, Parliament is under obligation to consider the views of the President. Otherwise, we would have said, if it had absolute power like in UK, where Parliament is said to be able even to change a man into a woman, they would not consider his views. So, we are saying, Parliament must consider the views of the President when he expresses doubt about what they have passed, but when they do consider, and still pass it, there must be a way of resolving the impasse. We are saying, let them go as far as two times, where he is asking them these are my views, they consider them, may be they will modify, may be they will amend, they will respect his views not doubt or give reasons why they cannot accept. Now, we must reach a point when the impasse has to be resolved. What we are saying, and that is why there was no resist-

ance when this House decided to amend the number from one half to two thirds, we did not resist as a committee, although we had had reasons for bringing it down to one half. But we said, okay, two thirds - if two thirds of Parliament says, "No, we think Mr. President, we have taken into account your views but we think this is what is good for this country", then the President should either accept that "the legislators have taken into account my views, and I must respect them, out of respect, they have taken into account my views, now they have decided". Out of respect of Parliament, the President should also accept. But as Hon. Katenta Apuuli said earlier on, if he feels so strongly that he is right and they are wrong, then he has the political method of testing the will of the people.

I think it was Hon. Sebi who referred us back to the provision, the power is vested in the people. That is true. But how do the people exercise their power, how do we say they should exercise their power? We are saying they are legislators. The people exercise their power by choosing through election those to govern, those to legislate. So, let us not say we can go to the extent of sending them a Bill for an Act to decide. So, I think I am informed fairly well. Let me finish. In fact I am concluding. The political method of resolving it as suggested by Hon. Katenta Apuuli would be the correct one. If the President feels that he is right and Parliament is wrong, he can resign, there will be an election and he makes that issue. But let us take into account the roles we have assigned, the power belongs to the people, the people use the power to choose their leaders in these different categories. Let Parliament be the legislator, and President be the Executive.

MR. KAVUMA: Thank you very much, Madam Chairperson. Madam Chairperson, I have been looking at Hon. Mukwaya's amendment, and I think it is important for us when we consider it, to consider it in its totality. Madam Chairperson, I think Hon. Mukwaya is finding a solution in case of conflict between the President who is elected universally by the people and Parliament which is also elected by the people. Madam Chairperson, a lot of politics is about conflict resolution. It is very easy, even if you derived the authority from the same source, to come and have a conflict. Originally, the National Council of State was being proposed as a forum to resolve conflict of this nature before other means which may not only be political, but also forceful and resorted to. The National Council of State fell out - *(Interruption)*

PROF. NABUDERE: Point of clarification! Does that mean that Hon. Kavuma wishes to resurrect Article 154 which we rejected, when we rejected the National Council of State?

THE DEPUTY CHAIRMAN: He was just making reference.

MR. KAVUMA: Thank you very much, Madam Chairperson. So, Madam Chairperson, only yesterday when we were debating what would have appeared to be a very obvious Motion that the electorate should have a power to recall their representative, there were arguments on the Floor which actually indicated that some of the debates were ignoring the fact that the master of any representative in Parliament is the people who elected him. That is an example where you can easily legislate or deliberate in contravention of what the electorate - your masters think. So, Madam Chairperson, as a conflict resolution method, Hon. Mukwaya is saying, before we go to invoke other means from which even the people may stand to suffer loss of property and life, let us go back to the people to be the ultimate judge, to see whether we can resolve this conflict.

Madam Chairperson, I have heard arguments that, this is a very, very expensive affair. But I want to allay the fears of delegates who have this in mind by saying this is likely to be a very rarely invoked provision in that, there are many avenues which are being in-built in this article to facilitate peaceful resolution of a conflict even before going to a referendum. But I think Hon. Mukwaya is only saying that, should we come to that position, then definitely the people who are the masters, who are the supreme political organ of this country by our own constitutional provision we passed, should have an opportunity to help in resolving this crisis. Madam Chairperson, this is why, Hon. Mukwaya goes on to provide that, in the event that people vote in favour of the parliamentary position taken, then the President either accepts or resigns. He also says, in the event that the people decide to vote in favour of the presidential position, then either Parliament accepts and they continue after reconciliation or the President resigns. So, Madam Chairperson, I think it is very important taking into account our History in this country, where the people have suffered because of a conflict of leadership in the various organs of government, that we give our people the right to ultimately have a say in the running of their

affairs before they stand to suffer loss of life and their property.

Madam Chairperson, I want to conclude by appealing to Hon. Members, to look at this provision as a healthy provision and a provision that strengthens the role of our people. We departed from the usual notion of saying, the constitution shall be supreme. We also said that, the ultimate political supremacy rests with the people. So, even if we cherish the supremacy of Parliament in legislative matters, Madam Chairperson, that supremacy is only being exercised by Parliament on behalf of the people so that in the event that the peoples interests appear to be ignored by Parliament, then the people should have a right to directly resolve this conflict. Madam Chairperson - *(Interruption)*

MR. KARUHANGA: Point of information! I am grateful to Hon. Steven Kavuma for allowing me the Floor to inform him that Parliament is not a permanent structure, we have given it only five years. If they really misbehave, and together with the President they cannot agree over a series of Bills until the level two thirds, which is a very high level of democracy, to go back to ask for a referendum after two thirds of members of Parliament from Uganda have rejected the President's view. You can easily tell what the referendum will come up with. So, five years is a very short time and I really would like to appeal to Hon. Kavuma and Hon. Mukwaya to really withdraw this Amendment.

THE DEPUTY CHAIRMAN: Hon. delegates, as I said, after him, I put the question.

