



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 24TH MAY 1995

MOTION:- Consideration of the Draft Constitution of the Republic of Uganda [Pg 4477]

Wednesday, 24th May, 1995

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

PRAYERS

*(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 6 - REPRESENTATION OF THE PEOPLE

Article 87 - Independence of the Commission

THE DEPUTY CHAIRMAN: When we adjourned yesterday, we had some issue pending on article 86 which was proposed by Hon. Karuhanga, and I can see a copy of their proposal at my desk. I propose that we get that out of the way before we come to article 87.

MR. KARUHANGA (Nyabushozi): Madam Chairperson, the debate was continuing yesterday and on the suggestion of Hon. Lt. Col. Kiiza Besigye, it was agreed by you that we sleep over this so that we can look around, those who had the facilities for research could compare the number of countries which use this method. The only thing I found was that in Kenya the supervision of parties is done partially by the Electoral Commission, but is mainly by the registrar of societies in Kenya. The Registrar of Societies in Kenya, as you know, is a government employee, and his level of impartiality is not Constitutional nor does he go through the vigorous appointment of going through Cabinet, President and Parliament.

The registrar could well be an employee of the government in power and the government in power might be a political party and you may find that if you adopt that method all the parties will always know that the registrar belongs to a party in power. Other countries in Europe and in the Western hemisphere and now recently Namibia have realised this and they have strictly gone for the Electoral Commission.

Madam Chairperson, you will find that in Article 97 of the Odoki Draft, most of which has been retained as was pointed out yesterday by the Chairman of committee 5, Hon. Sam Kutesa, the functions of the Electoral Commission are detailed in article 97 and the fact that the committee has retained it, and I do not see any reason why this Assembly would not want to constitutionalise the existence of political parties in future in our country, and if we do so, then it is important that we subject them to the rules that apply in other democratic societies.

Article 97 of the Odoki Draft shows that the Electoral Commission's functions constitute superintending and supervising the political parties. They will supervise political parties as they register their organisations, receive copies of party Constitutions and take note of addresses of the national executives of political parties. The Commission is to ascertain that such addresses are correct and that they exist, including the duty of confirming that these executives are ordinarily resident in Uganda and that they are registered voters, and that the districts are equally represented and these parties are not sectarian. Supervising the naming, making the emblem, the motto, symbols, the party colours plus ensuring the efficacy and genuineness of the leaders of these parties is also part of the Commission's assignment. They will also make sure that political parties, as in 10 declare their revenues and assets and sources of their revenues and assets.

This is the normal practice in all democracies. Many countries do not allow their political parties to receive money from outside sources or from enemy countries. So, if the party is going to receive money, the Electoral Commission has already in the draft been charged with the responsibility of receiving these public accounts, and that they make sure that the party accounts are audited annually and these audited accounts can be accessed by citizens at the Electoral Commission.

In 12 they say only citizens of Uganda may contribute or donate money to political parties which are registered. Such supervision is very important. The Electoral Commission in my view is the most legitimate organisation to do that, and it is a question of supervision and enforcement. If a political party is not happy with what the Electoral Commission has done in respect to their activities, the political party will go to court and challenge the

decision of the Electoral Commission. This is available to political parties, to find another organisation which can handle this type of job, I have extended my imagination which is reasonably fertile and I have not found the place for it.

The Electoral Commission is the most ideal organisation in as far as we can make sure that it is neutral, it is impartial as it should, and if we find that there are areas where we have left this impartiality unchecked, we should tighten it. Once we do that it is a quasi judicial organisation, it should be able to look and play fair to the other parties. There is fear that one party may go to accuse the other at the Electoral Commission for one reason or the other and I am sure that in practical life this is going to happen. When it happens, the Electoral Commission will take action, it will make sure that these parties actually become watchdogs of each other, and I think it is healthy in democracy.

In a democracy the most important thing is transparency. If there is lack of transparency in any political organisation or party, that is fatal to democratic ideals and the rule of law. After further scrutiny last night and this morning I found more reason, than I did yesterday, to beseech you to approve this Motion so that the Electoral Commission can enforce the observance of the code of conduct of political organisations as may be prescribed by Parliament.

There is a feeling that the code of conduct should be streamlined in this Constitution now. If the Delegates want it that way, we shall say as prescribed in this Constitution. But I think we can do as much as was done in 1967 and then the details can come out by an Act of Parliament like Namibia has done.

Namibia has mentioned this type of thing and then set out an Act of Parliament which has detailed the code of conduct. Fear was yesterday expressed on the issue of the code of conduct, that it concentrates on political organisations and leaves out the individuals, but this is not the case. If any Member wants to make an Amendment to add political organisations and individuals I do not mind; but in as far as I can read *-(Interruption)*.

MR. APUUN: Point of clarification. Madam Chairman, I would like clarification on what Hon. Elly Karuhanga is deliberating. I can see a story on the back page of *The New Vision* talking of the

Minister of Justice appointing some members to constitute the committee to implement the Leadership code. I think that there is no need for this Amendment, because there is already a Leadership Code, and that Code will cover even what he has put here as political organisations. I do not think it is necessary, Madam, to have this Amendment.

MR. KARUHANGA: Well, I think Hon. Apuun's reaction is misplaced. As a Member of Parliament, he knows that we have streamlined the functions of the Leadership Code, and this concerns the code of conduct of individuals in government. So, if the leader of a political party is misbehaving and is holding a public office then the Leadership Code may come in, but not the organisations. The political organisations are separate and distinct. The organisations have a certain format which they have to follow, the Leadership Code cannot do that. It is very important not to mix the two functions, please.

MR. ABALIWANO: Point of clarification. Madam Chairman, I would like some clarification from Hon. Karuhanga. If you talk about enforcing the observance of the code of conduct relating to elections as may be prescribed by Parliament, I can understand because then that code of conduct will be different from the Leadership Code. Besides there would be a number of other matters in the code relating to parties that may have very little to do with the Electoral Commission, if for instance, you say that the party would have to hold an annual general meeting; they would have to select their leaders: they must be democratic, that may have very little to do with the Electoral Commission per se because their task is actually to do with the elections. I wonder whether you would agree with me that we leave it open that when we enforce this code of conduct it relates to elections rather than to political organisations, because then the Electoral Commission would be in position to enforce that code of conduct which may have nothing else to do on elections other than any matters that may relate to parties.

MR. KARUHANGA: Madam Chairperson, I think what Hon. Abaliwano has raised is really a point of debate. The Electoral Commission has functions, and we have also added that Parliament may add on those functions to say that it is only limited to the election day would be a very serious mistake. I think it is important that before the Electoral

Commission allows you to go up there to get votes, they know that you are a genuine person, who has come with clean hands. And also that you have gone through scrutiny and examination of standards that are uniform, to ensure that the playing ground is levelled. To do that, it requires the Commission to work from the beginning.

All these requirements for the Electoral Commission to put into consideration cannot wait for the election day.

MR. NDEGE: Point of clarification. Thank you very much Madam Chairman. I would like Hon. Karuhanga to clarify whether this Commission will have the power even to ban political parties who do not conduct themselves in a manner that the Commission might think fit.

THE DEPUTY CHAIRMAN: Let us collect the inquiries first, then Hon. Karuhanga shall answer later. Hon. Elyau.

MR. ELYAU: Point of clarification. Thank you, Madam Chairman. I have been following the debate very closely and I want these few things to be clarified by Hon. Elly Karuhanga. You see, he talked of checking the accounts and then the records and so on. Now, political parties are like private businesses. Why should the Commission really come in, after all these people sometimes get their monies from donations, apart from membership fee? I want to know how the Electoral Commission would enter this business.

Another issue which I want clarified on his suggestion that debate between the individuals and parties are different. Can the party really be active without persons? I think it is the personnel like the President of the party are the people who are active, and the very people who cause havoc. Without these people the party would remain redundant. I want more clarification in order to have a clear stand. Thank you.

MR. KWERONDA RUHEMBA: Point of clarification. Madam Chairperson, I appreciate Hon. Karuhanga's concern, and I am sure it stems from our history; where we have had parties misbehaving and mis-conducting themselves. I am also sure he wants parties of the future to have good conduct and to behave themselves, and therefore, he is looking for a body which can regulate their con-

duct. But to load that responsibility on the Electoral Commission is to err.

I think his Amendment is really misplaced, and he should look through the Constitution that we have made and find a home for this Amendment. The Electoral Commission is mainly to make smooth the electoral process, so, when he turns around to say that the Electoral Commission should also carry out the duty of auditing the books of political organisations and political parties, then I wonder whether Hon. Karuhanga is focussing correctly.

Then he talks about the code of conduct of the -
(*Interruption*).

PROF. KANYEIHAMBA: Point of information. Thank you very much, Madam Chairman, and I thank Hon. Kweronda for giving way. I want to give information that really this Amendment is a natural consequence of what is already in the Draft Constitution. It did not just come out of the blue to Hon. Karuhanga.

I want Hon. Members to look at article 97 in the Draft which lists so many dos and don'ts of political organisations, including the requirement that only citizens of Uganda may make a contribution or a donation to a political party registered in Uganda. The only plausible argument that can be made is that this is a wrong body to entrust with such a responsibility as suggested by the Odoki Commission. It is, therefore, not correct to say that it is an idea which Hon. Karuhanga is putting forward, because as he has very eloquently shown in other areas and other Constitutions, this function is done by the Electoral Commission.

There are other arguments that the Commission should be limited to only electoral activities, but we have already assigned it functions which go beyond just the election procedures, like those listed on page 34. I think that we should argue in line with what is being proposed rather than really bring in extraneous matters.

