



THE REPUBLIC OF UGANDA

**PROCEEDINGS**  
**OF**  
**THE CONSTITUENT ASSEMBLY**

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OFFICIAL REPORT

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CONTENTS

THURSDAY, 25TH MAY 1995

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MOTION:- Consideration of the Draft Constitution of the Republic of Uganda [Pg 4501]

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Thursday, 25th May 1995.

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

P R A Y E R S.

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

*(The Assembly was called to Order).*

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

CHAPTER SIX - REPRESENTATION OF  
THE PEOPLE

ARTICLE 88 - CONSTITUENCIES.

**MR. WAGIDOSO MADIBO (Bulambuli County):** Point of Order! Madam Chairman, I wanted to draw to your attention that as of now, we do not constitute a quorum and are therefore not competent to commence transaction of business this morning.

**THE DEPUTY CHAIRMAN:** Let us count and see how many we are. We are not in the required numbers to start our business. So, I suspend the Assembly for 15 minutes to see whether we will get the required numbers. So, the Assembly is suspended for 15 minutes.

*(The Assembly adjourned for 15 minutes)*

**THE DEPUTY CHAIRMAN:** Delegates, can we regain our seats. 8, Clause (2), proposing to delete Clause (2) of that Article. I think I better start with Hon. Amanyam Mushega. Some Good Samaritan moved your Motion in your absence.

**MR. AMANYAMUSHEGA (Igara East):** Thank you, Madam Chairman, and I am quite grateful that there are quite a lot of Samaritans still going around the Constituent Assembly and I hope that they will treat this amendment until it is recovered and approved. Madam Chairman, we are in principle opposed to, for the time being, the county being used as the basis of demarcating constituencies for the next Parliament. What we are opposed to is entrenching it in the Constitution. Our own view is that it has so far been adequately catered for by the

electoral law in Parliament and that is the right place it belongs to because Parliament then will be in a position to change the principle and circumstances without having to go through the rigours of amending a major part of the Constitution. The reasons we are giving is the history why the county came to be used as the basis for electing the current NRC and this August Constituent Assembly and it has its history in the rigging of elections and gerrymandering of constituencies. But also, we must be able to reach a stage when we outgrow our own history. I will give an example in 1989, when the NRC was being elected, Madam Chairman, I happened to have been the Minister for Local Government at that time, and familiar with that, it is the genesis to the current one. We used lining up system for two main reasons. One, it was to assure Ugandans that no more shifting of votes is going to take place in Uganda. I will give an example. If my very good friend Hon. Ruhakana Rugunda and one of my old friends Hon. Bob Kitariko in Kabale Municipality, if by one vote, had it been by secret ballot, I am sure most Ugandans would have raised eye brows that this was rigging, but because it was so openly done, every body was satisfied with the results. So, one reason was to assure Ugandans that the new system is to ensure that those who get the majority of the votes are those who are declared winners and I am not referring to anybody in the past, but we are familiar with it.

Secondly, it was cheap; it was cheaper to line up than to go printing ballot papers and looking for Returning Officer and all those things. But as the situation changed later on, the secret ballot was introduced but the county again was used for the same reasons to ensure that nobody will come and accuse you that you have demarcated boundaries in a manner to favour your system and that is why the counties again in the CA elections were used. But in this case, a county like Bukoto had to be subdivided into five, while in NRC, it had only one representative meaning that we are beginning to outgrow our past, to stop living in the past and begin appreciating the present and planning for the future, because for those who live in the past, they run the risks of missing the present and having a miserable future.

So, my reasons, or our reasons for seeking to remove this provision from the Constitution and leaving them to the electoral law is that Ugandans

have matured sufficiently and for reasons we are going to articulate, it will be adequately catered for in the electoral law, which is easier to amend and adjust as circumstances change. The county was never intended in the first place as a permanent feature of representation in Parliament, it is an administrative unit for administrative convenience. We had only borrowed it for the time being simply because Ugandans need to be assured that the new order was different from the old.

The other reason is who will now demarcate counties because counties are for administrative convenience within the district. Under the existing law, to demarcate a county, you need the approval of the Minister for the Local Government. Fortunately those who say that the present may not be not as good as the past, fortunately, the current Minister for Local Government and that one before him, were considerate enough not to allow the multiplication of counties. But supposing it had been the other way round? What would have happened when you mix up something intended to serve a different purpose and permanently entangle it with something which is intended to promote democracy in the country? So, this could even lead - for those who are frightened of rigging, it could even lead to an existing system going to an area which is appearing favorably and multiplying the constituencies. If you fear rigging, this could be another way! Go to an area which is favorable, multiply as many constituencies as possible into counties, have the Minister of Local Government approve them, and when you are declaring elections, you are an edge over the rest.

So, we think really this should not be the case and this could lead even to a lot of litigation, if we are going to create counties now, it becomes not only an electoral matter, not only an administrative matter, but it becomes a Constitutional matter and this could lead to litigation in the constitutional court that you demarcate a county, somebody feels cheated - I have really referred to other provisions - then he will go to a constitutional court that this county which is being created, I do not like it, it is going to lead to 1, 2, 3 and you are permanently in court sorting out the creation of counties, because now it becomes a constitutional matter, in which case you will apply the coming provisions and have endless provisions. Also, when you look at the following Clause (3) of this Article which talks of the quarter, this is not consistent with it. At the

moment, it will be good for nation building, but you will not be nation building on a permanent basis.

A Constitution is a permanent document, usually with very many obstacles in its way of amendment. Now, when you end up with a county with 7,000 people because of reasons convenient to that administration, represented similarly with another county of 70,000 people, this is against the principle of representation of the people because Parliament is primarily about representation of the people, although there is an element of areas. That is why National Parks normally are not represented although they constitute huge chunks of land, because of the problems of population.

The other reasons we are giving is that, they are already enough for those who are scared of the past, who have not been able to overcome it, they are enough safeguards within the provisions of the report of Committee 5 to ensure that really gerrymandering and rigging of elections is not easy, because as soon as a constituency has been drawn, demarcated by the electoral Commission and in the proposed recommendation of Committee 5, anybody who is aggrieved can appeal and the Chief Justice will establish a tribunal to look into the grievance. If the decision of the tribunal is not adequate, you can appeal to the High Court, if the High Court gives a reason you think is not fair, you can go to the Supreme Court, plus public awareness and this provision in the Constitution that you can go to courts really if the tribunal is not able to stop this. If the High Court is not able to stop it - and we have to give them independence and autonomy - and the Supreme Court is not able to stop this, then if that level has been reached, the country has already gone to the dogs as some people say and me, I think these provisions are very adequate to allay the fears of my Chairman in Committee 5 who suffered the heavy consequences of gerrymandering and heavily influenced the decision that we arrived at because his constituency in 1980 was crossing several rivers and several counties only to make the situation difficult. I hope those who are responsible for such situations have sufficiently repented not to repeat it again. Then, these safeguards within the constitution are sufficient guarantees against gerrymandering of constituencies and of course when you use the county as the basis. We have not talked about Municipalities, we have not talked about divisions within Jinja and Kampala, so we are going into details that would be

better adequately catered for by Parliament under the relevant legislation for electoral purposes.

Madam Chairman, the county or the constituency is not only drawn for purposes of county convenience, when you are drawing constituencies, there are also financial or budgetary considerations that Parliament may see and say that for us to run Parliament efficiently, adequately and to be facilitated, you need a given number of Parliamentarians and they could increase, or decrease the number, depending on the financial ability or budgetary ability of that particular period. Now, when you say that the county is the minimum unit of representation and maybe you end up with 300 counties, but the budget could have adequately supported 250 members of Parliament, what will be the case? Because, in demarcating constituencies, budgetary considerations are also taken into account in that you provide for a number of Parliamentarians who will be adequately funded, adequately facilitated to effectively represent the people, because you can also end up with a huge Parliament within a minimal Budget in which case it is called once a week, or twice a year and adjourned because the coffers are dry. So, we will be tying the hands of the future Parliaments who may not even be in a position to effectively facilitate the Parliamentarians for representation of the people. There are population shifts, and if a county loses a lot of people, what happens? It still gets representation, when the situation on the ground would demand that constituencies be adjusted according to population shifts! This is if you study the practice and history of countries that have been having elections over many years. Constituencies are, from period to period, adjusted to take into account not only population increase, but shifts in populations and shifts in populations are not automatically followed by shifts in administrative boundaries. So, this will be a big problem.

Then you have the question of drawing of county boundaries in the preview of the Electoral Commission. Why should the Electoral Commission be involved with administrative boundaries? Why do we not leave the Electoral Commission to concentrate on issues relating to the representation of the people not the way people are administered on a day to day basis? So, while for the time being the county is the convenient tool for allaying the fears of gerrymandering, for assuring the population that really shifting goal posts in the middle of the game

will be abandoned, it will be unfortunate if it is entrenched in the Constitution because of the current fear and make the adjusting of constituencies in the future, very difficult and it becomes a role of the Electoral Commission, when in actual fact, it would have been an administrative arrangement between the local authorities and the responsible organs at the centre. So, we support the use of the county for the time being as the basis of representation in Parliament, but we oppose to entrench it in the Constitution because we are mixing up issues there, it was well catered for in the current statute which brought this August Assembly into being, it has also been well catered for in the interim electoral law which has just been passed through NRC and I am sure, as I said before Madam Chairman, that the population has seen better things that the population has been able to elect us, people who are capable of taking the Ugandan interests at heart. I am absolutely certain that the population in future will even elect better people than us, who will take into account the aspirations of the population and pass a law that will enhance democracy. Democracy is not a permanent feature, the way it is expressed changes with time and circumstances, and we should not be able to tie the hands of future Parliaments and future generations but leave it to them to adjust the law according to the circumstances rather than mixing up administrative matters with the representation of the people.

With those few remarks and when time allows, we shall be able to give other points of information. I appeal to this August House to support the principle of the county, but remove this from being entrenched in the Constitution and leave it to be catered for by the electoral law. I thank for your audience and kind listening. Thank you very much.