MR. KAVUMA: Madam Chairperson - *(Interruption)*

THE DEPUTY CHAIRMAN: I do not see anything new from what Hon. Mulenga has said and what Hon. Kavuma has said. It is a matter of yes or no. Hon. Kavuma, proceed.

MR. BIDANDI SSALI: Point of clarification! I am sorry to insist on this clarification but I thought it would be important for me to make up my mind. I was taken by the arguments of the Chairman, but I want him to clarify one thing that if the President finally says no, I do not accept, I resign, in the ensuing elections, can he stand? If he can stand and he is re-elected what is the fate of the Bill? Does Parliament in turn resign, does it now accept the President's view over the Bill and if he answers

either way or the other way, can we include it in the Constitution so that it is obvious that if the President finally resigns and was re-elected over this issue, then there should be provision whether the Bill should now be rejected or Parliament should resign? I just want him to clarify for me, because I see situations where the President feels very strong and resigns, then there is election of another President, he stands, he is re-elected, and that impact there is where I want the Chairman to provide a solution before I finally vote for it or not.

THE DEPUTY CHAIRMAN: Perhaps, Hon. Kavuma can answer that one.

MR. KAVUMA: Madam Chairman, the clarification was sought from the learned Chairman and I do not intend to usurp his opportunity to answer it.

THE DEPUTY CHAIRMAN: You complete, Hon. Member deserves it.

MR. KAVUMA: Madam Chairman, I was saying, the Hon. Chairman said that are we going to bother our population by sending Bills to them. No, this is very far from that. A referendum is not a question of sending the entire Bill to the population; the question will be framed, "we have had this empathy, Parliament believes this, the President believes this. What is your view as the people? As simple as that! It is not a question of referring the entire Bill to the population. Madam Chairman, I want to end by saying that failure to provide a concrete resolution mechanism in our Constitution can lead to insecurity and instability which would unfortunately put at jeopardy the State and the citizens of this country. Madam Chairman - *(Interruption)*

THE DEPUTY CHAIRMAN: Order, order!

MR. KAVUMA: Madam Chairperson, other countries have opted for a direct veto by the President, but as Hon. Mukwaya says, I think judging from the experience we had, it would be dangerous to allow the President to have a directive veto because it can groom dictatorship, just as an over powerful Parliament can also develop into Parliamentary dictatorship. Therefore, Madam Chairperson, I want to appeal to Hon. Delegates to consider this amendment very carefully in that light, in the light of actually empowering the people as we have already agreed and give them just one last chance before these organs of State resort to means other than political solutions -

THE DEPUTY CHAIRMAN: There is no cause for order, I have not seen him disorderly at all.

MR. KAVUMA: - and resolve conflicts peacefully. I thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Mulenga, answer Hon. Bidandi Ssali and we vote.

MR. MULENGA: Madam Chairman, I am glad to answer Hon. Bidandi Ssali and his privilege he has got. His point is about what happens if the President feels so strongly that he takes the political option to resign and go to the people and say, I resigned because I do not want such and such a law. If he is re-elected, what will happen if the law is either represented or the President asks his government to move that the Bill be repealed or rather the Act be repealed, and Parliament refuses? My answer is in two parts; One, and I think really the practical one, is that I do not expect a Parliament which has faced the people and they have said "no, you are wrong", I do not expect that Parliament to turn round and say, we do not care whether the people have vindicated you or not, we are going to reject again. I think that would be - we are talking of a very hypothetical Parliament.

My second part of the answer is that if it is felt by this August House that it is necessary to go to the extent of saying, in the event of the President resigning and taking the issue to the people and he is vindicated, then Parliament must accept his view. I would have no objection to that, I would say it is absolutely unnecessary in my view. What sort of Parliament are we talking about, what sort of President are we talking about? A President who will refuse to respect the views of voters of a whole Parliament, what sort of Parliament are you talking about? The dictator? Or the a Parliament which will refuse the will of the people when they re-elect the President, who resigned on principle and put figures on his platform that he wants that law repealed and that Parliament says, No! What type of Parliament would that be?

THE DEPUTY CHAIRMAN: Hon. delegates, I think really we are just going round the problem. Let him finish. Hon. Mulenga finish and I put the question. Hon. Mulenga, address the House, not an individual. Are you through? Now, we have a Motion by Hon. Mukwaya that we delete 6 and insert what he has proposed.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, I think all the other proposals by Hon. Mukwaya falls by the way side.

MR. MULENGA: Madam Chairman, I think we formally adopt 6 (b) or the entire 6.

(Question put and agreed to).

MR. MULENGA: Madam Chairman, the Committee recommends Clause (7) to read as follows: "Whether the President fails to do any of the acts specified in Clause (3) of this Article within the period prescribed in that Clause, the President shall be taken to have assented to the Bill at the expiration of that period, the Speaker shall cause a copy of the Bill to be laid before Parliament and the Bill shall become law without the assent of the President."

(Question put and agreed to)

MR. MULENGA: Clause (8); Madam Chairman, the Committee recommends that Clause 8 reads as follows: "A Bill passed by Parliament and assented to by the President or which has otherwise become law under this Article shall be published in the gazette."

Madam Chairman, that is the end of Article - *(Interruption)*

AN HON. DELEGATE: Point of clarification Madam. I am seeking clarification before we pronounce ourselves to the whole Article in 6 (b). I am seeking the opinion of the Chairman, since (5) was amended to two thirds, would it not be proper also to amend two thirds?

THE DEPUTY CHAIRMAN: (b) consequentially follows - two thirds, that is obvious and we had already done it. So, I put the question, on 144 as amended, that it do stand part of this Constitution.