MR. KWERONDA RUHEMBA: Madam Chairman, I appreciate that information, but I also want to say that Hon. Karuhanga correctly put it that in Kenya this role is carried out by the registrar of societies, and that in Namibia this role is carried out by the Electoral Commission. Namibia has hardly been in existence and none of us have really gone

to Namibia to see how it works, and I do not think Namibia should be the best example. Namibia is even still fumbling with its Constitution making process. It would have been better if he had quoted United States and maybe Germany, otherwise Namibia is so infant in these matters.

Madam Chairperson, my argument is that we should not overload the Electoral Commission. The duties we have defined for the Electoral Commission and those that may be determined by Parliament in future are already more than enough. Let the parties be registered by the Registrar of Societies, and their malpractices and conduct be looked into by the IGG, whom we have already provided for in this Constitution. Their accounts and other Financial issues can be handled by the Auditor General, and the individual behaviour of party executives, various party constitutions should be looked into by the code of conduct which we have also provided for. Madam Chairman, with Hon. Karuhanga's permission, I think we should try and make the Electoral Commission look into the conduct of individual candidates.

If we are concerned that candidates should behave in a particular way, then maybe, the Commission can come in to regulate the conduct of the candidates once they have been nominated, but to look into the conduct of political organisations, I think, is simply over loading the responsibilities of the Electoral Commission, and on that note I would like to oppose the Amendment. Thank you Madam Chairperson.

MR. TIGWEZIRE (Bunyangabu County): Thank you very much, Madam Chairperson. Madam, I am seeking clarification from the Mover of this Motion, Hon. Elly Karuhanga, that since he is subjecting the enforcement and observance of the code of conduct of political parties to Parliament, won't that Parliament of the day twist laws to its favour in anticipation of winning the next election?

I also seek clarification on the level of independence of the Electoral Commission. Is Hon. Karuhanga not compromising this impartiality when he subjects it to the Parliament of the day?

That aside, what would become of an individual who may want to stand as an independent candidate, since this motion only talks of the conduct of political organisations? Who is going to regulate

my conduct if I want to stand as Kasaija Tigwezire? I thank you very much Madam Chairperson.

MR. KITARIKO: Thank you Madam Chairperson. Members should recognise that in Chapter 3, article 85 and 86 we have said that all political and civic associations aspiring to manage and direct public affairs shall conform to democratic principles in their internal organisation and practice. That really calls for the question of, who will then be able to verify that the internal structures are democratic?

I support Hon. Karuhanga that the Electoral Commission should do this, and the question of the Commission being overloaded is not true. After elections what else does it do? It carries out elections and makes a report, after which there is no more work to justify allegations that it is overloaded, simply because it carried out election.

I believe that this role should be left to the Electoral Commission and not Registrar of Societies. Thank you Madam Chairperson.

PROF. NSIBAMBI (Presidential Nominee): Thank you very much Madam Chairperson. I am very sympathetic to what is being proposed here, because I am a believer in supervising these political organisations. The problem, however, is this aspect of overloading the Electoral Commission. We are, here, talking of political organisations, and therefore we are not limiting ourselves to political parties. Even trade unions can qualify to be supervised under this formulation, because we are talking of political organisations and this makes the task taxing.

It must be remembered that this Commission has to do such a good job that ultimately the results of elections must be accepted. That is the most important issue here, yet it has eluded many African countries. This makes it a full time job, which has to be started early enough as a way to ensure that there is no gerrymandering. We want to ensure that the Commission examines so many other things in order to ensure that ultimately the contending groups accept the results of the process.

Another problem is that, in order for this Commission to enjoy political legitimacy and acceptability it must not get itself involved in many 'tricky' and sensitive matters.

We are now charging them with the hard task of policing these political parties and other political organisations which incidentally have significant external allies directly involved in their politics. This, therefore, is involving the Commission in policing a very tricky matter, and in the process you are likely to impair the legitimacy and acceptability of the Commission.

I appeal to Hon. Karuhanga who is a fellow Rotarian, to find another institution to perform this task. He should not overload this Commission. I beg to very reluctantly oppose this formulation.

MAJ. GEN. TINYEFUZA: Thank you Madam Chairperson. Madam, while I appreciate the spirit of this Amendment, there are a few things I would like to have cleared, for me to ascertain that we are doing the correct thing and not repeating ourselves or compromising the principle initially intended even to be safeguarded by the Mover.

Madam Chairperson, if the Mover intended to protect political organisations from the whims of the powers that be, you know, like the Registrar of Companies and so on, and as you register a newspaper, that these could be influenced by government. Doesn't he think that by having to subject this whole thing again to Parliament in a way which makes the rules compromises on the independence of the Electoral Commission?

If he wanted to remove the influence of government completely so that he protects political organisations, and having established the principle that the Commission is independent, why then introduce Parliament? If you look - Madam Chairperson, I know we have not come to that yet, but if you look at article 96 and article 97, and I think a new article 95; detailed principles which could be followed by a movement type of system have been laid down. Article 97 largely tries to regulate the internal workings of political parties. Now, of course, if you join these two, this is what we understand by political organisations in our sense.

To what extent will the two, actually, be synchronized? First of all we have already prescribed under this Constitution a specific framework in which these political organisations must operate, and now somebody is trying to say no, let us leave Parliament to make these rules and then they can be implemented by the Electoral Commission.

I think, there is a conflict there. Unless the Mover resolves this conflict, I would rather advise that we stand over this until we deal with these coming provisions. If we think that we should very seriously tackle the inner workings of these political organisations, then we do not need to empower any organisation to do so, because the Constitution is already very specific on this matter.

Of course, I would not like to agree with Hon. Ruhemba who tried to paint a very negative picture and experience of Namibia. Namibia has held two consecutive very peaceful multiparty elections, and Kenya has almost failed to hold even one peaceful one. So, his Kenyan example of having to registrar like it is for a newspaper is not very appropriate. He should also understand the history of Namibia. Namibia has apparently defeated several enemies, and very strong ones at that. I, therefore, think their experience ought to be taken very seriously, because these are experiences brought out over a lot of debate and consensus building in multilateral societies. Societies with a lot of contradictions; you know of those fellows who were there, then the South Africans, then - so, I think, it is worthwhile, for people to seriously look at the Namibian case.

Basing on this, I agree with the spirit of Hon. Karuhanga's amendment, that we need to have a certain body which can carry out and enforce the observance of a code of conduct of political organisations and, I would add, individuals who run independently, because not everybody must subscribe to a political organisation as some people think. I can be Tinyefunza without having to be anybody else. I think people need to address that too.

In my view, Madam Chairman, I think that the Mover need to look at the specific provisions which have already been provided in this Chapter, regulating the conduct of political organisations as will be appearing in 1997 and so on; and then look at the element of Parliament vis-a-vis the independence of the Electoral Commission. He should also consider the factor of independent candidates, and after he has addressed all these then you could bring out a cogent and synchronized Amendment which we could look at. Otherwise, I think this one leaves a lot of things hanging. It neither solves our worries, nor does it help much really. I wonder what the Hon. Mover thinks of these contradictions.

I would not want to oppose this Motion per se, but I would like to see it synchronized with the already provided for specific articles in this Constitution which guide the conduct of political organisations. I think these are basic and should not be compromised. Madam, if you could enlighten me on that then, I would decide on whether to support it later or do otherwise. Thank you Madam Chairman.

THE DEPUTY CHAIRMAN: Let us first hear from Hon. Karuhanga. it seems we are dragging on this issue.

MR. KARUHANGA: Thank you very much Madam Chairperson. Members have raised legitimate concerns and questions which I shall attempt to clarify, and I call upon all the people who seconded this Motion to come in and assist me. I am going to make an attempt, because the people who have seconded this Motion are not small people, they are big people. I would like to call on them to come to my *-(Interruption)*.

THE DEPUTY CHAIRMAN: Hon. Karuhanga, just hang on. I agree you are going to try to answer, but what about Hon. Tinyefunza's argument that we are preempting some provisions which are yet to be discussed. What implications does this have? Are you coming towards that direction?

MR. KARUHANGA: I will start with Hon. Tinyefunza's queries.

THE DEPUTY CHAIRMAN: Yes, but how about that issue? If we are deferring this, then we may not need to waste any more time. We may have to discuss the others first and then see how this one fits in. Short of that we are discussing in a vacuum, moreover, it is because of that vacuum that some delegates are not clear.

MR. KARUHANGA: Madam Chairperson, I do not mind what Hon. Tinyefunza has said, but I want to point out that if you looked at page 34 of the report of committee 5, one of the functions glaringly clear, is to supervise these parties, and I do not know why they missed it while enumerating the functions. It was a question of enumerating. There are other functions already enumerated which we have not debated.

But if you feel that on this particular function you want to first finish the whole Chapter and then we enumerate the functions after we have finished the

Chapter, then it should be for all of them.

I, however, felt that the questions raised by Hon. Ndege, Hon. Elyau, Hon. Tigwezire and Hon. Nsibambi should have a quick explanation. Hon. Ndege wanted to know whether the Electoral Commission if it is supervising the code of conduct of political parties, can go ahead and ban a political party, using the law enshrined in the code of conduct of political parties, set up by Parliament. The answer to that is that it would depend on what power the code of conduct has loaded the Electoral Commission.

Certain crimes may be grave enough to deserve going to court, and others are settled by fines or caution.

Hon. Elyau talked of parties as private organisations whose operations nobody should try to monitor, but the purpose of this Motion, is to say that parties are public organisation. The public has got interest in them, young children are coming up and they would like to become members of one of the parties. They should have access to all of them and then decide which one they want to join.

Hon. Kweronda was not asking for clarification, because he was opposed to the Motion, since he preferred the Kenyan experience as opposed to the Namibian experience. I am grateful to Hon. Tinyefunza for helping Hon. Kweronda understand that Namibia has a much more stable democracy than the country of his choice.