**MR. JACK SABIITI (Rukiga County):** Thank you very much, Madam Chairman. Madam Chairman, this amendment was thoroughly discussed in Committee Five and defeated. I remember Hon. Amanywa gave the same reasons for deleting this amendment but the members of this Committee and those like us who had come from other Committees felt that his arguments surely were not enough to delete this particular amendment. I do not see any logic, Madam Chairman, behind Hon. Amanywa's arrogance to insist on trying to make a point - *(Interjections)*

**MR. AMANYA MUSHEGA:** Point of order! Madam Chairman, I have the greatest respect for Hon. Sabiiti. It was in Committee Five where, by consensus and with the support of other members of that Committee, that we were allowed to present this report, by our Chairman, as a minority view. Is Hon. Sabiiti really in order to call my representation of the consensus of Committee Five as arrogance on my part and insult me and the people of Igara East, who elected me to represent them?

**THE DEPUTY CHAIRMAN:** Hon. Sabiiti, I think that was out of order, except if that was an earlier belief as far as you are concerned. Otherwise, as of now, I do not see any arrogance from Hon. Amanya Mushega. So, you are out of order.

**MR. JACK SABIITI:** Thank you Madam Chairman, that is good ruling, but the arrogance I am talking about is his - *(Interruption)*

**THE DEPUTY CHAIRMAN:** No, you are ruled out of order. I have not asked you to substantiate the arrogance, just withdraw the statement.

**MR. JACK SABIITI:** Withdrawn. Madam Chairman, I sincerely feel that if we are to discuss this issue seriously, we have to look at the history of demarcating constituencies in this country. Demarcating constituencies in this country has been crowded with a lot of gerrymandering. If we look at what happened in the past, many Governments tried to influence commissions, tried to make sure that if candidate "X" was not for this particular party, he will not go through by trying to change constituencies. Now, if we use a county as a basic unit in demarcating constituencies, this will certainly sort out some of these problems that we have gone through in the past. I therefore feel that a county should continue, should remain as a basic unit when constituencies are being demarcated. Now, to say that the counties could be used in the past, particularly in the last few years and that now they cannot because circumstances have changed, really is not valid. The reasons why we used constituencies in the past are the same reasons, because we do not want to cause confusion in constituencies, to make our people not understand where to vote from.

So, I would suggest, Madam Chairman, that this amendment be rejected, let us retain this amendment so that our people are not confused when we

are going to elect. I therefore, vehemently oppose this deletion. Thank you Madam Chairman.

**MR. WACHA:** Madam Chairman, I want to support this amendment and I hope no body misunderstands it as a way of expressing a form of arrogance. I am supporting it for two reasons Madam Chairman. First, a county as a basis for a constituency removes that important element that the commission should be sure of when demarcating constituency boundaries, that is certainty of representation. Madam, we have passed in Article 204 - that is under Local Government - that Parliament shall by law empower District Councils to alter the boundaries of Local Government units and to create new Local Government units within their districts. Now, should it become necessary for administrative or other purposes to create new counties when a general election is not due, the end result would be ineffective or non-representation of the new or old county. If for instance a county is divided into two, then in the life of a Parliament, it may end up trying to represent two counties, because I think by law, the number of seats in Parliament would have already been enshrined, there would be no possibility of a by-election taking place in the new or the old county. The member in question therefore, in these circumstances, is unlikely to give equal attention to both constituencies.

Now secondly, Madam, the county as an electoral area gives rise to uneven representation. This point has been elaborated upon by Hon. Amanya Mushega, but permit me to repeat it. Now, while an attempt has been made to reduce the number of voters in an area which is over populated through the usage of population quota, nothing has been and nothing can be done about the under populated counties. One could therefore be faced with the situation which was elaborated upon by Hon. Amanya Mushega of a constituency made of only 7,000 people while another constituency might be made up of 100,000 people. Obviously, the constituency which is made up of 7,000 people is going to be over represented while the other one which is made up of up to 100,000 people is going to be under represented in Parliament because the member of Parliament will have to do everything possible to satisfy the needs of these 100,000 people.

Now, the fear which has been expressed by Hon. Sabiiti about gerrymandering is, I think, the only reason which one could maintain a county for as a

basis for constituency. Now, it could be granted, it could be accepted, that gerrymandering could take place but the gerrymandering which takes place on the basis of population quota can take place only once in ten years. However, the misapplication of counties to achieve representation in Parliament can take place at any time in between the elections. Let me explain. As I stated before, under 204, you are provided that District Councils can create counties for whatever reason. Now, there is no check in that provision to say that you are not going to create counties for purposes of representation, there is no check. Now, having left an open ended provision in the Constitution, there is no way you are going to check whether these counties are going to be created for purposes of representation only, or for purposes of administration. While you can check gerrymandering under population quota by filing suites in court, you cannot check misapplication and heavy handed gerrymandering by the State by the usage of counties.

Madam, because of the above three reasons, I think very briefly this time, I support the deletion of this, and I go further by the way, and I say, I support the deletion and I do not accept the county as the basis for constituent representation.

**MR. MULASANYI (Rubanda West):** Thank you, Madam Chairman. Madam Chairman, I want to oppose this Motion. Madam Chairman, it is good that a member of Parliament represents those people he knows and those people who know him. When you extend a constituency outside the county, you are going to include the people you are not familiar with and the people whose problems you are not acquainted with.

So, Madam Chairman, I think the county is a good guideline for that matter because as a result of common administration, the people in the county tend to develop a common thinking and to have common problems. So, a representative of a county is representing common problems of all the people in the county. Hon. Amanywa Mushega has said that maybe the numbers in Parliament may have to change in future, depending on the financial stand of the State, but I wish to observe and state -  
(*Interruption*)

**MR. ELYAU (Kalaki):** Point of clarification! Madam Chairman, I want clarification from the Hon. Member holding the Floor. He says that if you

represent the county, you will know your people better. I am asking him that, that one from Masaka - is it Mawoogola which has merely 400,000 people, will that member know each and every body in that constituency, and do you think these people will not have been under represented, because they will be 400,000 instead of yours which 70,000? Can you clarify?

**MR. MULASANYI:** Thank you, Hon. Elyau. But I want to say that because these people are in the same county, they have the same thinking, they have the same problems, the member of Parliament in that particular area must know all of them, because the administrative area is the same.

**MR. NEKYON (Maruzi):** Point of clarification! Madam Chairman, I would like the Hon. Member on the Floor to clarify to me, that we have already provided that we will have one woman representative per district. How is it that a woman representative will come to know all the people in the district and a member representing one county and half counties will not be able to know the people in those one and half counties?

**MR. MULASANYI:** Thank you Hon. Nekyon, but I hope you know that the representation by the districts is given by women as a temporary measure, just to lift them up, very soon, it will end so that is not a basic argument. Madam Chairman, to continue with my contribution - (*Interruption*)

**MRS. SEBAGEREKA :** Point of information! Madam Chairman, I would like to inform the member holding the Floor that the Woman representative is affirmative action accepted, that she has to know all the people in her district, she has to identify with their needs and she knows the things that should be directed to - you know, for the other constituencies, she is like the over-seer of the district. Thank you.

**MR. MULASANYI:** The woman is elected on special circumstances and she has to operate in special circumstances, we are considering a constituency. Madam Chairman, in answer to Hon. Mushega's proposal that the number of members of Parliament should depend on the financial stand of the state is, in my view, a wrong concept. I propose that the number of the members of Parliament should rather depend on the representation of the people. Madam Chairman, if we say that the popu-

lation quota which qualifies for a member of Parliament is 100,000, it should be that whether there is money to pay them or not. But it makes sense that representation is based on the representation of the people rather than the money available to pay them. I thank you, Madam Chairman.

**DR. MIYINGO KEZIMBIRA (Bukoto Mid-West)** Madam Chairman, I support the amendment. This county that we want to make the basis of a constituency, to me, is very unclear today especially when I relate it to the situation of my county, Bukoto. Bukoto, one of the largest counties in the country with nearly 370,000 people, has in the past been represented by only one person in the Parliament and it has been evident that this one person could not be able to cover the entire county as a constituency. Much as he has tried to work, a lot has been left to desire. Suggestions were made that the county be sub-divided into some other counties but the mechanism of doing that up to now is very unclear that we are not even sure whether that county is still one or they are three or four, and that is left at the whim of the Ministry of Local Government to decide. Now, if Local Government does not decide in time, that would mean that Bukoto with all those people would still remain one constituency under the guise of a county. So, I feel this should not be used as a basis. *(Interruption)*

**MR. CHEBET MAIKUT:** Point of information! Thank you, Madam Chairman. I would like to give information to the Hon. Member holding the Floor that his fears are very much true. We do appreciate the facts pointed out but I think under the Committee's recommendation on sub-clause (4), this one takes care of such fears and therefore, if a county has a population which is more than a certain given quota, then definitely, there is that provision to sub-divide the county, provided the constituency is so sub-divided, it will not overlap in another administrative unit. *(Applause)* Secondly, Madam Chairman, I would like to refer the Hon. Member to one of the popular quotations in the "Animal Farm" - that "*not all animals are equal, some animals are more equal than others.*" In the same tone, we have your figures, you can look at so many examples. In the United States, you have so many States and when we come to some kind of election, not all these States are equal in size, but never-the-less, they are represented or they constitute the States of America.

**DR. MIYINGO KEZIMBIRA:** Madam Chairman, the information raised by Hon. Maikut in fact, he goes along to support me, that the county should be eliminated and we go by a population quota and geographical consideration rather than demarcation of a county because we have got the factors which are population quota, and geographical consideration. So, we do not have to go by the marking out of a county rather than these two.

Madam Chairman, when we were deliberating on the Chapter for Local Government and when the people in the country side realized those who are in the RC V, they realized that there has got to be a Councillor per sub-county to come to the Local Government at the district. What people started in the country side was to sub-divide the sub-counties which were there so that they could get more Councillors to vote them into power. Of course, this was overtaken by the amendment that was passed whereby there was adult universal suffrage, recommended. So, the manipulation could still take place, where there could be either more sub-division or curtailing other areas to sub-divide although they could have qualified to be counties. Now, the question also of confusing the Electoral Commission by tagging it to Local Government so that it has to conform to what Local Government does is to remove its independence and we have said, the Electoral Commission is an independent body which will work without any influence. But now, if it is going to be dependent on what the Minister of Local Government is going to decide, then it is going to be a confusing situation.