(Question put and agreed to).

THE DEPUTY CHAIRMAN: So, 144 as amended does stand part of this Constitution.

MR. MULENGA: Madam Chairman, Select Committee Two recommends that Article 145 be recast

to read as follows: "*Parliament shall not pass any law to alter the decision or judgement of any Court as between the parties to a decision or the judgement.*"

(Question put and agreed to)

THE DEPUTY CHAIRMAN: Now, I put the question on 145, that it do stand part of this Constitution.

(Question put and agreed to).

MR. MULENGA: Article 146: Madam Chairman, the Committee recommends that Article 146 be amended only in the opening words but otherwise be retained without amendment to the paragraph. It reads: "*Parliament shall not, unless the Bill or Motion is introduced on behalf of Government;*

a) proceed upon a Bill including an Amendment Bill that in the opinion of the person presiding makes provision for any of the following.

i) The imposition of taxation or the alteration of taxation otherwise than by reduction - (Interruption)

MISS. AKELLO GRACE: Madam Chairman, I had gone to discuss with the Chairman of the committee hoping to get him to agree with me and some people who think like me, that the words, "*in the opinion of the person presiding*" should be deleted from this Article so that it reads like: "*Parliament shall not, unless the Bill or the Motion is introduced on behalf of Government, proceed upon a Bill including an Amendment Bill that makes provision for any of the following ...*" but I see that he suggested that we bring the issue up for discussion, so I do not know whether you could allow me to move a formal Motion to delete the words: "*in the opinion of the person presiding*" both in (a) and in the (c) part of that Article Madam Chairman.

MR. MULENGA: Madam Chairman, I confirm that the Hon. delegate did come to whisper to me, I tried to explain to her in whispers also, because proceedings were going on, I saw that I was not convincing her. So, I said to her, you can bring it up but I was trying to explain to her that these words are deliberate, it is to avoid unnecessary dispute as to whether or not a Bill or a Motion has any of the

financial implications that are being referred to in here. So, it will be the Speaker to make a ruling that a Bill has financial implications or a Motion has financial implications or not and if he so rules, then the Bill should not be presented unless it has been proposed by Parliament. That is the point I was explaining yesterday. There is no need to clear that these future MPs are going to be so greedy that they will elevate themselves when Government does not have the money to cover it. So, I think that question is necessary, Madam Chairman.

PROF. KABWEGYERE: Thank you, Madam Chairman. I think there is a need to amend that Clause because the question of taxation is not a matter of opinion at all of the Chairman. It is either true that there is going to be a financial implication or there is not going to be, it is not a matter of opinion. If we leave it to the matter of opinion of the Chairman, he could easily say in his opinion that it is not, when in fact it is. So, I think it is correct that those words be deleted.

PROF. NABUDERE (Budadiri West): This matter is directly from the original proposal by the Odoki commission itself. So, we should consider that carefully. Any suggestion to delete should be considered carefully because it is not being proposed by the committee as such, it is important that one person has to rule whether a particular provision involves financial implications or not. The Speaker is the person who should have that power and I think it is not just an opinion, it is a question of judgement whether such a Motion or Bill affects the financial situation or not. The ruling of the Chairman should be final.

MR. NDEGE : Point of clarification! Could the Chairman clarify to me whether the Private member's Motion cannot be brought to alter the provision in this Article? It appears to be restrictive to government only, whereas we accept a Private Members Bill, be it by a member or by a committee. Could he clarify whether that is the case and if not, then maybe I think we should review that.

MR. MULENGA: I am sorry Madam Chairman, I have really not understood what Hon. Ndege's question is.

THE DEPUTY CHAIRMAN: Can you repeat your question?

MR. NDEGE: My question is, the clause says: "*Parliament shall not, unless the Bill or Motion is introduced on behalf of the Government...*", but we have what we call a Private Members Motion. I can bring a Motion abolishing the taxation on old clothing as a private member. So, it appears as if this would restrict me.

MR. MULENGA: No. Madam Chairman, if you read (a) (i), what it is restricting is Private Members increasing, but for abolishing a tax, it is allowed. It says "*the imposition of taxation or the alteration of taxation otherwise than by reduction.*"

MR. NDEGE: Okay, what if I want to increase the tax on any item?

MR. MULENGA: Then it restricts you.

MR. NDEGE: I think that is what we should revisit, I think it should be either Government or a Private Members Bill.

MR. MULENGA: I am sorry Madam Chairman, it looks like a dialogue between me and Hon. Ndege. The whole point of the Article is to recognize that it is government, in matters of finance, it is Government that should make the proposals for increasing on revenue and for increasing on expenditure. If I may summarise like that.

MR. NDEGE: I would like to bring an Amendment in that it should be either on behalf of the Government or a Private Members Motion because what has been happening in the past is that you cannot alter anything which is brought before Parliament by Government, whether it is correct or incorrect. *(Interruption)*

THE DEPUTY CHAIRMAN: Is the Motion seconded by the way? Your Motion is not seconded so there is no use. Oh, Hon Nasasira has seconded it.

MS. AKELLO GRACE: Madam Chairman, thank you for giving me the opportunity to speak, because when I introduced the idea that this Clause should be deleted, I was not given a chance to explain why *(Interruption)*

THE DEPUTY CHAIRMAN: Which one?

MS. AKELLO: The same one, "*in the opinion of the person presiding*" but I have to give my reasons

why and I think they are valid reasons.

THE DEPUTY CHAIRMAN: Okay, let us have it like this. You are saying, instead of "*in the opinion*", we put "*makes*".