But the issue which was raised by Hon. Nsibambi and Hon. Kweronda on the overloading of the Electoral Commission has been ably answered through a note I received from Hon. Katenta Apuuli - since he was going out. I would like to credit him for it, and indeed I associate myself with his reasons.

He notes that the Electoral Commission is a full time body with the elections taking place at five year intervals, and this does not really symbolise an overload. This is giving a job to the Electoral Commission which will, otherwise, be redundant. Even when you talk of local elections, these occur every four years or so. So, there is a lot of time for them to actually carry out this provision.

Prof. Nsibambi inquired as to whether this job could not be assigned to another body, and he appealed to me as a rotarian to look for another

body, and certainly I will not look for a Rotary club because this will not be the right body at this time. I think that the Electoral Commission has worked in Namibia, it is used in the United States to supervise political parties, and in other democracies. I have not yet checked the Germany Constitution in detail but I am told it caters for the same.

Maj. Gen. Tinyefuza and Hon. Tigwezire's expressed fears that if we allow Parliament to pass the code, we shall be compromising the independence of the Electoral Commission, since the Parliament may have an interest and may decide to write the code in favour of the party in power. Well, this is a legitimate concern, but I am assuming that the Parliament in Uganda will not be a monolithic Parliament. I also assume that the laws which will be passed will be enjoyed by all the parties.

However if my fear is misplaced, and I stand to be corrected, there is a group which want this code to be enshrined in the Constitution. Maybe, we could go ahead and do that, but that does not stop us from enumerating the functions and we can say prescribed by law instead of Parliament; so that parliament and Constitution and Act, are all laws. I am absolutely open to changing the word Parliament to law. I brought this Motion with a genuine concern, that there is a serious omission of making sure that our political parties in future conduct themselves in a transparent, open, democratic fashion and not fascist methods that we have seen hitherto.

I am not referring to the parties which we have been using in this country, but future political parties, which should conduct themselves through an agreed practice. The practice should be as debated either by this House or by Parliament, and that the Electoral Commission is the one to be charged with the duty of supervision. I appeal to you to give this Amendment the support that it really deserves.

THE DEPUTY CHAIRMAN: Hon. Karuhanga, let us turn to page 37 at the top, although we have not reached there, clause 4 says; '*subject to the provisions of this Constitution Parliament shall by law regulate the establishment, financing and functions of political parties.*'

MR. KARUHANGA: So, that will be part of the code.

THE DEPUTY CHAIRMAN: Yes, so if it is part of the code, that means that what we are looking for

now is the body to implement that. So, let us now zero in there, which is the best body to do that?

MR. ATWOKI (Youth - Northern): Madam Chairperson, I also want to observe that Hon. Elly Karuhanga was trying to give the Electoral Commission a function which will be permanent and continuous, but I believe that the establishment of the Electoral Commission is for a purposeful function normally with a specific role. As you can see from the few functions we have given in article 86 - let me read some '*to ensure that regular free and fair elections are held; to organise, conduct and supervise regular free and fair elections; demarcate constituencies in accordance with the provision of this Constitution.*' If you look at these functions you discover that the functions are carried out during specific periods. Hon. Karuhanga's Amendment, however, tries to give the Electoral Commission a permanent job, which I think would be inconsistent with the rationale of establishing the Electoral Commission.

So, other than looking at the Electoral Commission as a body to enforce the code of conduct guiding political organisations, I believe there are certain provisions as Hon. Tinyefunza said in articles 95,97 which have the marginal title as *Restrictions on political parties*. I believe that Hon. Karuhanga's idea should have fitted here. Rather than saying restrictions on political parties, he could as well say code of conduct for political organisations, and we re-orient the provisions in relation to that kind of aspiration.

I also want to observe that with the kind of guidance you have given, I think that there is no need for further debate on this Motion. The idea of giving the Electoral Commission the duty to look into the internal democracy of political parties, their financial sources and establishing of accountability is a very overwhelming role which cannot be performed by the Electoral Commission.

Madam Chairman, the provision you have just drawn our attention to, could be the best provision to ensure that a comprehensive subsidiary legislation comes out of this enabling Act which states that; '*subject to the provisions of this Constitution, Parliament shall by law regulate the establishment, financing and functioning of political organisation.*' I think this is a very genuine provision which will enable us through Parliamentary acts to provide for the code of conduct of political organisations. Thank you Madam Chairperson.

MR. AWORI (Samia Bugwe North): Madam Chairperson, I rise to oppose this Motion for Amendment. For a long time now Political Parties have been demonised. Once again, here is another attempt to cage this local wild animal called political parties. We are looking for another prefect, another Policeman to look into a conduct and behaviour of so-called political parties.

Madam, as you rightly observe we have a legislative body called Parliament, once it has established the rules on how political parties shall be formed, I think that is adequate. First and foremost, Madam Chairperson, a political party is supposed to be an association, a voluntary association of people of the same political feeling. We are not supposed to be
 -(Interruption):

MAJ. GEN. TINYEFUNZA: Point of order. Thank you, Madam Chairperson. Is it in order for Hon. Aggrey Awori to try to incite the position to this Amendment by associating it to political parties, when actually, it is talking about political organisations, and political organisations include a movement? Is he really in order, Madam Chairperson.

THE DEPUTY CHAIRMAN: He has taken note.

MR. AWORI: Madam Chairperson, I thank you for your protection and correct observation. Madam, a political party is part of that generic format called political organisation. I was only talking about one aspect of political organisation, and that is political parties. If you are going to condemn the family, you are also talking about, man, wife, and children, and in this case I am talking about probably just the man.

AN HON. DELEGATE: How about a woman?

THE DEPUTY CHAIRMAN: Perhaps, the woman is more important *(Laughter)*- she generates the family. Now, you can proceed.

MR. AWORI: Thank you Madam Chairperson. This time I am talking about, more emphatically, the woman. Madam Chairperson, talking about political organisations inclusive of Movement, I am not familiar with the Movement, I do not know what a Movement is all about, but I know what a political party is all about. This is another attempt to create, if I may repeat it, another attempt to create a policing organ to make sure political parties,

particularly, within the organ of political organisations are curbed.

Once Parliament has made a law on how a political party shall be formed, there is no need to go around, every now and again, to tell them how to behave. There is a law, and it is a free association of citizens of the country. Madam Chairperson, we already have enough work for the Electoral Commission, and the principal part of their function is to organise or to make sure that elections are held in accordance with the provisions of the Constitution.

When we start making the Electoral Commission a Policeman for political organisations, we are stretching our argument too far. I can only read between the line that here is another attempt to demonise and strangle political parties as part of the family of political organisations. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Delegates, I can see we are going round the problem. Hon. Tinyefunza had a very good suggestion, that because of the uncertainty of the direction we have on these other provisions, for example the one I have read on page 37, we should stay the issue. What harm does it do? We have been doing this; we even have high aspects which are not yet passed. We do not want to pass provisions with uninformed minds. Okay, let us hear from Lt. Col. Kiiza Besigye, and then Hon. Kawanga Ssemogerere.

LT COL. KIIZA BESIGYE: Thank you Madam Chairperson. As I indicated yesterday when we were debating this point, I thought it was necessary to look at the various sources of information which were being referred to and to study the problem a little further. I have used this time to do that, and I have found that, first of all, in the Namibian Constitution, the electoral law, section 4, par. 2(c) gives the Electoral Commission the function of supervising and controlling the registration of political parties.

The section which talks about conduct is section 43 para.2. It says that the Commission may, by notice in the gazette and not inconsistent with the provisions of the Act, that is the electoral law of the Namibian Constitution, issue guidelines for the conduct of political activities by political parties in respect of any election. Madam Chairperson, I looked at the Germany electoral law and in the

Germany electoral law which is very comprehensive, they impose the duty of supervision of the activities of political parties on Parliament. In fact, in the Presidential Parliament, it is in the Speaker.

The Speaker has a committee which is responsible for the monitoring and supervision of the conduct of parties, and the audited accounts of parties are presented to Parliament for the scrutiny of that committee. That committee can sanction parties. Therefore, I do not find that it is the duty of the Electoral Commission anywhere to enforce the observance of the code of conduct. What their duty requires is to supervise the registration of political organisations, in conformity with the electoral law, that would have been laid down by parliament. Therefore, Madam Chairperson, if any duty is imposed upon the Electoral Commission by Electoral Law, then I find that that duty is sufficiently taken care of by paragraph (g) which we passed in section -(interruption)-

THE DEPUTY CHAIRMAN: Information from Hon. Basaliza.

MR. BASALIZA: Thank you very much madam Chairperson.

LT. COL. BESIGYE: I have not yet allowed him.

THE DEPUTY CHAIRMAN: You do not like it?

MR. BASALIZA: Thank you very much Madam Chairman. Hon. Kiiza Besigye has quoted a Germany example. Now, I seek clarification on a situation where Parliament is such that the Speaker comes from the party with the majority, what would happen? And if it is a one party scenario, how can he supervise other parties?

LT. COL. KIIZA BESIGYE: You see, Madam Chairperson, the Concept of Parliament and its speaker is that, a speaker arises out of a consensus of the political groups which are in Parliament. And once he is elected, he is expected to be neutral. Even if he is not neutral, I have told you that he acts with a committee, and this committee composes Members from the various political organisations. And what they are enforcing is a conduct, like we have a Disciplinary Committee in Parliament. They are enforcing a Code of Conduct which is already written.

It would, therefore, require a political Organisation for example to quote, audited accounts before them. Those accounts must be put as required by law and they must be scrutinized. And if there are any problems arising out of those accounts, because they are open accounts, they are laid on the table. Any Member of any political Organisation can rise and present a problem relating to any of the issues that have been laid before them.

Therefore, it is not the question of the Speaker being biased or whatever. It is the question of the method of having debate on matters of conduct of political organisations by an organ which is composed of all of them. I am sure that, this is the most rational way of dealing with the conduct of such political organisations rather than, using an organisation outside them, which in its self can be biased.