Madam Chairman, I do not subscribe to the fact that the county should be made so prominent now, because all along, we have not considered a county very prominent. Why all of a sudden now? We want to make it very prominent yet it is not even part of the Local Government. We have just made it an administrative unit and now, all of a sudden, it is becoming very prominent. I think really this is not worth putting into the Constitution, although it could be a basis of administration.

Then, Madam Chairman, the basis that the county is the best way of knowing how to represent people, I think is not also valid. In fact, I think it means that the number of seats in Parliament, many people have argued and when we were in the House there, over the Electoral law, people argued that the county should be used because the House is small,

it will not be able to accommodate very many people if you do not use the county which takes up many people and therefore reduce the number of seats in Parliament. I do not think we are going to depend on the space in Parliament to determine the country's needs. This Parliament was built a long time ago and situations have got to change, and we are going to go by population quota and you know, change seats as need requires. So, Madam Chairman, with those reasons, I think the county should not be constitutionalised, it should remain as an administrative unit, but let the Electoral Commission depend on the population quota and the geographical situation on the ground. I thank you.

**DR. BYARUHANGA (Kitagwenda County):** Thank you, Madam Chairman. When we worked on the Chapter on Local Government, we agreed in Article 202 and the interpretation Article 232 that a county is not a local government unit and therefore, the existence of a county is at the mercy of Parliament or at the mercy of the Minister for Local Government who may wish to have it as an administrative unit or not. Now, when we got to Article 204, we said that the Local Governments - the District Councils will be enabled to create new local government units. It can be assumed that they will also be enabled to create new administrative units, sub-divide for examples parishes, which we have not talked about in this Constitution, sub-divide the villages, and sub-divide the counties. So, when we come now, and make this county which has not actually been constitutionalised, as the basis for drawing up our constituencies. I believe we are making a mistake because we are opening the door, as some people have said, to official gerrymandering which has been the root cause of the failure of the practice of democracy in this county.

**DR. CHEBROT (Tingey):** Point of clarification! Thank you, Madam Chairman. I would like to clarify to Hon. Byaruhanga, that since we made counties a basic units for a constituency, nobody has ever attempted to create a county and it was actually a policy in the Ministry of Local Government to ensure that we do not create any more counties as long as the county remained a basic constituency and we can make a provision in this Constitution to say, now that the county is a basis for the constituency, the Parliament can only create counties, and that can be provided for in the Constitution and that therefore, cannot be a basis for argument. I would like to re-emphasise the point

raised by Hon. Chebrot, there are minority groups in this House, we will not just want to consider the question of population of numbers. If you consider the United States, the State of Hawaii has got two senators in the Senate and yet the population of Hawaii is only 50,000 but at the same time, the State of Massachusetts has got two senators who are representing them. So, we should not just consider the question of numbers as a basis for it.

Thirdly, the arguments about geographical features and other things like that, those are entirely subjective. Who is going to decide that now it is going to be more difficult to climb to the hills of Kisoro and therefore, I am going to give these Kisoro people five constituencies? This is very dangerous for minority groups and yet we have provided for in the Municipalities - some Municipalities are being operated by - like Lira has only got 22,000 people. Now, you are saying Lira as a Municipality can be represented by 22,000, but another district which has got a population of 80,000 should only have one! This is not proper. Thank you, Madam Chairman.

**DR. BYARUHANGA (Kitagwenda):** Madam Chairman. I am going to refuse information, because I believe the member was replying to - to make his contribution, but all the same, we cannot have our cake and eat it, because the Hon. Member has said that for example, the Municipality of only 20,000 people is represented in Parliament, it is being represented because the Municipality has been equated to a county and we would not wish - some of us would not wish to have just 10,000 people being represented when in another area 138,000 are only being represented by one person! So, if we believe - if we honestly believe that the basic unit of democracy - in the practice of democracy, is the individual, this individual who is the basic unit and the consumer of this democracy, we should use that individual in our practice of determining constituencies. The rationale of using population is definitely very much more superior, to trying to use the counties which after all, when they are being drawn, were not drawn having in mind that at one time, they would be constituencies. We have in some districts, as we have heard, where counties are very huge and with very huge populations. We have in other areas where counties are very huge, but with small populations and we have in other areas the counties are very small and with very small populations. Now, this may have

worked fairly in this Movement system, it also worked because we had sane people in the Ministry of Local Government, it worked because we had a Cabinet that would not have approved just the creation of more counties with the intention of gerrymandering, but if we ever practice multi-partyism in this country, it will be unfair for say, a Party to have a majority of members in Parliament but which members actually represent minute a population, because that could easily happen. You could sweep areas, a Party could sweep areas where because of geographical problems or because of this issue of minorities, where we have had depopulation of counties, end up with a majority in Parliament when actually the number of people who voted for such a party is less than the party with a minority in Parliament. Therefore, to be fair, and really to have a sound basis for the establishment of democracy in this country, we better not, as Hon. Amana Mushega has said, we better not put this thing in this Constitution.

Hon. Amana Mushega is not saying that we must abandon counties as constituencies today. No, what he is saying is that we should not put it here in this Constitution, let it be in an electoral law so that tomorrow, should we see that we are now prepared to go by a better system which is definitely going by the population quota, then the electoral law would just be amended by Parliament. Otherwise, if we fix it here today, and tomorrow we shall actually see that it is a very unfair, it will cause future Parliaments to amend this Constitution. Thank you, Madam Chairman.

**MR. BAGEYA (Kigulu County North):** Thank you, Madam Chairman. Madam Chairman, although I had alerted the Hon. Members yesterday on the Article we had already passed which referred to this particular Article, we have gone ahead, and insisted probably, because Hon. Amana was not here yesterday but I had wanted to know from him whether he wanted us to go back to secret ballot - to lining and through this reasoning, I am strongly opposed to the deletion of this particular Article. In the Odoki Report, page 273, 10.05, the recommendation was very clear; *"counties and sub-counties, should be the basic constituencies for Parliamentary and District Council elections respectively. However, density of the population of such units should be taken into account so that those with large populations are divided into two or more constituencies that would be as nearly equal to the population quota as possible."*

Now, people in this country need effective representation. Now, when we talk about population shifting, I do not see the Local populations shifting to the level of the Western world and even the Western world, when people shift, others come in and fill those areas. I am wondering, for those who are having fears of creating more counties by District Councils and the Minister of Local Government deciding how to create more counties. I have this to ask. Is the Ministry of Local Government going to operate independently outside Government policy? Will there be a policy in Government which will control the Ministry of Local Government or it will be working independently? We have areas here like Arua Municipality, it has only 22,000 inhabitants, Ntokoro county has got 24,000, when we get to Karamoja the matter becomes very difficult because none of the counties would be having the quota. Are we saying that the counties in Moroto will not be represented according to the counties because the quotas are much lower? *(Applause)*

There is also the question of the area coverage, which should be put into account and these are counties, there is no way unless we are saying that now we are going to make these other small counties be swallowed up, then that is a different matter. Some people have been worried of the size of the Parliamentary Building, I thought we are talking about revolution of development, are we going to retain do we plan to retain the same size of Parliament for the next 100 years, because I believe this Constitution must last as long that. Are we going only to develop in other ideas and not develop in structures in this country? And if possible, can somebody explain to me what we are going to do with Clause (1) which we passed yesterday, which has got a distinct reference to this particular Article which Hon. Amana Mushega is seeking to delete. What will happen to Clauses (3) and (4) because they are inter-related and I am wondering why in the first place the Movers of this Motion had an oversight on Clause (1) because at the moment, this Clause refers to the next Clause, and we passed it very comfortably yesterday without anybody raising a finger. How then do we go back and say, although we had referred to this clause before, we delete it?

So, Madam Chairman and Hon. Delegates, I strongly believe you should support and make sure that we retain this Clause (2). It has got no harm as other ulterior motives. I thank you.

**MR. LOOTE OGWEL (Moroto Municipality):** Thank you, Madam. Madam Chairman and Hon. delegates, I would like to oppose this amendment because this amendment shows that other areas of Uganda have to be completely marginalised and representation will not be there. Because we want to avoid the future political manipulation for those who may be having interest in winning some elections and this was demonstrated in 1980 whereby some politicians decided to go to those areas where they knew they had large support and so they decided to create new constituencies. Now, Madame Chairperson, I feel if this is a unit which is wide and broad-based for representation for those areas which will be marginalised. Now, somebody had already given the example of Karamoja. It means that Karamoja will only send two representatives - okay, let us take Kalangala. Let us take Kiboga. Now supposing one representative comes from these areas, now, it shows that the effective representation will not be there. Also the counties are easy to manage and to deliver the social services to the people. They are easy to mobilise and easy to educate and create awareness. They also help in equitable development. Now, I am wondering how Hon. Amanyanya - if now, during our general debate, everybody here addresses the issue of equitable development and the sharing of resources, sharing of power, now say the county is not the basic of the constituency, then, I do not know how you will address the issue of equitable development. How will you address the issue of marginalisation because when these constituencies were big and large, you find even some of these MPs or representatives could not reach some of these areas but now you can be able to go from Parish to Parish, from smaller village to village so that you are able to consult and address the issues of development and other issues.

So I oppose this amendment, it is undermining the people of this country. I do not think there is anybody during when we were using these counties as constituents, I do not think any part of Uganda raised a complaint because they feel that they are represented. Their views are being given and well articulated. So, I oppose it and I call on all the delegates to throw this amendment wherever it belongs. Thank you, Madame Chairperson.