MS. AKELLO: No, we simply leave out the words "*in the opinion of the person presiding*", and we say, "*proceed upon a Bill including an Amendment Bill, that makes provision for any of the following*" so that we do not leave this very important matter to the opinion of the person who is presiding because he or she could have different agenda, could have other interests, could have other things that he would not like to be passed by Parliament or would not like to be given to Parliament and therefore, this is not a matter for opinion, this is a matter of commitment.

THE DEPUTY CHAIRMAN: Is it seconded? Okay, seconded.

MS. AKELLO: Madam Chairman, the Speaker or his deputy are responsible Ugandans who are diligent in the performance of their duty, they do not therefore need to be reminded continuously of the opinion in the exercise of their duty. It is expected that they will take into consideration the implications and repercussions of each of their action when they are sitting on that important Chair. On the other hand, the Presiding Officer should not be given the leeway to exclude some important considerations, for example, if it is a government Bill, there may be reason why the Speaker could decide that a certain Bill which is being put forward, should not be put forward at that particular time and therefore, exclude the possibility of discussing something very important or on the other hand, they could push it, they could connive with the government in power to push through only those Bills which, in the opinion of the government in power, is important and leave out others which, other members of Parliament might think are important. Therefore, it is very important that this person should not simply act on his opinion. This is particularly pertinent in the issue that is at hand, which are of weighty financial matters. They affect the issue of alteration of taxes, putting a charge on the consolidated fund or raising the agreed charge. They also affect the payment of money from the consolidated fund or from any other public coffers. The increase of the amount to be paid or issued or withdrawn from this public fund are affected by this Clause, "*in the opinion of the person presiding*".

So, it is the last of the four sub-articles; the issue of the composition of the remission of Uganda's debt is equally important and should not be simply left to the opinion of the person presiding. So, Madam Chairman, in the circumstances of our history, we can easily recall that some peoples' opinion become law and once they become law, nobody else can move them and this leads to all kinds of difficult conflicts with the country. So, it is important, I think, that while we are making this Constitution now, we do not make room for people to have their private opinions imposed on the government or on the State. Thank you Madam Chairman.

MR. BEN WACHA: Thank you Madam. I think there is a misunderstanding. The issue here is that, the opinion of the Chairman or the presiding person will be called upon only in respect of Bills or Motions brought by Private members. Where a Motion or a Bill is brought on behalf of government and it has financial implications, then this Article will not be called into play. But should a private member bring a Bill or a Motion, which marks off some financial implications, then the Presiding Officer will be called upon to interpret that Bill as to whether it does not have or it does have financial implications and therefore, should only have been brought by Government. The issue here is, should that decision by the Presiding Officer become a debating matter, again that is what this Article is trying to prevent. It is saying that if the Presiding person says, I think this matter ought to have been brought by government, that decision should be filed and I think it is only protecting *government* on matters with financial implications.

DR. BYARUHANGA (Kitagwenda County) Point of clarification! Madam Chairman, I wish to get clarification from Hon. Wacha. In this CA for example, do we have powers apart from when we are deciding on the fate of Clauses of this Draft Constitution, to challenge the Chairman's ruling? Because in Parliament, the Speaker's ruling is taken for granted, I do not think it is challengeable.

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

MR. BEN WACHA: The point is, should a matter which has been stated to have been either: (a) financial or b) not financial, be debated as to whether it is correctly interpreted or not? That is the issue because if you decide that the Chairman has wrongly decided on that matter, you can tell him.

MR. BIDANDI SSALI: Madam Chairperson, the exception being provided in (a) 1, 2, 3, and 4, in my view are matters of fact not opinion, not speculation. Each one of these is either yes or no. It is either a fact or it is not. Therefore, it is not subjected to the opinion or rather it should not be subjected to the opinion of whoever is in the Chair because in the final analysis, when you say in the opinion, and you challenge and it is a Constitutional provision, the person chairing will only say, you read the Constitution, it is my opinion that has got to be taken into account. Therefore, since 1,2,3,4 are facts, you either reduce or you do not, you either increase or you do not, it is obvious, it is I think straight forward to know that this is an increase, this is a charge on the consolidated fund and therefore, I tend also to support the idea that in this particular case, we should not constitutionalise the opinion of the Chair where facts are facts.

THE DEPUTY CHAIRMAN: Hon. Paul Etyang, are you still interested in the Floor?

MR. ETYANG ORONO (Tororo County): Madam Chairman, I go along with the suggestion - I go along with the proposed Motion to delete the interjectory Clause which gives the decision on this matter to the opinion of the presiding individual, for the reasons that have already been given. I was just wondering, Madam Chairperson, that this is really more of clarification either from the Mover of the Motion or the Chairman of the committee, whether the words, "makes provision" could not similarly be interpreted in the same way as the "opinion of the presiding officer". I would have been much happier with the expression, "gives effect", instead of "makes provision" because this provision would be specific in the Articles of the proposed Motion and the making of the provision or the giving effect may not necessarily be reflected in the Articles that are given. This is more of a clarification, otherwise, Madam Chairman, I go along with the Mover's - (*Interruption*)

MR. BEN WACHA: Point of clarification! I am seeking clarification Madam Chairman, from Hon. Bidandi Ssali.

THE DEPUTY CHAIRMAN: You know it is Hon. Paul Etyang who is on the Floor.

MR. BEN WACHA: No, Hon. Bidandi Ssali made some statement which I want clarified before we make our decision on this matter.

THE DEPUTY CHAIRMAN: But let Hon. Etyang finish.

MR. BEN WACHA: I thought he had finished.