As I was saying, Madam Chairperson, I find that, it is sufficiently provided for by paragraph (g) of 86 which states: *The Commission shall perform such other functions as will be prescribed by Parliament, or by law as you were trying to amend.* That means that in the electoral law, which we cannot make in the Constitution, if it is determined that the Commission does a particular function, then that function is already provided for by the Constitution. but I do not suppose that, we are going to put the electoral law into the Constitution, and therefore, we should leave it to be accommodated by the provisions of that paragraph (g).

I do not see the necessity to postpone this problem, saying we are sleeping over it, or it is being carried forward. Whatever is decided to impose a responsibility on the Commission is already taken care of. I thank you Madam Chairperson.

DR. KAWANGA SSEMOGERERE: Madam Chairperson, I seconded this Motion, and I think it has served a good purpose. This Motion was to bring some transparency about this matter, which is always bothering us regarding political parties, whatever has been said about them, and what we think about them in the future. The evidence which has been produced so far shows that, where there was a problem with parties, for instance in Germany, it was necessary to bring the issue into the constitution for the first time. Many Constitutions do not have the word parties mentioned. But in Germany they had to do that.

There are also powers given to supervise these political parties. The example of Namibia is very important for us here in Africa, because Namibia had an election following a bloody war of liberation. The evictors and those who were defeated, had to settle down under a democratic political system, with each one having a right to organise for a political office. And this is part of the reason why, in their own wisdom they thought, that there should be an Electoral Commission, to shoulder the heavy burden of registering in political parties, supervising their conduct, issuing guidelines to them, or protecting against intimidation, and things like that, to ensure free and fair elections. Similarly, in South Africa, at the end of the war of liberation, it was deemed necessary to have the Electoral Commission playing a big role to ensure that, all political activities will be regulated.

Much has been said about the past, hence the need to regulate and control political party activities. I am glad that, we are now saying political organisation, because we can be other organisations, without being called political parties. The question has been raised, whether this should be done by a Commission and not by Parliament.

I do not think that the two are mutually exclusive, and I consent that the proposal by Hon. Tinyefunza deserves our consideration, since we are going to discuss the dos and the don'ts of political parties, originally proposed under the Odoki Draft, Article 97. We could as well deliberate further on this matter when we get there.

I am, however, of the view that whether then or now, it is not overburdening the Electoral Commission to supervise what parties are doing and what political activists are doing. The previous speaker has referred to several clauses in the Namibian Constitution, I do not want to go over them. But it is clear that, the Parliament in Namibia did pass an Act whereby they empowered the Electoral Commission to carry out a lot of work to supervise its political party activities. That has saved them a lot of problems.

They have been concerned about which type of Constitution a party should have? These are matters of principle. They have to look at the cost of every political party to see, that what has been agreed upon by Parliament regarding basic principles is so contained. More so they are empowered to reach

guidelines regarding the conduct of elections, to ensure that, nobody is intimidated and so forth. We have been talking about unfairness in the past, but all these can be accommodated if the Electoral Commission is empowered to issue guidelines to take care of that.

My view is, if we want to explore this matter further, it will be over the issue of the principles which must be laid down for all political organisations, and we can find it as we said, in Article 97. What should be the role of Parliament in this regard? What is the role of the Electoral Commission? Nevertheless, I think the debate has been helpful in opening up our minds, in showing that, we should have nothing to hide. If there are bad things, which are done by political parties, let them be controlled under law, and let there be an organ to ensure this kind of control. I thank you.

THE DEPUTY CHAIRMAN: Thank you very much Hon. Ssemwogerere. I think we have bogged down on this one. Hon. Karuhanga, I think you agree with Hon. Tinyefunza and Hon. Ssemwogerere, or I put the question for the decision to be made. Let us hear from Hon. Karuhanga.

MR. KARUHANGA: Madam Chairperson, in as far as this is just a function, and not debating the whole series of the quote and it is just one of the functions being enumerated but we have not debated the other functions in detail, I would propose that you put the question; and if it is rejected, it is rejected. If it is approved, it is approved.

MR. MULINDWA: Madam Chairperson, I agree that, the question be put. But I would like to caution Members, not to move amendments just overnight. I think we should spend more time, concentrate and read the report, instead of picking something small like Hon. Karuhanga has done. He has wasted a lot of his time and yet he has stubbornly refused to concede that, this thing is already covered. I think we should be more careful in moving such amendments, otherwise, we are spending a lot of time doing nothing.

THE DEPUTY CHAIRMAN: Now, I put the question on Hon. Karuhanga's Motion. He has conceded, and we debated it the whole afternoon yesterday, and the whole morning today. I now put the question on Hon. Karuhanga's Motion.

(Question put and negatived)

THE DEPUTY CHAIRMAN: Let me remind delegates, that we have already put the question on the provisions that were in the report. So, I do not have to put the question again because Hon. Karuhanga's Motion has been negatived.

MR. KUTEESA: Madam Chairperson, the committee recommends that Article 87 as it appears in the Draft Constitution, be slightly amended to read as follows: *The Commission shall be independent and except as otherwise provided in this Constitution or in any other law, in the performance of its functions, it shall not be subject to the direction or control of any person or authority.*

MR. ELYAU: Thank you Chairperson. While I agree with the recommended provision, there is something I want clarified. During the campaign, people asked us to find out whether there shall be an independent Commission in this country governing election, so that it is able to control all election programmes. I now need to get clarification from the Chairman on this. Can the Commission turn down the intention by the President of the government at the time to postpone the election date if the president thinks there is a need to postpone? Can it say, no, you must have this date as proposed by the Electoral Commission?

MR. KUTESA: As Hon. Elyau will remember in our discussions on the Chapter on Legislature, this Commission has set out a number of dates, or times within which the elections should be held. Now, unless it is a state of emergency, or something extraordinary has happened, if you exchange those dates, it would be unconstitutional whether there was a Commission or not. And because these dates are fixed - or the number of days are fixed, I think the president cannot direct the Commission to change a date unless there are extra-ordinary circumstances.

I, therefore, think the independence of the Electoral Commission is controlled by the dates that have been put in the Constitution itself. So, I would not think that, the Government would force the Electoral Commission to change dates except in extra ordinary circumstances.

MR. RWOMUSHIANA: Madam Chairperson, I am a little bit puzzled by a few words in this amendment. When you say the Commission shall

be independent and then add except as otherwise, provided for in this constitution, or in any other law, I really foresee a coup. I foresee the next Parliament making laws to manipulate the Electoral Commission.

If we wanted it to be independent, I think let us make it so and it becomes independent, of any authority, so that, the next government does not use the Parliament to influence the Commission. I would, therefore, humbly move that, the words 'except as otherwise provided for in this constitution or any other law' be deleted.

MR. KUTESA: Madam Chairperson, that is difficult because the Electoral Commission has got to operate within the armpits of this Constitution, and this Constitution obviously controls its activities. For example, it cannot create itself. We agreed yesterday that, under this Constitution, Parliament and the President will create the Electoral Commission. To that extent their existence is dependant on the functions of these two arms of government.

When you talk about any other law, this Constitution is not exhaustive as an electoral law. Parliament is going to have to make an elections Act, or some electoral law, and that obviously is bound to affect the Commission. So, it is not really that, we are trying to undermine the independence of the Electoral Commission, but that the Electoral Commission will have to operate within the armpits of the Constitution or established law.

MR. SABIITI: But, Madam Chairperson, can the Chairman clearly tell us where, for example in this draft, the Commission is likely to be limited? The query here is, we are saying this Commission should be independent, and we are giving a certain provision that, in certain cases, or under certain circumstances, it will not be independent. I would like the Chairman to clearly explain whether the laws we are going to make tomorrow or the parliament is going to make tomorrow, may limit the independence of this Commission or whether we are going to limit the independence of the Commission in this Constitution.

MR. SAKWA: Thank you, Madam Chairperson. My query is similar to Hon. Sabiiti's, but I want to add that, we are talking about independence in the performance of its functions so, I do not agree with the Chairman Committee 5.

You create the Commission but once you have created it, we are saying, it should be independent in the performance of its duties. So, I do not see why 'the except' comes in. Otherwise, we are saying that, this Commission will be independent only as long as the Constitution says so. With this, the Commission becomes dependent of some other orders, and makes the whole clause meaningless.

I would like the Chairman to clarify whether the independence, with regard to the performance of functions, of this Commission is going to be subject to any other law, or to any article in this Constitution. Thank you.

DR. OKULLOEPAK: Thank you, Madam Chairperson. Madam Chairperson, I do not think that anybody is in any doubt that such a Commission would perform its functions in accordance with the prescriptions in this Constitution and in any other law that will be established to provide for its functions. I do not think anybody is in any doubt to that effect.

The problem here is simply that, this statement 'except as otherwise, provided for in this constitution or in any other law,' tends to derogate from the very intention of independence. And as far as I am concerned, Madam Chairperson, I think we are seeking independence of this authority with regard to the performance of its functions and with regard to the possibilities of its being directed or controlled by any person or authority. I consider that the inclusion of the exception regarding the Constitution and any other law, is redundant and sends a wrong signal.

Madam Chairperson, I beg the Chairman of this committee and the committee to accept that, this Commission cannot function otherwise, than by the prescriptions in this Constitution and any other law that shall be made in future in that regard. Our main concern, is the issue of independence from direction or control by any external person or authority, Madam Chairperson. And we could do away with those words, regarding the Constitution and the law.

MR. OKALEBO: I entirely concur with the previous four speakers on this subject. Those ones who are against the expression, creating an exception to this particular clause. It is true that the Commission is established by the Constitution. It is also true that,

it will have to work in accordance with the laws passed by Parliament. But creating an exception here, gives room for creation of laws which go a long way to undermine the independence and the impartiality of this Commission. That one should not be seen as appearing in our intent at all.