**THE CHAIRMAN:** Hon. Lukumu. (*Interjections*) - Okay, I had given the Floor to Hon. Lukumu, I will come to you.

**MR. BAGENA (Bufumbira East):** Thank you Madame Chairperson.

**THE DEPUTY CHAIRMAN:** No, no it was Hon. Lukumu.

**MR. LUKUMU (Buliisa County):** Thank you, Madame Chairperson. I strongly oppose the Motion moved by Hon. Mushega. Madame Chairperson, using counties as basic units of representation, it has already been indicated, was even recommended under the Odoki report. Most counties are basically formed out of ethnic groups. Generally, in Uganda when we use the system of representation at national level based on constituencies, the representation of views of various ethnic units in Uganda will be addressed effectively as is the case right now. Madame Chairperson, you remember very well the issue of side-lining or even totally ignoring the existence of certain ethnic groups in the previous constitution was addressed here because at least every ethnic group almost was represented. Tribes like Bagungu, Baruuuli, Batagwenda and many were never known to exist in Uganda constitutionally but today, because the issue of representation is based on the county level, this was brought this to light. I am a Mugungu but I was known as a Munyoro. Hon. Byaruhanga Fabius was known as a Mutooro but now he tells us he is a Mutagwenda and we know that it is constitutionally recognised.

So, I think the issue is that, we have gone through many problems in Uganda, Madame Chairperson, mainly because tribalism has been the major cause of this and this tribalism has been seen at a larger level but even when you go deeper, districts had so many problems because - (*Interruption*)

**THE DEPUTY CHAIRMAN:** Point of Order!

**MR. AMANYA MUSHEGA:** Madame Chairperson, is it in order for Hon. Chebrot to go around the plenary campaigning from person to person? (*Laughter*)

**THE DEPUTY CHAIRMAN:** No, he is not campaigning, consultations are allowed in the House. (*Applause*)

**MR. LUKUMU:** Madame Chairperson, fears have been expressed regarding the provision made in Article 204, Clause (3) whereby Parliament will

make a law authorising District Councils to form lower administrative units or lower councils but I think this Constitution has not yet been completed. We could address that at the reconsideration stage by giving a provision whereby the formation of units like the county will be subject to approval by Parliament. I have already in mind a proposed amendment to that effect. I think this one can be addressed since now, it was an oversight when this provision was being debated. We did not have this in mind and since there is room for a reconsideration, we can address that. But we ensure that there is representation, effective representation.

Arguments have been raised to the effect that population - some counties have got very low population. It is true but it should also be understood that representing some of these counties with low population density may be even more difficult than representing counties which are heavily populated given that infrastructure varies from place to place. Areas which are well provided for by way of infrastructure *-(Interruption)*

**THE DEPUTY CHAIRMAN:** Information from Hon. Pinto.

**MR. PINTO (Kakuuto County):** Thank you very much, Madame Chairperson. The information I have for this Member and others who have argued against this deletion on the basis that areas which do not have enough population may be affected or marginalised. I would like to point out to them that under Item 4 of this very clause, if you get to it, and if this is going to be maintained - it reads: *"for the purposes of Clause (3) of this Article, the number of inhabitants of a constituency may be greater or less than the population quarter in order to take account of means of communication, geographical features, density of population, area and boundaries of districts."* If this particular clause is maintained, Madame Chairperson, then the labour our colleagues are putting across as obviated is catered for. Thank you very much.

**MR. LUKUMU:** I thank Hon. Pinto for that information. But since this point of infrastructure is recognised, what is wrong with ensuring that it is not tampered with because it is very difficult to provide a formula which will take into account all these numerous factors but when you ensure that a country is a basic unit, you have already ensured that there is no way it can be tampered with.

Therefore, it should remain there to ensure that it is not in any way tampered with. It has already, Madame Chairperson, been indicated that in the USA, where in the Senate representation takes into account the administrative units, like the States, no matter what size it is, we are aware now in Uganda we have only a system of representation at national level *-(Interruption)*

**THE DEPUTY CHAIRMAN:** Information from the Mover.

**MR. LUKUMU:** I will take it later Madame Chairperson. We have only one Parliament which means we have a two in one system whereby we must take into account the two in one system - I mean we have a Parliament, instead of having two Houses as earlier proposed to take the case of Britain and America. We have only one National Assembly. We shall have only one National Assembly under the new Constitution. So, this should take into account considerations of minority groups because we cannot think that we are only going to base on population forgetting those minority groups which may easily be sidelined or marginalised unless the county is used as the basic unit. I will take information from the Mover.

**MR. AMANYA MUSHEGA (Igara East):** I wanted to inform my colleague and I thank him for yielding the Floor. Reference has been made to the United States and quoting it in a truncated form. The United States has a federal system of administration. The Senate represents the constituent States for equal representation because of the federal arrangement but for representation of the people, there is what they call House of Representatives and this is based on population, not based on state size. I thought that should be taken into account so that when they quote the United States - here we rejected *federo* and we went for a unitary state and the United States is federal.

The second piece of information is that when they are drawing counties, counties are not based on ethnic groups. The drawing of counties is not based on ethnicity, it is administrative and our amendment is not to marginalise minorities or throw away the county altogether but it is not to have it in the constitution because even it will lead to rigging of elections by multiplication of counties in areas where the government in power may think it has better chances of getting more delegates. I just wanted to bring this to your attention. Thank you.

**MR. LUKUMU:** I thank you for that information but in effect, it has not added anything because I was already aware that the Senate is not the same as the House of Representatives but I am saying that under our system, in the new constitution as has been the case earlier, we have to take into account the element of regional representation or call it tribal if you like and because they exist anyway, to assume that they do not exist would actually be behaving like hiding from facts. I would like to conclude, but before I conclude, reference was made by Hon. Mushega that USA is a federal state but I think we are also aware that although we have not adopted a federal system, the decentralisation system has been called a hybrid. So we have to take some elements of federalism in our provision because this is a hybrid, we cannot throw it away completely.

**THE DEPUTY CHAIRMAN:** Hon. Omara Atubo said he had an amendment.

**MR. OMARA ATUBO (Otuoke County):** Madame Chairperson, I have listened to the various Speakers for and against the Motion and I think that if the amendment I am going to move is considered favorably and adopted, it will satisfy both parties. Madame Chairperson, I move that the following phrase be added immediately after the word "county". That, "the county to be the electoral unit should be approved by Parliament."

Madame Chairperson, the main fear is - and this was raised by Bidandi Ssali yesterday - that currently, the District can resolve to have a county, it is up to the minister and so on and also the fear is that the Executive at any given time wishing to play about with voting and with their number may actually increase the number of counties in order to be the basis of a constituency. However, Madame Chairperson, I believe that if a county is approved by Parliament, it will go a long way to be a measure to prevent any possible abuse so that Clause (2) should read as follows: "*When demarcating constituencies -*

**THE DEPUTY CHAIRMAN:** Procedure. Hon. Akello Grace.

**MISS AKELLO (Presidential Nominee):** Madame Chairman, is it not our usual procedure, Madame, that when somebody proposes an amendment, it should first of all be seconded before he

goes ahead to give the reasons? Because it seems to me as if the Hon. Member has gone to give his reasons for the amendment without being seconded and I did not hear anybody seconding him.

**THE DEPUTY CHAIRMAN:** Okay, I gave him the Floor because the Motion is for deletion and he needed that amplification because the Motion is not part of the deletion. So, sometimes we have to be liberal given certain circumstances. That is why I allowed him to because he is not amending the deletion, he is talking about something which is not on the Floor. Okay, now he has done so, anybody supporting the amendment.

**MR. OMARA ATUBO:** I have very many people I have talked to and are seconding this amendment. They are very many. The whole House is seconding, Madame Chairperson. - *(Laughter)* Madame Chairperson, I move that Clause (2) be amended as follows: "*When demarcating constituencies for the purposes of Clause (1) of this article, the Electoral Commission shall ensure that each county as approved by Parliament, has at least one Member of Parliament, except that no constituency shall fall within more than one county.*"

The importance of this amendment is that the county should not exist or cease to exist at the whim of a minister or at the whim of the executive at that particular time. As long as the county is becoming the basis of a unit for election, then, Parliament must be involved. The advantages of having a county as an electoral unit has already been argued and I strongly support it that the county really should be the basis of a unit for an election but my fear is that if you have an executive which wishes to abuse its power and without the control of Parliament, it may go to the extent of having the counties increased or decreased in order to play about with the number of members of Parliament in certain areas where it has either more support or less support. So, I believe that Madame Chairman, this amendment assists us to take care of the Motion of Hon. Amanyana and for those who believe that a county as a unit should be approved by Parliament. Thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Omara Atubo, as I call upon Hon. Amanyana Mushega to comment, can you push forward your amendment, it was quite long, I could not -

**MR. OMARA ATUBO:** No, Madame Chairman, it is a very simple amendment. After the word "county" appearing in line 3, add: "*as approved by parliament.*" That is all. In other words, the county which is going to be a constituency must be approved by Parliament. That is the import of the amendment. Thank you.

**THE DEPUTY CHAIRMAN:** Let us hear from Hon. Amanywa Mushega. Yes, Hon. Wacha, what is the problem?

**MR. WACHA (Oyam North):** Madame, on a matter of procedure, Hon. Amanywa Mushega's amendment was for deletion. Now, this amendment is for apparent improvement of an existing Clause. Is it not procedurally proper that we should first deal with that of deletion because I do not see how you can amend a deletion? *(Applause)*

**THE DEPUTY CHAIRMAN:** Let us hear from Hon. Amanywa Mushega. I have taken note of your comment.

**MR. AMANYWA MUSHEGA (Igara East):** Thank you, Madame Chairperson. I have been consulting with the Chairman of Committee Five since you allowed consultation and our worries for moving a Minority Report are partially catered for. So, we are in support of the amendment moved by Hon. Omara Atubo - *(Applause)* - because our biggest fear was leaving the creation of counties open ended and if it needs withdrawing my deletion in order to accommodate this one, I will do it. Thank you. *(Applause)*

**THE DEPUTY CHAIRMAN:** So, can you do it please.

**MR. AMANYWA MUSHEGA:** I am withdrawing the deletion in order to allow Omara Atubo's amendment to stand. *(Applause)*

**THE DEPUTY CHAIRMAN:** Thank you very much. I think with that, unless somebody is amending Hon. Atubo's -

**MR. AMANYWA MUSHEGA:** And maybe Hon. Chebrot could retake his seat. *(Laughter)*

**THE DEPUTY CHAIRMAN:** Let me hear from the Chairman of the Committee, whether you are saying nothing but the truth.

**MR. KUTESA S:** Madame Chairperson, I welcome the proposed amendment by Hon. Omara Atubo because it caters for all people's concerns. First, it ensures the county remains the unit, second, it guards against any creation of new counties for the purpose of increasing representation and this seems to have been the main fear of Hon. Amanywa. However, I wanted to say this, even if we had maintained the old one, we seem not to have included divisions and municipalities. I do not know if it is necessary and if it is not necessary, Madame Chairperson, for me I think all sides are happy and Hon. Omara Atubo has saved the day. He has helped Hon. Chebrot sit back in his seat and saved Hon. Amanywa the consequences of defeat. So - *(Laughter)* - I think it is a happy compromise.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I think that we have had enough debate. I want to put the question. Unless Hon. Wacha - if you are commenting on the municipality which was left hanging.