THE DEPUTY CHAIRMAN: You had finished Hon. Etyang?

MR. BEN WACHA: Ya, he had finished.

THE DEPUTY CHAIRMAN: But he was saying that he is giving effect and I did not see any - it seems your move has not been - Grace.

MS. AKELLO: I do not mind having the word "giving effect" although I would in turn ask Hon. Etiang to explain further what - how different that would be from "*making provision for*" but I think giving effect is okay. Perhaps he could explain a bit further.

MR. WANENDEYA (Budadiri East): Point of information! Thank you Madam Chairperson. Madam Chairman, there is a famous point in connection with the Shs. 62 billion of the Uganda Commercial Bank. Now, a law was brought to Parliament and Government proposed that some of those loans would be written off from the consolidated fund and yet, Madam Chairperson, you find that some of the people who borrowed the money were some of the Ministers, MPs, and Civil Servants. Should that be taken as a point to go by in the opinion of the Speaker or not? I would like that point to be clarified before we go further and this is in connection with "in the opinion" because opinions sometimes may not work out to be in the best interest of the people but rather of the individuals who may be in Government. I thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Okay Hon. Wacha you can air your request.

MR. BEN WACHA: Madam, thank you. I wanted Hon. Bidandi Ssali to make clarification for me. This Article and Clause restrict the introduction of a financial Bill to Government. What in his opinion will happen if a Private member sought to bring a Bill which has financial implications to Parliament?

MR. BIDANDI SSALI: Madam Chairman, in my view, whether a Motion is from a private member,

it will either have the effect of increasing or decreasing. So, it will be seeking either of what has been stated here and as long as it is seeking what has been stated in 1,2,3,4, it will be - it is not a matter of opinion but it will be, this is my opinion, I mean I am really expressing an opinion, I am not an authority on what I am saying, but this is my view as a Member of the Assembly.

PROF. KABWEGYERE: Point of clarification! Thank you, Madam Chairman. I would like to add on what Hon. Bidandi Ssali has said. When a private member is moving a Motion or moving a Bill that has financial implications, the procedure exists for him or her to handle the matter through the relevant Ministry or the relevant department, the Minister in the first place accepts - the Clerk. There is a lot of consultation, I am talking about. There is a lot of consultation before this Motion or Bill is tabled. Otherwise, if you have a Government which has the majority, a Bill will be lost if you have not solicited support for it. So, sometimes we talk as if there is going to be such hostility that a private member will be shut up and so on. But the normal procedure is that, the Mover consults and gets support, because we must have the public interest in that Bill or in that Motion so that there is a justification of the expenditure.

THE DEPUTY CHAIRMAN: Okay, let us pronounce ourselves on Hon. Akello's Motion that we delete "*in the opinion of any person presiding*".

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, (a) is amended.

MR. ETYANG: Madam Chairperson, may be this is the point the clarification I was seeking could be made. I was seeking to improve on this Clause as amended to substitute the words, "*makes provision*" with the words "gives effect to".

THE DEPUTY CHAIRMAN: Hon. Mulenga, would that make any difference from what the Committee proposed? He is saying, instead of having "*making provisions for*" we have "*giving effect to.*" Does it make any change in meaning?

MR. MULENGA: What I have not understood is why Hon. Etiang is unhappy about the words "*makes provision for in the following..*" That is what normally the law does. The law does not give

effect, the law makes provision and then is enforced afterwards. So, I do not understand why we should replace "makes provision for" with "gives effects to". A Bill does not give effect, a Bill makes a provision. Can I understand why -

MR. ETYANG: Madam Chairperson, if you recall, I specifically sought clarification from the Chairman of Committee Two. My problem is this, "makes provision" would appear to suggest that in the Articles of a particular Motion, there is a provision having the effect of 1,2,3. Those provisions may not be clear enough or they may in interpretation and implementation actually have the effect of 1,2,3 and that is why I was actually asking the Chairman, who also happens to be a lawyer - that suppose a Bill may not necessarily make the provision, but it has the effect of either imposing - having the duty of imposing taxation or a charge or the withdrawal from a consolidated fund of other public funds as here enumerated!

MR. BATEGANYA: I was going to suggest that since we agreed on the principle, I would like to propose that we leave this matter to the Legal and Drafting committee and the Technical Committee to come out with the exact language we want in the Constitution since the principle is clear to us and we have just passed it. Thank you very much, Madam Chairman.

MR. KAYONDE (Gomba County): Point of clarification! Madam Chairperson, I am seeking clarification from the Chairman of the committee why they found it necessary to restrict members of Parliament to bring any Amendment or Motion concerning financial matters and only restrict it to Government because the economy of the country is based on raising funds. Suppose Members of Parliament realise that there is deficiency in what Government has provided in the Bill and according to (i) and (ii), they are only restricted to making reduction. So, the Parliament is tied even not to make any adjustment in taxes, you may find that government has - *(Interruption)*

THE DEPUTY CHAIRMAN: Hon. Kayonde, are you addressing No.1?

MR. KAYONDE: Ya, I am addressing No.1.

THE DEPUTY CHAIRMAN: But we have not finished (a), the beginning statement. Hon. Bateganya was saying we give these two to the

Drafting Committee. We had not agreed on that one. I said we are still on that one.

MR. KAYONDE: I am talking on the principle which Mr. Bateganya is talking of being referred to the Drafting Committee.

THE DEPUTY CHAIRMAN: It is only "makes provision for" and substituting with "giving effect to." That is just the language not substance. So, let us finish the language part first, then we go to (i) which has the substance we are talking about.