The intention of the committee and the Hon. Chairman, may well be good, that the Commission must conform with the law. But what I am saying is that, any law made regarding this Commission should not contravene the Constitution -that of course means penalty. And creating exceptions is one of the dangerous steps of creating such loopholes, Madam Chairperson. So, the words except up to any other law, should actually be deleted. Thank you.

MR. KUTESA: Madam Chairperson, I do share the concerns of the Hon. Members with regarding to keeping The Commission independent. But just to sight an example, we have just passed article 86, which talks about the functions of The Commission. We are, therein, talking about independence in performance of these functions. Article 86, 1 (c), says: *to demarcate constituencies in accordance with the provisions of this Constitution.* Now, what are the provisions of this Constitution? In this Constitution, we spell out and say, that it is Parliament which shall prescribe the number of constituencies. In that case, the demarcation of the constituencies, will be subject to what parliament will prescribe as a number. But that is a function of this Commission.

Furthermore, we talked about a population quarter which shall be established. We also talked about a county being a unit, a basic unit for a constituency. So, in the performance of its function of demarcating constituencies, the independence of the Electoral Commission is circumscribed in the terms contained herein. We are not saying that we are going to interfere with its functions. But this Constitution lays down areas in which the Electoral Commission must operate. So, its independence is subject to the provisions of this Constitution.

I, however, concede to the worries that have been raised by Hon. Members with regard to the last part of the article 'or any other law.' I would add that, *any other law which is consistent with the provisions of this Constitution.* This would mean that any other law that may wish in a way to circum-

scribe the independence of the Commission, can also be consistent with this Constitution. But that is again obvious, because any law that is not consistent with this Constitution is null and void, however we can add it if it sounds better.

Knowing that one of the functions is already circumscribed, I do not see that there is any intention by the committee to derogate on the independence of the Constitution. All Commissions we have been setting up are independent, although their independence is circumscribed by the provisions of this Constitution.

MR. MASIKA: Thank you, Madam Chairperson. I am abit alarmed by the Committee Chairman's contribution, after other Members have elaborately stated what the position should be. What the Members are saying is that, the Electoral Commission may be given functions to do. But it may not be told how to do them. I think that this is the crucial issue that we are debating, and if the Hon. Committee Chairman insists, let me take the example he has given. Parliament may say, let there be 150 constituencies; now, if the Electoral Commission goes in to demarcate them, it is not to be told how to demarcate them. It cannot come to my area and then, I persuade them to exclude a village where I think I have opponents and include another one, where I think I have supporters. That is what exactly we are trying to say.

The electoral Commission should be given duties to perform, but it must not be directed on how to do them. Therefore, Madam Chairperson, I agree with all the previous speakers who accept whatever should be deleted, and nothing new be added. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Masika, Hon. Kutesa said that the phrase 'or any other law all that is consistent with provisions in this Constitution.

MR. MASIKA: Madam Chairperson, it is irrelevant and superfluous. There is no need to add that, a constitution will speak for its self. Thank you very much.

MR. NGOBI: Thank you, very much, Madam Chairperson. I would like to add my voice to the un easiness that has been expressed in the present formulation. What I think Members, and what I am

asking the Chairman of Committee 5 to see, although I am not a lawyer, is that the present formulation seems to say that, the Commissions have been independent, except where The Constitution and other laws provide differently. I think that is not really the intention of this article.

The intention is that, in accordance with this Constitution and the laws that will be made there under, The Commission will be independent in the performance of duties so prescribed. But when you leave it as it is, it gives a different meaning. As I listened to him trying to tell us, that the Constitution is the mother of this Commission since all powers of the Commission derive from there, therefore, you cannot say that, they are independent - 'except' I was disturbed.

I think there should be some reformulation. Instead of deleting the words you could state that The Commission has to abide by the provisions of The Constitution and the laws made thereunder, to do that work. But do it independently, I hope that the lawyers will find suitable words - otherwise a lay man's expression of that, would be: That in the performance of its functions, as provided for in The Constitution and the laws made thereunder, The Commissions have been independent and shall not be subject to the directions or control or any other person. That is my lay man's way of putting it so that we actually have both; what is intended by this formulation and also the wishes that have been expressed by Hon. Members. I thank you.

MR. WASSWA LULE: Thank you very much Madam Chairperson. I concur 90 percent with what Hon. Ngobi has said. It is unfortunate that, what the committee intends and what they have written are two different things. The wording here, is actually permissive of derogation. The word independent in this case is also superfluous.

A Constitution gives the guideline along which Parliament will make a law. This article as written specifically gives Parliament, the powers to derogate The Commission from independence subject it to the control of any other authority. That is what it does.

It says, that we should give Parliament the powers to make a law that can subject this Commission to the control of say of, say, the executive. Some of the words in here permissible, but the word independ-

ence is not appropriate. Independence of Government Organs is not rendered by just inserting the word. What is normally considered is the manner of appointment, and the controls that exist.

We should be looking at the manner of removing the controls that exist; considering whether officers can be willingly removed by the executive. Have we given such powers in The Constitution? Then consider also the manner of remuneration. Is the power to determine remuneration left to a minister who can change it upwards or downwards, at his will depending on whether or not these people danced to their tune? That is what independence is about.

It is not a mere word, that you just keep putting in the Constitutions and then assume that it will be so. Let us avoid being superfluous and be substantive if we want to look at independence. We were talking about the appointment of these Commissioners and we said, to balance the influence of the executive, let the other interested parties also be involved in the appointment. That is how you get a balance of power, and limit abuse by the executive. You can also balance by having Parliament looking at these appointments, to ensure a consistent checks and balances mechanism.

Back to the wording; I would object not only to the exception which reads, 'except as otherwise provided in this Constitution or in any other law,' but also to the very use of the word independent, when we have refused to insert checks and balances, to render the independence substantive.

Madam Chairperson, I suggest that this Article be looked at again, and the wording revised, because what we want is this Commission not to be subjected to the control of the executive. That would ensure its independence, yet we have left that door wide open by this construction.

I pray that, the Chairman of the Committee accepts my proposed wording that: 'The Commission shall in the perform of its functions not be subject to the direction or control of any person or authority,' and leave it as absolutely as that. Let it be. Thank you very much Madam Chairperson.

MR. KUTESA SAM: Madam Chairperson, the intention of the committee was to ensure that, this Electoral Commission is independent within the

law. That is the bottom line. We are saying that it could be independent within the law, and not outside the law. It should not be independent without any guiding principles.

The bottom line is that, we are saying this Electoral Commission is independent within the law. It is not just autonomous. It not just fallen from above, but it is here. It is a creature of the law, and it is independent, and its independence is guaranteed by the law. Now, let us break it down. What is it that we are looking for?

LT. COL. SERWANGA LWANGA: Point of information. Thank you Madam Chair. Madam Chairman, before the chairman of the committee breaks down what he is saying, the words he is leaving out from the original draft are any other law which is consistent with this constitution. Our worry is, that there may be another law, which may not necessarily be consistent with this Constitution. We are not saying that, the independent commission should not operate outside the law, it should definitely operate within the law. But that law must be consistent with this Constitution. I seek clarification on this, why did the committee leave out these words from the original draft?

MR. KAGIMU: Point of clarification. Thank you, Madam Chairperson. I am also seeking a small clarification following the other provisions which were passed. We added a small phrase at the end, that The Commission would be independent except that, it shall take into account, government policy relating to so and so. Would that not equally work for this scenario as; 'except that the Electoral Commission will take into account government policy relating to direct truth.' Thank you.

MRS. MWONDHA: Thank you very much Madam Chairperson. I am not seeking clarification, but I want to react to the new formulation proposed by Hon. Wasswa Lule. Is it okay?

THE DEPUTY CHAIRMAN: Yah, because he is going to have your view and then we proceed on together.

MRS. MWONDHA: Madam Chairperson, I am opposed to be the new proposal by Hon. Lule, because it intends to leave out the words 'subject to the provisions of this Constitution,' and yet in the committee, we considered other provisions of this

Constitution which will be very vital in as far as the independence of The Commission if concerned. Those other provisions are in the Chapter concerning the legislature.

Madam Chairperson, we had in mind the provision of article 129, Clause 7 which says: *subject to the provisions of this Constitution, Parliament shall enact such laws as may be necessary for enabling effective measures to be taken for dealing with any state of emergency that may be declared under this article.* So, failing to subject it to the provisions of The Constitution would be dangerous, because such provisions cannot be utilised. Thank you.

THE DEPUTY CHAIRMAN: Hon. Delegates, just hang on. Let me ask the committee chair the nature of the debate. We justified in your rationale on the 19th to ensure the independence of the Electoral Commission and that the proposed amendment, 27 was deleted. Can we have justification, why we departed from the original 87, in the draft perhaps that can help us? Because it seems the delegates are now leaning towards what is in the draft rather than what is being suggested.

MR. KUTESA: if you look at what is contained, in Article 87, in the Odoki Draft Constitution, the only words that have been added are; *shall be independent.* The rationale for departing from the text was that, as a marginal note, you are talking about the independence of The Commission, without putting it into the body of the clause. So, we thought, we were strengthening the clause by saying that The Commission is independent. We were stepping up its independence from what was originally provided for, in the Odoki Commission.

Now, what we also removed and I have no problem in re-inserting, are the words which Hon. Sservwanga is referring to, that: 'any law consistent with this Constitution.' The reason we removed it, as has been admitted by Hon. Masika is that, they are superfluous since any law that is not consistent with this Constitution is null and void. We can, however, add them for coloring, but they really mean nothing more in terms of interpretation

Madam Chairperson, if people want to go back to the draft, the committee's view was that the draft did not actually state the independence of the Electoral Commission. The committee felt that, by putting the words, 'Commission is independent.'

we were strengthening further the independence of The Constitution, rather than, what was provided for in article 87 of the draft. That was our rationale.