**MR. WACHA (Oyam North):** No, I have a problem with this amendment and maybe Hon. Omara Atubo can assist me. When you say as approved by Parliament, what do you mean? Are you suggesting that certain counties would be there which would not be a basis for constituencies, or are you suggesting that the creation of counties must be approved by Parliament? Now, if you are saying that, then this does not bring it out. It does not. You have to find some way of saying that the creation of counties as basis for constituencies must be approved by Parliament but not the way it is put here.

**THE DEPUTY CHAIRMAN:** Let us hear from Hon. Kutesa. Anyway, the advantage is now we agreeing in principle. What we are trying to do is find the best language to drive the point home. I think that is a better.

**MR. KUTESA:** Madame Chairperson, as Hon. Ben Wacha earlier on pointed out, Article 204 gives Parliament power to empower local administration to create smaller units. What this Clause has now done is to say that whatever you do in empowering those lower administration units - to create smaller units, must receive the approval of Parliament and it is now really a question of drafting, how best it comes out but I think the important thing clearly is that we are vesting the approval of creation of counties into Parliament unlike the earlier position

of leaving it to districts to create new counties which eventually could have ended up with gerrymandering that both Hon. Amanya and Hon. Wacha were concerned about. I, therefore, propose Madame Chairperson, that you put the question.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Okay, I think with that, we have had enough of this. I put the question on Clause (2) as amended.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Hon. Omara Atubo's amendment is part of this Constitution. We are not going back to (2) - *(Interjection)*. You cannot ask for clarification on (3) when it has not been moved. Hon. Sam Kutesa.

**MR. KUTESA S:** Madame Chairperson, Clause (3). The Committee recommends that Clause (3) be retained as it appears in the Draft Constitution to read: "*Subject to Clause (2) of this article, the boundaries of constituencies shall be such that the numbers of inhabitants in the constituency is, as nearly as possible, equal to the population quarter.*"

**THE DEPUTY CHAIRMAN:** Hon. Mulasanyi and then Hon. Rwabyomere.

**MR. MULASANYI (Rubanda West):** Thank you, Madame Chairman. I am not happy about Clause (3) and Madame Chairperson, with your indulgence, I would like to raise my problem in Clause (3) in conjunction with Clause (4) because they are saying the same thing. I would like to find out from the Chairman of the Select Committee Five whether they discussed or they considered this thing? What is being said in Clause (3) by the words: "*the boundaries of the constituency shall be such that the number of inhabitants in the constituency is, as nearly as possible, equal to the population quota*", is the same thing with the words in Clause (4) - "*the number of the inhabitants of a constituency may be greater or less than the population quota*" except that Clause (4) becomes superior because of the additions of the communication, geographical features, density of population, area and boundaries of districts. So, Madame Chairperson, I was thinking that for brevity, we could put all this information in one clause and finish and end

there. I would like to find out from the Chairman of the Committee what his view is. Thank you Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Rwabyomere, was yours on similar lines so that we can have them and then the Chairman answers once?

**MRS. RWABYOMERE (Presidential nominee):** Thank you, Madame Chairperson. The clarification I was seeking from the Chairman of the Committee is not on similar lines as my colleague's but he could take it on and view it at the same time. It is in connection with the use of the term "*constituency*". The Chairman will note that in Chapter 13 - Local Government, the term "*electoral area*" is used. Now, the question is, are we going to use the terms "*constituency*" and "*electoral area*" interchangeably or we choose one and we use only one? Thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Rwabiita.

**MR. RWABIITA (Ibanda South):** Thank you very much, Madame Chairperson. I am seeking clarification from the Chairman of the Committee about the term "*quota*". Now, my question is, "what are the criteria of determining the quota? That is number one. Now, will this be a definite figure or it will change from time to time according to the demographic changes of the population because as you know, Madame Chairperson, our population in Uganda is growing every year at about 2.5 percent? So, what happens when a small area which did not have the quota gets a quota, does that qualify to be a constituency or not? I want to be clarified, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Okay, Hon. Sam Kutesa.

**MR. KUTESA SAM:** Thank you, Madame Chairperson. First, I will deal with the question raised on Clause (3) in relation to Clause (4). Clause (3) is the general clause relating to boundaries. It says: "*Subject to Clause (2) of this article, boundaries of the constituency shall be such that the number of the inhabitants in the constituency is, as nearly as possible, equal to the population quota*". Now, what is the population quota? What we have said is that Parliament will sit and say this country can only afford 400 Members of Parliament - just for exam-

ple - and it will say we have a population of 20,000,000 and they will say, therefore, every constituency should be 50,000 people. That is the number of constituencies as prescribed by Parliament divided by the population. Now if you go down to (7), that is properly described. Clause (7) on page 16. Maybe that is clear. That is clear. That is what Clause (3) says.

Now, Clause (4) says yes, you will use the criteria of a population quota but in certain areas, you must take into account means of communication, geographical features, densities of population and areas of boundaries of the district. In other words, there will be such areas that cannot be as close to the quota as possible because of the terrain, because of the difficulty of communication in those areas and because if you wanted to increase to get close to the quota, you may have to jump a district border. So, Clause (4) must remain separate from (3) because it creates an exception to the general rule. So, I think you cannot put them together and remain clear.

Maybe at this stage, let me connect with the last question raised by Hon. Rwabiita. What is this population? As I have said, in Clause (7) we said that the Population is the total number of seats prescribed by Parliament divided by the population. If, for example, as I used the example of 400 - if you say we have 400 constituencies or shall have 400 MPs, and you have 20,000,000 people, then the population quota will be 50,000 people. However, if your population were to double and go to 40,000,000 and you still believe that you can only maintain 400 Members of Parliament, then the population quota will be 40,000,000 divided by 400 seats. In which case, every constituency will be 100,000 people. So, indeed as the population goes up, the quota will go up. Sometimes constituencies do go up also but that is dependant on the economic capability of the nation to maintain a Parliament. Just as for example in Great Britain, the number of constituencies since 1930 has changed by only about 50 despite the population increase but what has happened is that the seats have remained the same but every MP represents more people. You can see that you can have the same number of constituencies but the quota will go up meaning the number of people. And this is also, I think, a natural phenomenon because we hope that as communication continues to improve, we hope that mobility and all is going to be easier as we go on. So, a Member of Parliament should be able to represent a much higher population than he probably does

now.

With regard to the question raised by Hon. Rwabyomere. I agree with her that we need to decide but I think this is for the Technical Committee to decide whether to use the term "constituency" or "electoral area". I think there is need to be consistent. However, let me point out that when you talk about a county as a constituency, and then you talk about a district as a constituency for example for women leaders, you may have to have these terms used separately whenever you are referring to a different situation but I think this is a matter that we need to reconcile with the Technical Committee to see which term we should use for consistency or if we need to use both interchangeably. Thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Kalema.

**MRS. KALEMA (Kiboga South):** Thank you, Madame Chairman. I just want to add some more information to assist my Chairman of the Committee on the matter of population quota which Hon. Rwabiita has just asked about. When we were discussing or debating this clause, we had a problem of population quota as it has been explained in the previous laws. I would like to assist by giving an illustration of the representation in the Constituent Assembly of some few districts I have picked out where the representatives are too few and others are too many as against the population because of the population quota which has to be used. Moroto, for instance, today as per the population projected by 1994, has 187,829 people and it has got six Constituent Assembly Delegates and each CAD approximately represents 30,000 people. Moyo on the other hand has got also 187 and it has got only 3 CADs which means that each CAD here approximately in the whole district represents 60,000 people. Kitgum with 384,648 has got only 4 CADs - approximately 95,000 people per CAD. Iganga has got a population of 1,018,505 people with 11 CADs and each CAD represents approximately 100,000 people. Mpigi has got 984,000 with 11 CADs and each representing 90,000. Kiboga has got 152,000 people and with two CADs and each CAD represents 75,000. So, we see the difference in the population quota where all other situations are taken into consideration as explained in Clause (4), we cannot have the exact population quota unfair as it may seem in many instances. Thank you.

**THE DEPUTY CHAIRMAN:** Okay, I think that is enough explanation and we are retaining (3). I wonder whether (4) has also been taken care of according to Hon. Mulasanyi's request for explanation. Okay, if there are no other comments, we are through with that. (3) and (4) have been accepted unaltered.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** Can we go to (5)

**MR. KUTESA SAM:** Madame Chairperson, the Committee recommends that Clause (5) of Article 88 be amended to read as follows: *"Subject to Clause (1) of this Article, the Electoral Commission shall review the division of Uganda into constituencies within 12 months after the publication of results of a census of the population of Uganda and may, as a result, re-demarcate the constituencies."*

**THE DEPUTY CHAIRMAN:** I have an amendment by Hon. Komakec. seconded by Hon. Ndege.

**MR. KOMAKEC (Aruu County):** I accept this in principle. I would like to move an amendment to read as follows: *"Subject to Clause (1) of this article, the Electoral Commission shall review the division of Uganda into constituencies at intervals of not less than five years or within twelve months after the publication of the census of the population of Uganda and as a result, to re-demarcate the constituencies."*

**THE DEPUTY CHAIRMAN:** Yes, this Motion was seconded. So, continue.

**MR. KOMAKEC:** My main reason for reverting to what was provided for in the Odoki Commission is that the amendment as proposed by the Committee bases the demarcation of constituencies on the exercise of a census. My amendment, Madame Chairperson, would require that the changing of boundaries for constituencies should be based on statistical number of constituencies as revealed by say, the Department of Statistics. The reason for this is that 10 years as provided earlier is a bit too long. So, the reason for moving this Motion are basically three. It is known that a population change does occur all the time and that the population in Uganda, as in many parts of Africa, is growing pretty fast and people do change because of either occupation or because of national disasters, popu-

lation also changes. The settlement of people do change.