MR. MULENGA: Madam Chairman, I do not want this to be prolonged unnecessarily. I would agree with Hon. Bateganya but subject to saying this, we indicate to the Technical Committee the point being posed by Hon. Etiang, whether it is necessary to say "to proceed upon a Bill which makes provision for or has the effect of making provision for", whether that is good drafting so that it is clear to the Technical Committee what we are asking. I have no objection to that going there although I would have thought that it is understood and that is why I lament that we have had to delete the person who would have decided that it makes the provision or has the effect of making the provision. Unfortunately, we have deleted it.

THE DEPUTY CHAIRMAN: Hon. Kayonde, so that is understood. It will be cleared in the Drafting process.

MR. KAYONDE: Madam Chairman, the interpretation of what has been stated here has got two implications. One is that it stops any member of Parliament to bring any matter or Motion or Amendment to be discussed by Parliament. In other words, it is only government which can present a Motion on financial matters. Two, the implication is that Parliament has also been restricted or members of Parliament have been restricted to increase or decrease any charge or any tax. Now, I am saying why did the Committee consider it necessary to restrict the private members to bring any Motion on any financial matter? That is one. Two, should members of Parliament realise that the government has over taxed one area and has under taxed one area, by (i) and (ii), members of Parliament can only make adjustments in as far as reduction is concerned. So, my concern is that as far as financial matters are concerned, Parliament cannot raise any further funds by these Clauses and also no one or no

member of Parliament can bring any Motion on financial matters to be discussed. I want really the justification for this restriction.

MR. MULENGA: Thank you - Hon. Karuhanga would like to give information before I -

MR. KARUHANGA: Point of information! Madam Chairman, I wanted to attempt to give an answer to my Friend Hon. Israel Kayonde as to why this power of introduction of financial Bills is limited to Government. It is because if it is left to individual MPs to start proposing taxation, the matter of taxation is a very detailed subject, it needs a lot of study, the whole Ministry of Finance has to see the implications on both Macro and Micro Economics and see where the trend of the country is going. It is also the basis upon which Government remains in power in the sense that they try to bring development in the country and it is one of the areas you must leave Government really to initiate proceedings. If for example, the Minister for Finance introduces a Bill to impose tax, let us say on housing, and he knows that he has calculated this tax, he is supposed to be given maybe the income and from there will go towards lending and has introduced a policy and they have gone to the exercise of lending this money to increase housing stocks and a Member of Parliament comes and reduces the amount or abolishes it, it will completely confuse the entire structure of Government. But I think it is very important that members of Parliament, in fact, are not denied the opportunity to discuss because once the Bill is presented, then it is up to them to really debate and pass. But to say that they initiate, I think, would be very strange and in democracy, would not probably work smoothly.

MR. ZZIWA GEORGE (Kawempe Division North): Thank you very much, Madam Chairperson. I just wanted to add to what Hon. Karuhanga has been saying regarding the taxation policy of Government that it only has to be exercised by the Government itself and not by private members. I would like to give this information. First of all, I am a member of the Select Committee Two and we had a heated discussion on this matter. Taxation, just like expenditure. Madam Chairperson, is a tool for distributing resources in the country and one has to be very, very careful because history has shown that most governments come down through the ballot, they are taken out of power by somebody manipulating the taxation in such a way that citizens or the

Wanainchi feel the Government is being unkind to them when they impose a very, very high tax on various items and leaving it to the private members of Parliament to increase the taxation would definitely make the Government very vulnerable to being kicked out of power and Government has therefore got to be extremely careful to make sure if this distribution by way of expenditure from the consolidated fund or by way of increasing taxation to sup up extra funds has to be exercised by Government itself or by agents, those agents being the Ministry of Finance who are well versed in the field of financial management and not to leave to individual members of Parliament to do that. Definitely, leaving it to individual members as Hon. Kayonde was proposing, would put Government at a very very big risk of being labelled anti-people or unpopular and may be probably get it out of power through that means. Thank you, Madam Chairman.

MR. NDEGE: Thank you very much. I think this is a question of looking at members of Parliament as not being well versed with the interests of the people who elected them. It is only Government which has got the expertise of making the right decision on any matter regarding the interest of this country. So, I feel and I have felt before, that there is sometimes where Government fails to act either by omission or by deliberate policy. Recently the committee - *(Interruption)*

MR. MULENGA: Point of Procedure! Madam Chairman, I am seeking a point of procedure. Hon. Ndege had raised this point and he got explanation and he seemed satisfied. Now, Hon. Kayonde has raised it again but we have no Motion we are debating, nothing has been moved to amend. I am worried that we may continue talking without much -

MR. NDEGE: I want you to clarify. Recently, there was a drought - *(Interruption)*

MR. MULENGA: Can we have a ruling from the Chair first.

THE DEPUTY CHAIRMAN: Okay, let him finish then I will come back to you because I have already given him the Floor. But be brief.

MR. NDEGE: Recently there was a drought, the government was sitting, those members where there was a drought brought the problem to the

Parliament and the committee decided and ordered the Government to release money for these people who were dying. In other words, they have a direct interest and obviously this could either effect imposition of extra tax or an extra charge on the consolidated fund. Therefore, I think it is very unfortunate that the committee thought again on a negative aspect and not the positive because I do not see how any Bill introduced by anybody has no financial implication which either affects the consolidated fund or an imposition of a tax to cover whatever calamity has brought sudden change of policy. We should not be very dogmatic, I think we should leave it to the members of Parliament to decide. Thank you.

MR. KAYONDE: Madam Chairman, I wish to move that Article 146 be deleted.

THE DEPUTY CHAIRMAN: You are not seconded.