By way of suggestion, since we now know all that we intend, I think it is right to say that this is a question of drafting. We intend that, The Commission should be independent within the law. I do not know whether there is anybody opposed to that, if we state as a principle that we want the Electoral Commission to be independent within the law.

MR. RWOMUSHANA: Point of procedure. Of recent, Madam Chairperson, I moved an amendment to this and I was seconded, but it looked to -
(interruption)

THE DEPUTY CHAIRMAN: Yes, with due respect to Hon. Rwomushana, I agree, but sometimes we do not delete for the sake of doing so. First of all, we are debating to see, whether the deletion makes sense or not. We are not out of your amendment. That is exactly what we are debating?

MR. RWOMUSHANA: But would you mind if it was read and -

THE DEPUTY CHAIRMAN: You said that, 'except as otherwise provided in this Constitution or in any law.' Are you proposing deletion of these words?

MR. RWOMUSHANA: I have this formulation that; 'subject to the provision of this constitution, the Electoral Commission shall - (interruption)

THE DEPUTY CHAIRMAN: Okay, you should have put up your hand to indicate that, you have another amendment. But your amendment is on deletion, not any formulation? So, can you say exactly what you want to say.

MR. RWOMUSHANA: What I want to say, Madam Chairperson, is that; "subject to the provisions of this Constitution, the Electoral Commission shall be independent in the performance of its functions, and shall not be subject to the direction or control of any person or authority."

THE DEPUTY CHAIRMAN: Hon. Kuteesa, any comment on the revised motion by Hon. Rwomushana?

MR. KUTESA: I have not heard it. But if he can read it again.

MR. RWOMUSHANA: It reads that, 'subject to the provisions of this Constitution, the Electoral Commission shall be independent and in the performance of its functions shall not be subject to the direction or control of any person or authority.'

MR. KUTESA: I have no quarrel with that, if it achieves our intention. But, Madam Chairperson, what will happen to any other laws that are made?

PROF. SENTEZA KAJUBI: Thank you, Madam Chairperson. I would like to inform and remind the House, that with regard to the Human Rights Commission, we passed the following provision. Subject to this Constitution, the committee shall not in the performance of its duties, be subject to the direction or control of any person of authority. I wonder, whether it is not also sufficient with regard to the Electoral Commission.

MR. BIDANDI SSALI: Mr. Chairman, the question put by the Chairman of the Committee as to what will happen to any other laws is answered by his earlier explanation, that all laws will be made in accordance with this Constitution.

THE DEPUTY CHAIRMAN: So, to you Hon. Rwomushana's Motion is not contradictory?

MR. BIDANDI SSALI: He is in order.

THE DEPUTY CHAIRMAN: Okay. I do not see any -

MR. KAVUMA: Thank you very much Madam Chairperson. I think Hon. Members we have to be clear of what we are providing. If you say that, 'subject to the provisions of this Constitution,' then any other law that is going to be made as far as this Commission is concerned, cannot provide anything that is not provided in this Constitution. We are also saying, that this body cannot be exhaustive enough to provide for all the circumstances that may arise and, therefore, Parliament which is an elected and representative body of the people should have the power to legislate, and to cover any gap with regard to The Commission.

Otherwise, Madam Chairperson, the other alternative would be for us to leave a provision which is so

strict and then the next (first) parliament finds that it cannot be practically enforced, which will mean an amendment to The Constitution. I think there is no harm in leaving room for other laws made by Parliament, as long as that Parliament is an elected Parliament representing the views of the people. I think we are trying to put a provision that is too restrictive.

THE DEPUTY CHAIRMAN: Hon. Kavuma, on page 13, (g); you have to perform such other functions as may be prescribed by Parliament. Will that not take care of that? Page 13.

MR. KAVUMA: But, I do not think we are now talking about creating other functions. We are saying this Constitution, and any other law may find it necessary to guide the performance of the Commission. I think that is why I see a small problem.

We are also implying that even if Parliament discovered the need to guide the performance of the Commission it should not do it. Because we have said, this provision shall only be looked at subject to the provisions of The Constitution. We are assuming, we have all the circumstances here and the information to make such a provision.

MR. MWONDHA PATRICK: Thank you, Madam Chairperson. Unless Hon. Kavuma envisages a situation whereby future Parliament will legislate contrary to this Constitution, I do not see his worry, because any future Parliament is definitely bound to legislate in accordance with this Constitution. And we are subjecting the independence of The Commission to this Constitution. I think that perfectly covers any situation we can envisage.

MR. KWERONDA RUHEMBA: Thank you, Madam Chairperson. I wish to disagree with Rwomushana's amendment. I had proposed a similar amendment to my friends here, and I was advised against moving it, because it is rigid. It may not allow future Parliaments to make laws, that may in any way affect or influence The Electoral Commission. The only acceptable amendment which is accommodative of every aspect that has been expressed, is if in the original article 87, in the third line, after the words Electoral Commission we insert "shall be independent and shall not be subject. So that it reads: *except as provided in this Constitution or in any other law, which is consistent*

with this Constitution, in the performance of its functions, the Electoral Commission shall be independent and shall not be subject to the direction or control of any person or authority. I beg to move.

It is seconded, Madam Chairperson. Allow me speak for this Motion since it has been seconded.

THE DEPUTY CHAIRMAN: Okay, just hold on. We had Hon. Rwomushana's Motion on the Floor, and Hon. Kweronda was trying to improve on Rwomushana's, or is it substantially any different from Hon. Rwomushana's Motion? Because we have to ensure liability. Let us not be driven by emotions and then tie our hands, when there is nothing substantial or any different. So, I propose, that in 87; if the committee is saying the word independence was the only stumbling block, to show that we are subjecting this to the Constitution and any other law. And we have provided that, Parliament shall make any other laws as far as this Constitution is concerned, I do not see any problem. It is what Rwomushana and Hon. Kweronda are trying to say.

MR. KWERONDA: Madam Chairperson, I differ with Rwomushana in that, I am only adding in the original article 87 the words *shall be independent* and I am not making it rigid.

THE DEPUTY CHAIRMAN: What I am guarding against is some person querying procedure, on grounds that I have abandoned Hon. Rwomushana. We are trying to get a consensus rather than a tug of war.

MR. RWOMUSHANA: Madam Chairperson, the Electoral Commission shall have functions, that it will have to fulfil. And one of it is to see, that elections are free and fair under the laws provided by Parliament. What we would not like to have is that, in the performance of those functions, Parliament makes a law that will derogate the independence of the Commission. It should not use this loophole to make the Electoral Commission less independent, and indeed, this article allows this kind of manoeuvre.

THE DEPUTY CHAIRMAN: How about that phrase "which is consistent with this Constitution." Because that is on the original, that "Except as provided in this Constitution or in any other law, which is consistent with this Constitution..".

MR. RWOMUSHANA: Madam Chairperson, if you say it is subject to this Constitution, then it means all laws which are not consistent with this Constitution cannot have force on it because they will be null and void.

AN HON. DELEGATE: Madam Chairperson, my understanding of Hon. Rwomushana's Amendment is strictly to make sure that in the performance of its functions, the Electoral Commission is independent. He is not saying that Parliament will not make any other laws regarding how this Commission should perform, but it is the degree of independence that must be protected. All he is after is not to leave any room where Parliament can make laws that may appear to erode the independence of the Electoral Commission, and I find the spirit of this Amendment very good and useful for our future elections and performance and confidence of that Commission.

Rwomushana's Amendment should be supported and I beg that you put the question so that it goes through and we do something else.

THE DEPUTY CHAIRMAN: Hon. delegates, let us get our language and law. You see the problem usually is that the each lawyer interprets his aspects differently and this leaves the non lawyer hanging. That is why the laymen usually strive to find the simplest language possible.

Hon. Rwomushana is saying that in the performance, which refers to what one is doing. I am told what to do, but not how I am going to do it. My husband buys the meat, the onions and other things, but he is not going to tell me to put in a tin of soup or one spoon. I think that is the spirit in 'the performance.' I am here in the Chair, I am told just pick so and so, and let them speak and that is that. Do not vote. That is my performance but I am given the role. So language-wise, I do not see any problem.

DR. KABAYO: Thank you Madam Chairperson. Madam Chairperson, I have looked at the functions of The Commission and in my view, the main frame of reference in this clause is in 'the performance of its functions.' That is what we have to direct our minds to.

If we leave the aspect of laws being made by Parliament with respect to the functions of the Commission, then the Commission shall be free to

perform its functions in any way it wants. There is no restriction in this Constitution other than the functions which we passed in article 86 (a), (b) and (c).

Madam Chairperson, I believe that we need to refer to laws being passed by Parliament so that we restrict the way the Commission conducts its business. If we just leave it open, The Commission can turn round and say we have a Constitutional right to do what we want in the way we want to do it. Therefore there ought to be a reference to laws being passed by Parliament to guide the functions of the Commission.

Madam Chairperson, I support that we revert to the original text of the Odoki Draft article 87 as amended by Hon. Kweronda Ruhemba to introduce the aspect of independence for emphasis.

THE DEPUTY CHAIRMAN: Now first we have to dispose of Hon. Rwomushana's motion. So I put the question on Hon. Rwomushana's motion.

(Question put and agreed to).

THE DEPUTY CHAIRMAN: So I put the question on article 87 that as amended it does stand part of The Constitution.

(Question put and agreed to).