The second reason for this is that we have in Uganda a Department of Statistics which carries out a population census on a regular basis. So, although the census is done once in every ten years, there is a half-yearly. That is every 5 years, there is a mid census of Uganda which normally gives a very authoritative size of the population - the correct size of the population. Because the Electoral Commission is a permanent body which reveals this population every 5 years, they would have an up-to-date population of the country. So, the reason is that taking the annual review of the Electoral Commission and the enumeration as carried out by the Statistics Department of the country, it is possible to know exactly the changes in the population of Uganda.

The third reason is that linking the demarcation of constituencies to the exercise of a census is problematic in that this exercise may not occur exactly every ten years. It may occur at a much later date. So, I think it is in principle wrong to bring the demarcation of constituencies to an exercise that may not take place. So, on the basis of the fact that we are creating an Electoral Commission with a permanent mandate of reviewing the population of the Voters list every year, I think that five years will be adequate for them to check and see whether a population change has been sufficient enough to warrant the alteration of boundaries.

So, my amendment is that we base the demarcation of the constituency on the size of population as reflected by the statistics and by the change in voter registration rather than on a census and secondly, that we lower the 10 years to half that period when such a number is normally recorded. I beg to move.

**THE DEPUTY CHAIRMAN:** Hon. Rwomushana.

**MR. RWOMUSHANA (Rujumbura County):** Madame Chairperson, I beg to oppose the amendment for one single reason that reviewing these results every five years is extremely very expensive. However, my major problem is also that how do we ensure that we have faith in the Census Commission because we have heard that in Nigeria there was complaint that there was manipulation through the census so as to rig the elections. Now,

do we ensure that those who carry out the census are really independent and they may not bring up fictitious or wrong figures simply to increase the number of constituencies in a particular area for political rigging? Thank you, Madame Chairperson.

**THE DEPUTY CHAIRMAN:** Hon. Rwomushana but even in the original, you have the reference to the publication of census of the population.

**MR. RWOMUSHANA:** Madame Chairperson, I am not in disagreement with that but my major problem is that how do we ensure that we have faith in the results of the census by making it a little bit more independent?

**THE DEPUTY CHAIRMAN:** Hon. Elyau.

**MR. ELYAU (Kalaki County):** I thank you, Madame. I think I should support this Motion for one reason or two. Madame Chairperson, during the recent census in Uganda, we in Teso who were having insecurity in our area suffered a lot of inconveniences. Most of our sons and daughters were here, Tororo and so on and they were counted there. Those who were in Kampala were counted as Baganda and we remained there very open handed. Now, recently they have all come back and I see that there is an importance if somebody would return to his home today and then get updated in the register at home. This can also actually give a chance to a particular constituency to qualify. In 1987/89 and 90, our people were all outside Teso. Mostly the young ones and the brain power went away to look for some greener pastures when problems were at home. So, I see a lot of sense in Komakec's discussion or argument. There is nothing wrong in five years, if there is updating of the registers. This is not a very difficult thing because that is the time we could change Parliament also. So, I think the Motion is just very clear. Why do we need ten years? Those were the systems done by Europeans. Now, we are ourselves trying to look for means in ensuring that the management of our affairs if done by us. So, I urge Members to support this amendment. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Grace Akello.

**MISS AKELLO (Presidential Nominee):** Thank you, Madame Chairman. While I concur with Hon.

Elyau that there has been an outcry in Teso that the last population census did not take account of the fact that the area was in turmoil and a lot of the population had been displaced, I do not really agree with him that we should therefore hold a census every five years. I think it would be a very costly exercise to do this and I would, therefore, go back to the formulation in Clause (5) and leave it as it is. If we are worried about population growth, there is such a thing as projections which can be done by the economists and this can be done to an accurate measure within a five year period. Population census are a very costly exercise both in terms of money, in terms of time, in terms of planning and therefore, I do not think we should indulge in them. The main thing to be sure of, is that the people are properly counted and this is provided for within the twelve-month period. So, I do not see any need for this amendment, Madam Chairman. Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Komakec, is your amendment implying a population census every five years? I think that is demographically wrong and I do not think that is what you are referring to.

**MR. KOMAKEC:** Thank you, Madame Chairperson. You are quite correct about that. I think Hon. Akello has completely misunderstood what I said. I said - I am not asking that Uganda should carry out a census every five years, it does not say that at all! I think it is right in front of you there. I said that the Commission should review the demarcation every five years or every ten years when the census comes up, it will review it every 12 months after the census. I am saying that because we said that the Motion is trying to divorce the exercise of demarcation from the exercise of census. It is exactly the very opposite of what she is saying. So, when we say that the exercise is expensive, this is not true. It is expensive but we are not talking about a census here.

**THE DEPUTY CHAIRMAN:** Okay, let Hon. Grace Akello and Hon. Komakec agree. They seem to be talking about different things.

**MISS AKELLO:** Now, Madame Chairman, I thank Hon. Komakec for that apparent clarification but really, he is confusing me. At least maybe I have a simple mind. How would the Electoral Commission review the demarcation of electoral areas other than by the population count? What is statistics? Statistics means that you count the people or you project the growth in the population. Let us be clear.

**THE DEPUTY CHAIRMAN:** Hon. Sebi.

**MR. SEBI (Koboko County):** Thank you, Madame Chairperson. I am seeking clarification from Hon. Komakec Leander over his amendment. Madame Chairperson, now that we have passed Article 88 as amended by Hon. Omara Atubo which leaves the matter to Parliament, and now Hon. Leander would want the Commission to interfere with Parliament and demarcate boundaries with regard to the constituencies, I think here we are contradicting ourselves because Madame Chairperson, the issue of demography or population is not a simple matter. It is an issue which hinges on international conventions. Hon. Leander could note that what he is talking about could easily be taken care of by the updating say for example, of voters' registers because if you are not careful, the moment we begin tampering with population, we might land ourselves into a similar problem similar to that, for example, the Federal Republic of Nigeria has been going through and this can be very tricky. In the end, you may not even know the exact population figure for your country. So, my point of clarification from Hon. Leander is, would he not be happy with Article 88 as amended by Hon. Omara Atubo? Thank you.

**THE DEPUTY CHAIRMAN:** Hon. Komakec, then I will go to Hon. Ndege.

**MR. KOMAKEC:** Well, with respect to Hon. Sebi's query, it is not the responsibility of Parliament to carry out the demarcation of constituencies. If he could read Article 86 which spells out the functions of the Electoral Commission, it is clearly stated that it is the responsibility of the Electoral Commission to carry out the demarcation of constituencies in accordance with the provisions of this Constitution. It is not interfering. This is only elaborating on the exercise of carrying out the functions which have already been given or the constitution gives to the Electoral Commission. I am only saying that the period of ten years is too long, that in five years, they can review. It does not mean that they will change the boundary in five years but they may find that the population has grown so much in a particularly big constituency that it might require a division of two, that is, dividing it into two. So, it is this one which will be taken into account and secondly, when they say that the Commission is not to be trusted - but I will imagine that this is a Commission that was ap-

pointed with confidence of the President and Parliament. So, these are normally people who we have got confidence in. So, it is not a question of meandering and when we say that statistics in five years, I said the Statistic Department gives what they call Mid-Term. Every five years, there is an independent body which gives out the population of the country. So, the thing is not entirely dependent on the figures as found out by the Electoral Commission.

So, Members should really open up their mind on this one. This is a very straight forward Motion which seeks to make the work of the Commission easier. This is a permanent commission which works every year. They look at this as they are revising voters. It is from these where they know exactly how many numbers have increased, where population has shifted. They would know. So, that is the clarification I wanted to give and I think with this one, people are generally agreed on this.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, of course I am not biased in the House but I am just trying to clarify something. If you have an efficient statistical department in the country like we used to have which used to give the statistical information every year, if you have a good system of registration of deaths, registration of births, registration of migrations - both inter district and international, and usually they carry out a mid-term census survey and because it is just a survey, not the whole population being counted, they marry it with statistics from deaths, births and what have you and they can give an estimate. It is here in Uganda where we really do not have that system operated. Usually, in a projection after ten years, the difference between the real and the estimate is usually very small. Anyway, Hon. Ndege.

**MR. NDEGE (Luuka County):** Thank you very much, Madame Chairman. I think you have done half of what I was intending to say. The other one is that this (5) as it is, does not subject the Commission to a particular period when they can carry out any changes in the current constituencies or boundaries or number of constituencies or electoral areas. This, if we leave it as it is and in Uganda our census is carried out every ten years in case there are donors to finance the population census, if they are not there, we may not even be able to carry out the population census which means some constituencies or counties or electoral areas have to wait for

two elections before they can appeal for any changes. Right now, there may be counties with about 137,000 people as population. We are telling them you have to wait for two more elections or ten years for us to find out if your county has grown by an extra two or three thousand people. I think this could be done.

In section (5) of the original Draft, they did exactly look at this and they put a specific number of years. For us, what we thought was that as time goes by, we shall become a little bit more efficient; we shall be putting all systems which we have described in our Civil Service system so that at any one time, we can tell how many people roughly are in Luuka, how many have migrated to Jinja and so on and so forth, so that we do not remain static for ten years before we can make any changes.

**DR. KEZIMBIRA MUYINGO (Bukoto Mid-West):** Madam Chairman, the information that Hon. Ndege is trying to say that it will be updated, it will still be updated whether the Electoral Commission does consider it or not. It is a routine thing. Thank you, Madam Chairman.