MR. KAYONDE: I am seconded, and I want to give reasons. Put the question.

THE DEPUTY CHAIRMAN: Proceed, after that, I will put the question.

MR. KAYONDE: Madam Chairman, this restriction has not been there and according to Parliamentary Procedure, it is the prerogative of Parliament to approve all financial expenditure and to raise money to run the country. This is the duty of Parliament and therefore, once it is the duty of Parliament, it is the responsibility of every member of Parliament to raise any matter in Parliament concerning finance. I should make one clarification - *(Interruption)*

MR. WANDERA (Bukooli South): Point of clarification! Thank you Madam Chairman. The clarification I wish to seek from the Mover is, he says this restriction has never been there at all, it is a new matter. I am seeking his clarification on whether he has looked at Article 59 of the 1967 Constitution and Article 57 of the 1962 Constitution before saying that this restriction has never been there at all. Thank you.

MR. MUSUMBA: Thank you very much, Madam Chairperson. Madam Chairperson, I just want to give a clarification and allow me to inform Hon. Kayonde that in fact democracies all over the world have a provision with similar terms as those

existing here. The reason and rationale is very simple, it is based on two principles that one, nothing, absolutely nothing in the provisions they appear in here stops any member of Parliament from suggesting any changes to government with respect to taxation through the appropriate and usual channels. Nothing stops Hon. Israel Kayonde, if he wishes to impose tax of jaggery or Motor boats or whatever, to suggest to government with his write-up in a manner that would give government opportunity to utilise his information.

The second one has already been hinted upon and it is based on the second principle that, the fiscal formulation and regulation of the fiscal regime of any country is an executive function. It is a function of the Executive which is then brought to Parliament for discussion and eventual passing into law. Therefore, Madam Chairman, the considerations upon which this rationale is based is twofold. One is the Macro and Micro aspect, the analysis given in an economy. Introduction or imposition of increment of a single item of taxation can have a whole range of consequences in the entire economy. The second one is actually the collection mechanism; because for every tax you are putting in place, you are also putting in place the mechanism to ensure that it is collected at the most cost effective levels. Generally, it is on those principles that normally Members of Parliament who are given the responsibility to represent their people do not come to Parliament to say, now while the Executive has suggested that there should be no tax on Coffee, we are now putting a tax on Coffee. So, I just wanted to explain this, Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Kayonde, wind up and then we move.

MR. KAYONDE: Madam Chairperson, I think there is a misunderstanding here. The misunderstanding is that, people are looking at how we debate, how a Budget is presented to Parliament, and this reduction is that you do not reduce - you do not increase the figure as presented by Parliament, but you can make adjustment within the tax regime, and I am talking from experience because I have been legislator for nine years now and we have done - when you look at Clause (a) (i) and (2) according to this provision, you cannot make any adjustment upwards in taxing. So, I am addressing this restriction in that the government can under tax one area and overtax another. Now, according to this one,

there is no way a Member of Parliament could propose a higher tax in a particular sector - *(Interruption)*.

PROF. KABWEGYERE: Point of order! Madam Chairman, is the Hon. Member holding the Floor in order to mislead this House by implying that a Member cannot talk on a Motion moved by Government? Because what this one is talking, if you read the first part is that, "*Parliament shall not, unless the Bill or the Motion is introduced on behalf of government...*" That is very clear, any Member will talk, he will even move within that Motion an Amendment but he seems to imply that even Parliament would not discuss a government Bill. Is he in order to confuse us?

THE DEPUTY CHAIRMAN: Hon. Kayonde, debate in the context of the whole article.

MR. KAYONDE: Madam Chairperson, I am addressing myself to (a) (i) and (ii).

THE DEPUTY CHAIRMAN: No, we discuss one by one. You said you want to delete (i) that is the Motion on the Floor, then why are you moving to (ii) ?

MR. KAYONDE: I am talking about the whole article because the opening statement is restricting any Member of Parliament to raise any matter of financial implication to Parliament other than through government. Thank you, Madam Chairman.

THE DEPUTY CHAIRMAN: Hon. Delegates, I think really let us clear this one. I now put the question on Kayonde's motion to delete (i) .

(Question put and negatived)

MR. NDEGE: Madam Chairman, (a) (ii) is that a private member or anybody other than government cannot bring any Motion which might impose a charge on the consolidated funds or any other funds, or alter any such charge other than the reduction. Now, here I am looking at calamities which have happened in the two or three years where government has failed to react in time. Cases like meningitis, the Toro earthquake, these droughts we have been having, government has been very, very, slow in reacting to these kind of natural calamities. So, it is my opinion that Members

should be able to bring Motions because I remember in 1989 we had sleeping sickness in my county, and I went to many of the government officials and they were unable to react and as a result so many people died of sleeping sickness; and nobody could do anything about it until some good samaritan called a donor came and sent us medicine because government officials had to go and make a study, make so many meetings and yet people were dying. So, I think that (ii) should be deleted so that if there is a calamity, a Member of Parliament may bring, in case of such emergencies, any Motion which can cause a charge to the consolidated fund. This does not affect the taxation policy or rate but it might affect government forfeiting some other expenditure in order to attend to such calamities. I beg to move, Madam Chairman.

THE DEPUTY CHAIRMAN: Is he seconded? Not seconded. So, I put the question on (ii).

(Question put and agreed to)

MR. MULENGA: (iii) is that, "*The payment issue or withdrawal from the consolidated fund or other public fund of Uganda of any monies not charged on that fund, or any increase in the amount of that payment, issue or withdrawal*".