MR. SAM KUTESA: Madam Chairperson, Article 88. The committee recommends that clause one of article 88 be amended to read as follows: "*Subject to clauses two and three of this article, Uganda shall be divided into as many constituencies for the purpose of election of Members of Parliament as Parliament may prescribe and each constituency shall be represented by one Member of Parliament.*"

MR. BATEGANYA: Thank you Madam Chairperson. I have a problem with this clause. If we talk of one Member of Parliament, there is a case of women leaders and interest groups, particularly women leaders maybe at districts. The district as I know is composed of several constituencies and that at one point in time, that lady representative is also a representative of the various constituencies. How do we address that one? Does it not conflict with this statement? I seek some clarification on that one. Thank you very much.

MR. SAM KUTESA: Madam Chairperson, what this means is that Parliament will say we shall have 300 Members of Parliament, 200 of them for example, will represent counties, 50 of them will represent districts as women and 20 of them will represent other interest groups. So the fact that someone has her constituency as a district, then it means that for women, the district can only be represented by one. That is the constituency.

Whatever constituency you draw up, whether it is district or county, shall be represented by one Member of Parliament. In other words, when you are in your county, you cannot claim to represent the district. Equally, the woman who represents your district, cannot claim to represent your county because the constituencies are different. This is the import of this provision.

THE DEPUTY CHAIRMAN: Hon. Kutesa, let me follow up one statement, that the woman will be in control of the district which is composed of the constituencies. Therefore, she has a stake even in the constituency otherwise what is a district?

MR. KUTESA: Madam Chairperson, when the President runs and he is elected in Uganda, he is elected by everybody but you cannot say he is also the representative of Mawogola. He is elected by, among others, the people of Mawogola and other places. But lesser beings like me also represent Mawogola. So you cannot say it is the President who represents Mawogola. He is elected and all these counties are under his electorate, but I have, also, carved out a small thing that I represent.

Even the Chairman of the district is not necessarily the only representative. He has councilors from gombololas or sub-counties although the chairman of the district we have said will be elected by universal suffrage. It is the same thing in respect of a woman representative for a district. She has a role she plays maybe for women in your county, or for people in your county. I am told it is not just women but for people. But whatever that role, she does it from the level of supervising the district. That is the understanding I have Madam Chairperson.

MR. DICK NYAI: Thank you very much Madam Chairperson. I have only one thing bothering me. My understanding is that a constituency is an electoral area and in elections, only one person wins. Now, I wonder why the Chairman of our

committee could not bend backwards, because I believe it is a repetition when you say 'and each constituency shall be represented by one Member of Parliament.' It is absolutely superfluous, because you cannot have two Members in a constituency, unless we are beginning to believe that we are not very normal. I believe this is a repetition of the obvious.

MR. MUKWAYA: My clarification is about what the previous speaker has said. Can the Chairman clarify on special constituencies like NOTU for instance. That one is one constituency but in Parliament, it is represented by more than one Member. How are you going to address that one in view of what the previous speaker has said? NOTU, UPDF and some other constituencies may be referred to as a constituency but with several Members elected. That is considered one constituency in Parliament.

MR. KUTESA: I think Madam Chairperson, other than women representatives who are elected by prescribed constituencies, interest groups like the army, workers to mention a few, are not envisaged in this particular provision partly because I think some of these interest groups are now part of our legislature as a result of affirmative action.

Once they achieve equality with other sections of society, then there will be no more need for affirmative action for them. Really I do not think that NOTU is covered under here. We are talking about a geographical area here and it will be covered somewhere else in this constitution.

With regard to my good Friend Hon. Dick Nyai, with whom we passed this provision but obviously has seen light now, and says that to talk of each constituency being represented by only one Member of Parliament is superfluous. It may appear superfluous on the surface but when you hear that we are choosing women representatives for districts, there may be an impression that districts may be represented by many people.

I suggest that we leave it there, even if it is just for emphasis. It does not in any way change the meaning, if anything it clarifies it.

MISS NAKYANZI: Thank you Madam Chairperson. Madam Chairperson, I have been following the debate and I have found it rather funny that

we are trying to dwell on this issue for as long as this, because to me, when I read this article, I do not see the word geographical constituency and I thought a constituency is just an electoral area. It may be geographical, it may be functional or operational.

In such a case, it may be a district depending on the election and I find no contradiction in a woman representing the district with other people representing the counties. When I look at these two elections, I think they are different elections. For the purpose of the woman delegate, the election will be for the district woman which will be a different election from the election for the county representatives. I see no repetition and no need to dwell on that.

Secondly, much as it might look that over emphasizing one representative per constituency is repetitious, I think it is important in that it is stopping Parliament in future from declaring that maybe a constituency can be represented by two people. You never know. So that is the light in which I was saying this, and I thought it was so obvious and clear. I did not expect it to raise a lot of dust Madam Chairperson. Thank you.

MISS NANKABIRWA: Thank you very much Madam Chairperson. I think this clause is in a wrong place. When we were considering legislature under article 131, the foot note is composition of Parliament. I would suggest that we move this clause to the composition of Parliament, and then we bring in these constituencies. Otherwise, it is in a wrong place.

MR. BAGENA: Thank you Madam Chairperson. I think we are talking about representation of people, and people are represented in parliament and they are elected through constituencies. So this article belongs squarely here. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Okay, with what has been discussed and the amplification by the chairman of the committee, I assume members are agreeable to the committee's provision. Okay, thank you. We move on Hon. Kutesa.

MR. KUTESA: Madam Chairperson, clause two of article 88. First of all, I read out what it is and then I will tell you that there is a minority report. The committee recommends that clause two be retained

as it appears in the Draft Constitution, to read: *When demarcating constituencies for the purposes of clause one of this article, the electoral commission shall ensure that each county has at least one Member of Parliament except that no constituency shall fall within more than one county.*

Now, Madam Chairperson, there was a minority report by Hon. Amanyanya which sought to delete the whole of clause two. He presented that motion before the committee, it was defeated but he chose to file a minority report. I suppose according to our rules, we start with the minority report which seeks to delete that clause. I am sorry I should not be going that far, but that is the content of what the committee passed. I beg to move.

THE DEPUTY CHAIRMAN: Hon. Mushega is not around. Is the motion seconded? Yes, Hon. Sserwanga-Lwanga is seconding the motion. So can you debate on it in the absence of Hon. Mushega?

LT. COL. SSERWANGA-LWANGA: I thank you Madam Chairperson. Madam Chairperson, I want to support the minority report as presented by the committee, and one of the reasons I have is this problem of the county. In the first place Parliament does not determine the county. The county is determined by the Local Government and we have argued that it is Parliament which will determine the district or the change of the boundary of the district.

THE DEPUTY CHAIRMAN: What is the order about?

MR. OBUA OTOA: Point of order. Madam Chairperson, the motion being debated has not been moved. Is it in order for us to continue debating it? The person who should have moved it is Hon. Amanyanya Mushega.

THE DEPUTY CHAIRMAN: The Chairman said he is the one presenting the report and it was tabled as a minority report. So the committee Chairman moved it.

MR. OBUA OTOA: No, Madam Chairperson, I remember the Committee Chairman saying distinctly that as far as he is concerned, he is moving the majority report. He did not say he was moving the minority report as well.

THE DEPUTY CHAIRMAN: I heard him saying that we start with the minority report. Okay, let us hear from Hon. Kutesa. But he is reading the report.

MR. OBUA OTOA: But it has to be moved Madam Chairperson.

MR. SAM KUTESA: Madam Chairperson, I have been moving the majority report but at this stage, I have also tabled the minority as Chairman. So I think it is in order to debate it because it is a minority report and the rules say that a minority report must accompany the report of the committee and it does. I think Hon. Obua Otoa should not just take advantage of Amanyanya's absence to kill or defeat the motion. I also will oppose but let us debate it.

MR. OBUA OTOA: No, Madam Chairperson, I am raising a serious matter -

THE DEPUTY CHAIRMAN: No, no, Hon. Obua Otoa, the motion is not coming. If it was typed and given to me and I am the one reading it, it would be okay. This one is in the committee's report. It was debated in the committee, and some people had a contrary view. So the chairman is saying that this is what I have and it was seconded. So I do not see any contradiction.

MR. OBUA OTOA: No, Madam Chairperson, what is the formulation of the minority report?

THE DEPUTY CHAIRMAN: That we delete the whole clause. That is all.

MR. OBUA OTOA: Okay as a point of clarification, may I now understand that from now on, the Chairman will move all reports including minority reports? Not just in this particular case.

MR. KUTESA: Madam Chairperson, every report that was submitted to me as a minority report and was competently done shall accompany this report and I will present it and mark my words, they must be competently submitted.

THE DEPUTY CHAIRMAN: Hon. Obua Otoa, let us get one thing clear. Hon. delegates, we have three scenarios. We have one when the Chairman is presenting the report, two, we have a motion amending the report with a motion submitted in

writing with people moving it and seconding it, because that motion was already moved in the committee. Then the third position is one of those motions which are consequential in terms of what has been amended. I have been adopting all those aspects. So I do not see why we are trying to be very rigid as to refuse the chairman of the committee to present his report. I regard it as part of his report anyway. Let us clear that one first.

MRS MASIKO: Thank you very much Madam Chairperson. Madam Chairperson I would like to

THE DEPUTY CHAIRMAN: No, no, I want those people who are contributing on this aspect whether we are right to have it discussed or not.

MRS. MASIKO: Madam Chairperson, I think it is right that we have it discussed, because it has already been tabled as a minority report. If there is nobody else to move it, I could move. Therefore I beg to move that the clause be deleted.

ANHON.MEMBER: Point of procedure. Madam Chairperson, I rise on a point of procedure. We have just passed clause one saying, subject to clauses two and three of this article, Uganda shall be divided into as many constituencies for the purpose of election of Members of Parliament as Parliament may prescribe and each constituency shall be represented by one Member of Parliament. Having passed that one, in reference to clause two, is it in order that we go by then deleting clause two again?