**MR. NDEGE:** Thank you very much. That even strengthens my argument more that it is already there in Motion. I am sure that if it already in Motion, therefore the Electoral Commission will have less problems in knowing how many people have migrated. We opted for five years because we thought they would be more efficient. So, either five or seven years, we must put in a period when a review must be made. If we just leave it for a population census and they cannot carry out the population census during the tenth year, I do not know when this Commission will ever do its job. So, it is in this spirit that I think the Chairman also should come in and clarify on why they did not put in a specific period. With those few words, I would like to support this very noble voice. Thank you.

**MR. ERESU:** Madam Chairman, I am at a loss. I would like the Movers of this amendment to clarify to me the meaning of the text. It reads that "*Subject to Clause (1) of this Article, the Electoral Commissions shall review the division of Uganda into Constituencies at intervals of not less than five years or within twelve months up to the publication of the census of the population of Uganda and as a result to re-demarcate the Constituencies.*" My problem is this, Madam Chairman. What do they mean when they say that the Electoral Commission

shall review the division of Uganda into Constituencies at intervals of not less than five years? Do they mean to say that "not less than five years" implies at intervals of five years or it means at a period exceeding five years? If it is a period which exceeds five years, I do not see why they are talking about this amendment because anything after five years, anything not less than five years can be ten years. So, why are we debating nothing? Thank you, Madam Chairman.

**DR. NAKYANZI:** Thank you, Madam Chairman. Madam Chairman, I want to oppose this amendment. The first ground for my opposition is that it is vague. Secondly, Madam Chairman, when you look at the population growth, for example now we have the population growth rate at 2.8 per cent, I have done some simple calculation and have realized that if we took the C.A as the starting point whereby each electoral area has 70,000 people, it means that after ten years, that population would have grown by 19,600 people only which would not even qualify it for another Constituency. So, the population growth per se is not enough to warrant such a thing. But most important, Madam Chairman, is that the census is a neutral process by which we get to know the people in an area. Whereas a review which is to be initiated after five years is going to be politically motivated, somebody will know that we are reviewing this population with the view of creating or either enlarging or making a Constituency smaller. In which case it is likely to be manipulated.

**MR. ZIIWA:** Point of Information! I would like to inform the Hon. Member on the Floor that population growth is determined by the rate of birth. People who are born have to go and vote. So, when the Movers of the Motion talk about five years, they are not saying that every person who is born will immediately vote at the end of five years. They are taking into account people who will mature within that period to be eligible to vote, and people who will immigrate and people who will move from one area to another. So, the argument of your population growth of 2.8 does not hold any water. Thank you.

**DR. NAKYANZI:** Thank you for that information. Madam Chairman, actually the population growth figure per se is much, much higher than the percentage of people who would have reached voting age. As you all know that more population

growth is made as a result of its amalgamation as a difference between birth rate, death rate, migration, immigration and emigration plus a lot of other factors. So, what happens is that it is actually much higher if you are to calculate the percentage of those who are reaching voting age, it would be even much smaller than that one of those who are being born. Therefore, it is much smaller and that serves to emphasize what I am trying to say.

However, what is most important is that a mid-census review of results will be manipulatable. Because I can imagine a situation where they are reviewing the results of Ntenjeru County with the view of creating the possible electoral area. I will use all my weight to make sure that it is inflated and by inflating it, would be creating my Constituencies, I will be getting more representatives to represent Ntenjeru and it is that reason why I am against it. We need a census because it is neutral and the results coming out are going to be representative and we can base on this. I do not think it is necessary to take a mid-census analysis of the results in order to re-demarcate because I am convinced the difference will be so small, it will not be adding anything much to what is already provided for. Because of that reason, I beg to strongly oppose the Motion on the Floor and I would request that we pass the Committees Recommendation as it is presented to us. Thank you, Madam Chairman.

**THE CHAIRMAN:** Hon. Kutesa, at this juncture, I want to call upon you, what is your opinion on this as Chairman of that Committee?

**MR. KUTESA SAM:** Madam Chairman, we considered all the arguments that have been presented by Hon. Ndege and Komakec, but the Committee came up with the view that a mid-term census or census review should not be used as a basis for creating new Constituencies, and the Committee did consider it. Indeed as you realise it Madam Chairman, in the original Draft there was a Provision for seven years. We felt that that was not sufficient. We still feel that five years is worse. So, I think the Committee Recommendation is still against this amendment. Maybe this is about the time we should put the question. Thank you, Madam Chairman.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I want to put the question on Hon. Komakec's amendment as seen above.

*(Question put and negatived)*

**THE DEPUTY CHAIRMAN:** Because there was this Motion, let me put the question on (5) that it does stand part of the Draft Constitution.

*(Question put and agreed to)*

**MR. SAM KUTESA:** Madam Chairman, the Committee recommends that Clause (6) be retained as it appears in the Draft Constitution to read, *"Where the boundaries of a Constituency established under this Article are altered as a result of a review, the alteration shall come into effect upon the next dissolution of Parliament."*

**THE DEPUTY CHAIRMAN:** There seems not to be any problem.

**MR. SAM KUTESA:** The Committee recommends that Clause (7) be retained as it appears in the Draft Constitution to read: *"For the purpose of this Article, population quota is the number obtained by dividing the number of inhabitants of Uganda by the number of constituencies into which it is divided under this Article"*.

**DR. KABAYO(Kassanda)** Madam Chairman, I have a problem with that definition. As a definition, I think it is defective because of the terms in which it is expressed is like a circle. I think what the Chairman was explaining is that the number of constituencies will be a figure which Parliament would be recommending as appropriate for the whole country. Therefore, it should be written like; *"inhabitants of Uganda by the number of Constituencies into which Uganda is to be divided under this Article"*. Otherwise if it is left like that, it will create a circle. Madam Chairman, what I am trying to say is that the number of constituencies is a figure which Parliament is recommending. So, it should be written like which Uganda is to be divided under this Article rather than the way it is now.

**MR. KUTESA SAM:** Madam Chairman, I have no problem with those words because it does not really affect the definition. So, I do not mind putting those two words.

**THE DEPUTY CHAIRMAN:** So, let me put the question that Clause (7) as amended do stand part of the Draft Constitution.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** I now put the Question on Clause 88 that as amended it does stand part of this Constitution.

*(Question put and agreed to)*

**MR. SAM KUTESA:** Madam Chairman, the Committee recommends that Clause (1) of Article 89 be retained as it appears in the Draft Constitution to read as follows: *"Any person aggrieved by a decision of the Electoral Commission in respect of any of the complaints referred to in Paragraph (e) of Article 86 of this Constitution may appeal to the High Court for determination"*.

**THE DEPUTY CHAIRMAN:** You can proceed.

**MR. SAM KUTESA:** The Committee recommends that Clause (2) remains as it stands in the Draft Constitution and should be retained to read: *"Any person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons appointed by the Chief Justice and the Electoral Commission shall give effect to the decision of the tribunal"*.

**MR. OKALEBO (Bukedea):** Madam Chairman, on this particular clause of this Article, I find some problems which I would like the Chairman to clarify to me. Is this going to be a standing Committee of the Tribunal? If it is or if it is not, what will be the method and the procedure for moving the Chief Justice to appoint this tribunal? I am of the view that one small thing is missing whereby maybe Parliament will be allowed to make Law to establish the procedure for giving effect to this Clause. Because if it is a question of petitioning a tribunal appointed by the Chief Justice. How do you move the Chief Justice to appoint the tribunal, Madam Chairman?

**MR. SAM KUTESA:** Madam Chairman, the background to this is that if you are aggrieved by the demarcation of the boundary, by a mere letter to the Chief Justice, you should then set up a tribunal. There is no standing boundaries to a tribunal. I think he will set up a tribunal in case to case basis which will attend to complaints as they come in. With regard to procedure, I think if you are aggrieved, I do not know whether Hon. Okalebo

wants someone to move by either notes of Motion or Chamber summons, but it is intended that the procedure should be as simple as possible and you write a letter of complaint.

**MR. ELLY KARUHANGA:** I think Hon. Kutesa has probably missed the point that was raised. The point is that when you are aggrieved, you should go to a particular body where you make your grievance. In this Clause, you go nowhere. You appeal to a tribunal which is not in existence, and the tribunal is composed after your appeal. So, these people should go to the High Court and then the High Court would set up the tribunal. That is the point we are requesting. As it reads now, a person aggrieved by a decision of the Electoral Commission in respect of a demarcation of a boundary may appeal to a tribunal consisting of three persons, appointees of the Chief Justice. So, I think they should appeal to the Chief Justice who then sends them to a tribunal unless this tribunal is a permanent one.

**MR. AGGREY AWORI:** Madam Chairman, I am seeking further clarification from the Hon. Chairman of Committee 5 on the question of the time frame in this particular amendment, whether there should be a time frame when this Committee shall be formed to looking to the grievance of the person wondering about demarcation. Because if we do not do it in time, Madam Chairman, they can go on up to almost election time. So, is it put into consideration?

**MR. RINGWEGI:** I thank you, Madam Chairman. I would like to share the view of Hon. Elly Karuhanga and that of Hon. Okalebo about the procedure to be adopted in moving either the Chief Justice or the Tribunal to get to redress the grievance that may have been caused by the Electoral Commission. Madam Chairman, as provided by the Committee's recommendation and indeed as it appears in the Draft Constitution, it would appear that any person aggrieved by a decision of the Electoral Commission would first lodge and appeal to a standing tribunal which is appointed by the Chief Justice. In the light of the explanation given by the Chairman of the Committee, this Tribunal is not a standing Tribunal; it becomes procedurally difficult for any aggrieved party to get redress because there is even no procedure set out either in the Constitution or by any other provision of the Constitution empowering Parliament to make the

necessary Law setting out the procedure on how the Chief Justice can be moved to appoint this tribunal to address grievance of the affected party. Therefore, Madam Chairman, I think the Hon. Chairman of the Committee should concede that we either provide for Parliament to make Law establishing or providing for a procedure by which any aggrieved party can petition the Chief Justice who then, on receiving the petition, can institute this tribunal to hear the complaints.