(Question put and agreed to)

MR. MULENGA: (iv) "*The composition or remission of any debt due to the Government of Uganda*".

(Question put and agreed to.)

MR. MULENGA: (b) is that, "*Parliament shall not, unless the Bill or the Motion is introduced on behalf of the government; (b) proceed upon a Motion including an Amendment to a Motion the effect of which in the opinion of the person residing would be to make provision for any of the purposes specified in paragraph (a) of this article.*"

(Question put and agreed to)

MR. MULENGA: Now, Madam Chairman, before we express ourselves on Article 146 as a whole, I would like to propose that instead of referring the matter of drafting in (a) to the Technical Committee, we use the phraseology that is in (b) and Hon. Etiang who had raised it would be happy, because

that is, in fact, what he was proposing. So, I am moving, Madam Chairman, that paragraph (a) should read: "*proceed upon a Bill, including an Amendment Bill, the effect of which would be to make provision for any of the purposes specified in paragraph (a) of this article.*"

THE DEPUTY CHAIRMAN: Are you transferring?

MR. MULENGA: No, when we were considering (a), Hon. Etiang raised a question whether the next provision is sufficient because in his view, which I accepted, the Bill may make no provision expressly that have the effect of providing for taxation. So, we said it could be referred to the Technical Committee. But on looking in the same article, I find that in (b), the working is what would have covered that situation. I thought we should use the same wording which is in the same article to improve upon paragraph (a) and we dispose of the matter.

PROF. KABWEGYERE: Thank you, Madam Chairperson. I thought the Amendment by Hon. Akello -

MR. MULENGA: I am not talking about Hon. Akello, but Hon. Etiang!

PROF. KABWEGYERE: No, Madam Chairperson, I see Hon. Mulenga shaking his head, but we had an Amendment of (a) which reads to the effect that "*proceed upon a Bill including an Amendment Bill that make provision for any of the following...*" That is what we concluded with and we passed that. Now, the Amendment that he is proposing now, to me sounds so wordy and I think it does not have the same effect!

THE DEPUTY CHAIRMAN: Hon. Mulenga, you see this is just drafting, it does stop us from pronouncing ourselves on the article. It is a linguistic issue. So, I do not see why really we are - *(Interruption)*.

MR. MULENGA: Madam Chairman, with due respect, when we do refer a matter to the Technical Committee, that means deferring expressing ourselves on the article, and I thought that it would save time if we could do so now instead of referring to the Technical Committee, and with regard to Hon. Kabwegyere's interjection, I think he has forgotten that after we made the Amendment by Hon. Akello,

we listened to Hon. Etiang, unless he had walked out, Etiang made a proposal which was - *(Interruption)*.

THE DEPUTY CHAIRMAN: Because we have passed quite a number of articles, if it is a linguistic issue, we take it in principle that this will come later at drafting, because it is just using neither, nor, or either or, when the meaning remains the same.

MR. MULENGA: Now, would it be wrong for me, Madam Chairman, to draw your attention also to (b) where we forgot to delete the opinion. Do we leave that to the Technical Committee also?

THE DEPUTY CHAIRMAN: You did not move it, and we passed it.

MR. MULENGA: Sorry, I am moving that consequentially we delete the expression in (b) "*in the opinion of the person presiding*".

(Question put and agreed to)

THE DEPUTY CHAIRMAN: So, for consistence, we are following what we followed in (a) (i). Any other issue?

MR. MULENGA: That is the end of Article 146, Madam Chairman.

THE DEPUTY CHAIRMAN: Now, I put the question on 146 as amended, that it do stand part of the Constitution.

(Question put and agreed to)

MR. MULENGA: Article 147 - Rules of Procedure of Parliament. Madam Chairman, the Committee recommends that Article 147 on rules of procedure should read in Clause (1) as follows: "*Subject to the provisions of this Constitution, Parliament may make rules to regulate its own procedure including the procedure of its committees.*"

(Question put and agreed to.)

MR. MULENGA: Madam Chairman, there is a Minority Report, to delete the rest of the clauses in the article. I do not know whether the mover or sponsors of that minority recommendation are - *(Interruption)*.

THE DEPUTY CHAIRMAN: Hon. Delegates, if there is a Minority Report, and the people who moved it know that it is being tabled and they disappear, I think they have lost interest! If I do not see anybody, I think, they have lost interest and abandoned it. That is my interpretation.

MISS. KABIRISI: Point of procedure! Thank you, Madam Chairperson. I am wondering if we have a quorum in this House before we make a decision on such crucial matters of a Minority Report, Madam.

THE DEPUTY CHAIRMAN: Please go and ring the bell. Yes, we have failed to get the numbers required, after the 15 minutes. So, I adjourn the Assembly until the afternoon at 2.30.

(The Assembly rose and adjourned until 2.30 p.m. same day).

THE DEPUTY CHAIRMAN: Hon. Delegates, despite the fact that we adjourned at midday, we are only 70 and it is coming to 3.00 O'clock. So, at five passed three, if we are not 142 we shall adjourn. So, I suspend the Assembly for 15 minutes.

(Assembly suspended for 15 minutes)

THE DEPUTY CHAIRMAN: Hon. Delegates, when the issue was raised that we have no quorum in the morning, we nearly had a similar number of 123 and we could not transact business, and now we are 123. So, still we have no quorum. So, there is no difference between now and in the morning. Still we do not have a quorum because that was the query that everybody has to be here because the issue is important. So, as we have no quorum I adjourn the Assembly until Monday in the morning. So, we stand adjourned.

(The Assembly rose and adjourned until Tuesday 27th March, 1995 at 8.30 a.m.)