MR. SAM KUTESA: I cannot offer advice on that. Maybe the legal and drafting committee can. Because I do not know whether, if one is passed subject to the provisions of clause two and three and then you delete two, you have got to go back and re-amend the other one appropriately. There will be no two and if there is a new two, it may not be what is referred to in the one you have passed. You can have a new two numbered as a new two but it will be irrelevant to the contents of one.

THE DEPUTY CHAIRMAN: Then Hon. Kutesa, if that was the case, we should have deferred number one and the minority report would have started from number three because when you delete it that means you are starting backwards.

MR. KUTESA: I thought we debate article by article according to the rules of procedure of consideration stage.

THE DEPUTY CHAIRMAN: Yes, but when you are synchronizing the logic of your presentation and you knock it out yourself. Yes, because by the way you presented it, you knocked it out. So we have nothing to debate. It has already been referred to and we have already passed it.

MR. KUTESA: So if Madam Chairperson, you rule that we cannot delete it, so be it.

THE DEPUTY CHAIRMAN: Let us hear from the lawyers. Mr. Kakyama Mayanja.

MR. ABU MAYANJA: Madam Chairperson, when we say subject to clause two which we have not reached, now when we reach clause two and we decide to remove it, it will just remain a matter of the technical committee to tidy up the drafting so that if there is no clause two, then there will be no subjecting this. But we cannot say when we have proceeding -

THE DEPUTY CHAIRMAN: Hon. Mayanja, look at three, subject to Clause 2 of this article, the boundaries of a constituency shall be such that the number of inhabitants in the constituency is as nearly as possible equal to the population quota. Now you are removing two. Once you remove two and three is referring to two, that means more or less removing article 88.

MR. ABU MAYANJA: And suppose that is the case, what is the problem there?

THE DEPUTY CHAIRMAN: The problem is, do you think that the content of three is referring to the population quota? Because that is a different issue. You mean it should be swept away even when you are discussing two which is on boundaries and then you are combining it with the inhabitants?

MR. ABU MAYANJA: Madam Chairperson, if there is no two, then clause three will be (a) appropriately numbered and (b) it will be appropriately worded so that it is not subjected to a clause which does not exist. But in my submission, we cannot, debar this committee from discussing whether clause two should be repealed or not, just

because there is a clause following or preceding to which it has been tagged

MRS EGUNYU: Thank you Madam Chairperson. Madam Chairperson, I believe that the minority report to delete clause two is possible because you have not put a question on article 88. We had just debated one clause of the article, but not the entire article and you had not put a question on article 88 as an entire article. So in that case, I believe that it will be competent for the movers of the minority report to move their amendment to delete clause two because no question has been put on article 88. Thank you Madam Chairperson.

MR. NDEGE: Thank you Madam Chairperson. I think the position of the X-Attorney General is correct, in that even if we debated the minority report, it would not have any material consequence on article one of 88 or three of 88. So, since it does not, I suggest that without wasting time, we debate the minority report, most likely defeat it and then we go to the majority report and proceed. I think we are wasting a lot of time Madam Chairperson. Thank you.

THE DEPUTY CHAIRMAN: Okay, Hon. Masiko volunteered to move the question to the satisfaction of Hon. Obua Otoa. Hon. Masiko, are you a member of that committee?

HON. MEMBERS: No.

THE DEPUTY CHAIRMAN: Then you cannot move that motion. Hon. Masiko, if you are not a Member of the committee, you cannot provide the minority report.

MAJ. GEN. TINYEFUZA: Thank you Madam Chairperson. Madam Chairperson, I will do the needful to satisfy Hon. Obua Otoa. I am a Member of that committee although I do not think that is very necessary.

Madam Chairperson, when you look at our rules, I take it that once a report is laid on the Table, it becomes a property of this House and therefore the chairman does actually present all the reports as they were concluded in that committee be they majority or minority because they are no longer property of individual movers or dissenters. Under this rule, I would like to read it for the benefit of the Members, It states that: Amendments to articles of

the Draft Constitution recommended in the report of a select committee, may be moved at the appropriate time by the chairperson or by a member of the committee. This, therefore, does not make incompetent the chairman of this committee to move the minority report under our rules.

However, I will volunteer, not so much that I support this minority report but I am a Member of committee five and I do move the minority report. Thank you Madam Chairperson. Maybe in my moving the minority report I should try to be more elaborate.

Madam Chairperson, I was in this committee and I think the worry of the Hon. movers who wanted this minority report debated was on entrenching the idea of a county in the Constitution and I think the inconsistency was, if you introduce the quota system in determining the electoral area, then why do you bog it down with a constituency in terms of county? Are those two not contradictory? Are they necessary? This is the whole problem.

Must we entrench county as an idea in The Constitution, or is it safer to use population quota? I did not, myself, subscribe to entrenching the county but I thought for purposes of clarity, it is better than twisting around the population. That is why I did not support the minority report, but I think it is better for this House to be given an opportunity to determine on what criteria the constituency should be based on. Thank you Madam Chairperson.

MR. CHEBET MAIKUT: Thank you very much Madam Chairperson. I would like to very strongly oppose the minority report as moved by Hon. Tinyefuza, although in my view I believe it is not fitting for him to have moved this minority report because as a representative of the NRA I do not believe it is the wish of the NRA that a county should not be entrenched in The Constitution as a basic constituency. Nevertheless, I would like to say, that the question of not entrenching the constituency in the Constitution in my view is an attempt to go to what every delegate has been decrying all along that there were some attempts in some other commissions in the past to rig elections by gerrymandering the demarcation of constituencies.

MRSEGUNYU: Point of information. Thank you Madam Chairperson. I thank Hon. Chebet for

allowing me to give him this information. As you are addressing your argument, I want you to consider also that the said clause which we seek to delete is providing that when demarcating constituencies, the Electoral Commission shall ensure that each county has at least one Member of Parliament. That means that the county now becomes the basis of demarcating a constituency.

Remember also that districts, according to what the Assembly passed in the local government chapter, can demarcate constituencies. So you have a situation where districts can demarcate counties and that means that districts may also gerrymander by creating more counties with the hope of getting more Parliamentarians to represent them; bearing in mind that the counties are going to be the basis for demarcating constituencies. Thank you.

MR. CHEBET MAIKUT: Thank you Hon. Egunyua Fiona for giving that information. In my view, there is no way that this provision will contradict with the provision passed under the provisions of the local government, because when we say the districts have the power to demarcate some counties, I think the overall authority is subjected to Parliament.

I remember we passed a provision under local government that any administrative unit like counties or even a district or a sub-district for that matter are going to be subject to Parliament. So this particular provision here does not in any way contradict with the provisions on local government. So in my view, it will be good enough to provide a Constitutional guarantee that the demarcation of constituencies should be a matter which should be borne in mind when the Electoral Commission is carrying out this important task.

MR. BIDANDI SSALI: Point of information. Madam Chairperson, I am giving this information taking the benefit of my role in some other responsibilities. It is not true that a district can demarcate a county. Presently, it is the Minister that can decide on whether an area should be a county or not although it could be recommended by the district. The district can demarcate a parish without reference and demarcate a subcounty on approval of the Minister. Currently, there are so many requests for counties to be demarcated, lying in the office of the Minister of Local Government. This should have already been done by the Minister and gazetted

legally. But I am aware of the Minister fearing that if he did that legally then there would be an outcry of saying, oh! this is rigging and wanting to create more Members of Parliament. I am giving this information so that when Members are debating this they should know that as of now, the Minister has a legal power to declare an area a county.

In other words, a county as we understand it today is not static, because any time, any area can be gazetted as a county according to the law. Now, I do not think this is the concept we want to entrench in the Constitution that regardless of what size, which if the whim of the Minister was such that he gazetted then automatically, that this must be a basis for representation in Parliament. While we are debating, this should be taken into account.

MR. CHEBET MAIKUT: I think Hon. Bidandi Ssali in a way has helped to clarify some of the issues that I was raising that the question of the demarcating of counties is not a subject that is only handled by the district but it is also subject to some other authorities as he has rightly pointed out. So in my view, I have a problem. Supposing we have a regime that is not complacent of the people's wishes and aspirations, don't you think that they can use this provision to entrench a system that will allow the Electoral Commission to demarcate constituencies based on certain criteria that will fit that particular system or a particular candidate that they will wish to support?

In my view, these are the kind of cries which were pointed out when some of the delegates were contributing to the general debate. They charged that in the 1980 elections, there was some kind of attempt to rig the demarcation of constituencies to favour certain candidates. So I think that if we have this kind of provision in the constitution, then it will become difficult for the government of the day to play about in the process of demarcating the constituencies.

I believe that there is need to provide for a minimum kind of position on which constituencies can be demarcated by the Electoral Commission. The fact that the NRC, the Present Parliament, handled the CA Statute very well is not, in my view, a guarantee that future Parliaments can have the same wisdom to handle any other legislation to demarcate or when providing for demarcation of constituencies. With this submission, I strongly oppose that minor-

ity report position and urge Hon. Members to maintain the position put forward by the committee. Thank you very much.

THE DEPUTY CHAIRMAN: Hon. Delegates, this seems to be an issue to which many Members would wish to contribute, but we have passed lunch time. Before I announce the adjournment, however, I propose that we adjourn until tomorrow at 9.30 a.m, because I have got to go and see a doctor and my Chairman is not around. So, I should be excused. We adjourn until tomorrow, and I think we have really persisted. This has never happened, but I do not feel well.

Hon. Delegates, Hon. Byanyima wants to make this announcement that there will be a World-Net dialogue of women and girls' access to education today, Wednesday, May 24, at 2.30 p.m. at the United States Information Service Mackinnon Road 21, Nakasero. All are welcome. Thank you. We adjourn until tomorrow but please, let us come at 9.00 o'clock.

(The Assembly rose and adjourned until 25th May, 1995 at 9.00a.m.)