**MR. SAM KUTESA:** Maybe, Madam Chairman, to save the time of the Committee, I would like to refer Hon. Karuhanga, Hon. Ringwegi, and Hon. Okalebo to Clause (4) of this Article. It may assist them in their current problem.

**MR. KARURANGA:** Madam Chairman, in fact on close examination, I now even go further and I suspect this tribunal. What is it for? Why can't a person go to Court and have his matter determined even on the question of the boundary? Because if there is any source of conflict in election time, it is the boundary that can cause very serious conflicts. The Courts have got various stages where you can be heard. Why do you put this through the Judicial System? Who are these three people who have special knowledge about boundaries? Where will the Chief Justice get them? Are they within the Legal Profession? Why can't the Court handle this? In light of that, maybe we should just delete the whole thing.

**MR. RINGWEGI:** Madam Chairman, Hon. Sam Kutesa, Chairman of the Committee has referred me to Clause 4 of this Article. But this Clause, Madam Chairman, with all due respect, does not address my fears. My fears are, how do we move the Chief Justice, if I am an aggrieved party? This is not catered for under the clause he is referring me to. This Clause is only talking about the expeditious disposal of the appeal. This means that the appeal has already been lodged. But how do I get my appeal to the Chief Justice? Is a mere letter sufficient? Is it really prudent for us to provide a method which is recognisable in Law which will say that this is an appeal lodged by any aggrieved party? These are the things that we would like Hon. Kutesa, the Chairman of the Committee to address. I thank you Madam Chairman.

**MR. ELYAU (Kalaki):** Madam Chairman, I also have a similar problem. This afternoon before we

left, we passed that the counties might be the constituencies as they are going to be. Now even if you appointed a tribunal, will he really meet the needs should complaints come around Uganda? I am trying to say, can the Chairman give us more, that will it be possible to put those various tribunals in every district so that they solve problems district-wise so that we expedite the time frame for appeals and so on? I want to be clarified.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, before we proceed, I would like to recognise the High Commissioner for India. He is seated in the Visitor's Lobby. You are welcome Sir. *(Applause)*

**MR. KAGGWA MED:** Madam Chairman, I wanted to react in response to what Hon. Elyau has said in regard to Clause (2). I want to say that in my reading the provision as it is, it does not say anywhere at all that the Chief Justice shall appoint only three people and they will be the persons to serve the entire country. All it says, it shall appoint the tribunal consisting of three persons and this, in my interpretation, would mean that it would appoint any three people within the area where the dispute is. What is important is that they carry the authority of the Chief Justice.

Madam Chairman, I also want to react to Hon. Ringwegi's fears and I would want to advise that when we get to Clause (4), I think he would cure his problems by proposing an amendment to the effect that Parliament shall make Laws providing for the procedure and the expeditious disposal of appeals. I think his problem will have been cured then. Thank you very much, Madam Chairman.

**MR. SAM KUTESA:** Madam Chairman, I think Hon. Kaggwa has vividly put the views I wanted to make, except that I believe that even under Clause (4) when you say Parliament shall make Laws providing for expeditious disposal of the appeals referred to in this Article, some of the things that Parliament shall be tackling in determining how expeditiously this appeal should be disposed of will be procedure. I am not convinced that there is a need to amend that Article when we get to it.

**THE DEPUTY CHAIRMAN:** I think we have been cleared. Let us proceed.

**MR. SAM KUTESA:** The Committee recommends that Clause (3) be retained as it stands in the

Draft Constitution to read; *"A person aggrieved by a decision of the High Court or a Tribunal under this Article may appeal to the Court of Appeal against th decision"*.

**MR. KARUHANGA:** Madam Chairman, the effect of this clause is to give the Tribunal the same jurisdiction and standard as the High Court. Madam Chairman, I fear the way the Chief Justice picks three names and they have the same degree of judgement as the Judges of the High Court on these matters of elections. I would like to be assisted as to whether this type of Justice is really standard justice.

**MR. BAGEYA:** Madam Chairman, I just wanted to give information to my good friend Hon. Karuhanga, that I have seen Courts of Appeal. I do not know what he is quoting.

**THE DEPUTY CHAIRMAN:** We are on Clause (3). I can see the word "High Court" there.

**MR. BAGEYA (Kigulu North):** But what he is saying is that we are saying that we are going to appeal to the High Court. But the appeal is to Court of Appeal which is supposed to be the extreme.

**MR. MULENGA (Democratic Party):** Madam Chairman, having not indicated what type of persons that the Chief Justice will appoint to man the Tribunal, the concern is, should they have the same status as the High Court? So, either the Tribunal is said to constitute three Judges, or three persons presided over by a Judge of the High Court, in which case it would be appropriate to move from there to the Court of Appeal. But if he should choose maybe surveyors, the question arises whether they should have that status of High Court.

**DR. KANYEIHAMBA (Rubanda East):** Madam Chairman, in support of the arguments which are being put forward by Hon. Mulenga and the previous Delegates, the provisions which we have already passed on the Judiciary say that apart from the High Court and Courts of superior record meaning the Court of Appeal. Under the Supreme Court, all other Tribunals are subordinate to the High Court. Therefore, it is only logical that this Tribunal will be subordinate to the High Court and therefore, if there is any appeal it must be to the High Court and nothing higher. If we do that, then we will have to reconsider what we have already

passed in the Judiciary and that could put us in problems. So, Madam Chairman, the points being made, really I think Hon. Delegates should really understand. I thank you.

**MR. RUZINDANA (Ruhama):** Madam Chairman, I also have a problem with this Tribunal. We are not stating whether it is Judicial or Tribunal and therefore, we are leaving the question hanging as to who is to finance it. Once the Chief Justice has appointed these three persons for example, he is obviously not bound to finance them, and neither is the Electoral Commission bound to finance. Secondly, Madam Chairman, it is still a bit of a problem as to how the Chief Justice is moved to appoint them. If I am aggrieved by these boundaries, do I just go and make an appointment with the Chief Justice and ask him to appoint a Tribunal? Do I merely write to him without having exhausted all other procedures? How is the Chief Justice moved to appoint these persons? How is the Chief Justice guided as to what type of persons he should appoint? As Hon. Mulenga has just said, if he read the word "boundaries" and appointed mainly the surveyors or people of that type of discipline, would he be in order?

I can see the tribunal is to cure the procedural problems of the Courts. It may be difficult to move High Court Judges to go and adjudicate on boundaries far away from where they may be located. Then we may create other problems that make it impossible actually for the tribunal to function and an aggrieved party will remain with his grievance as long as this tribunal cannot function. As it is now in these clauses, it looks as if it might not become functional or if it functions, its powers might be a bit of a problem and it may need all the time going to the Court of Appeal to confirm what it has come up with. Thank you, Madam Chairman.

**MR. KARUHANGA:** Madam Chairman, with your permission, I would like to make an amendment to this clause and also later on, following the remarks made by Hon. Ruzindana, when we come to (4), I would like to put some amendments there to bring into effect the fears raised by Hon. Ruzindana in (4) but now in Clause (3). I would like to make the amendment as follows: *"A person aggrieved by a decision of the Tribunal under this Article may appeal to the High Court against the decision"*. Madam Chairman, I am removing the words in the first line, "High Court" or "a" so that

it reads; "*A person aggrieved by a decision of the tribunal under this Article, may appeal to the High Court against the decision.*"

**MR. MASALU MUSENE:** Madam Chairman, the position which Hon. Karuhanga has stated, I think applies to Clause (2) only but it does not apply to Clause (1) which we have already passed because Clause (3) refers to a decision under this Article and this Article includes Clause (1) and (2). So, I think that would only apply to Clause (2). To me, Madam Chairman, I think the best solution would be to revisit Clause (2) and amend it so that we do away with the Tribunal altogether and we provide for an Appeal to the High Court so that Clause (3) would follow. So, Madam Chairman, I would move an amendment to Clause (2).

**MR. SAM KUTESA:** Madam Chairman, I think there is some confusion that has arisen. Before we talk to Hon. Karuhanga's Motion, let us be clear. There are kinds of complaints that we are talking about. There are complaints envisaged in Article (1) and these are complaints arising out of Paragraph (e) of Article 86. If you have any complaints with respect to what is mentioned in Paragraph (e) of Article 86, you go to the High Court. If you have complaints relating to boundaries, you go to the Tribunal. Then this Article is saying, if the aggrieved party is not satisfied by going to the High Court with respect to those complaints under Article (e) or with the decision of the Tribunal with regard to the rest of the Article, in particular boundaries, then both of them are entitled to go to the Court of Appeal. I think Hon. Members should read back because it relates back to Article 86 (e).

In other words, there are separate types of complaints. If you are talking about complaints that relate to Article (e) of 86, you go straight to the High Court. If on the other hand your complaints relate to the boundaries, you go to the Tribunal which will be set up. Now, if you are dissatisfied either on the complaints under Article (e) by the High Court, you have a right of appeal to the Court of Appeal. If you are dissatisfied by the Tribunal, you also have a right to go to the Court of Appeal. I think if this background is put clearly, maybe it may clear the air. It may sort out the fear that you are equating the High Court with the Tribunal. Unless Hon. Mulenga was suggesting that if you are dissatisfied with the decision of a Tribunal, then he should go to the High Court and then to the Court of Appeal. But other-

wise, these channels relate to different types of complaints. If you are arguing about a boundary, maybe the final Court should be the High Court. If you are talking about a boundary complaint, that is when you go to the Tribunal and it is saying that once you do not succeed there or you are not satisfied, then you go to the Court of Appeal. If you want to make it High Court, you could go to High Court. But I think for expeditious disposal of a boundary complaint, then the High Court should be final in this matter.

**MR. MULENGA:** Madam Chairman, my response is that what Hon. Kutesa has now said supports the amendment by Hon. Karuhanga that if we delete reference to the High Court, I should rather say that the appeal from the Tribunal goes to the High Court, then that sorts it out. I am not conceding that the decision of the High Court in that matter should be final, but I think we can agree that it be final. Otherwise the first step, the Chairman of the Committee 5 has really conceded. We can dispose of Hon. Karuhanga's amendment then we should decide whether that should be a final appeal which might need a separate clause to say a decision of the High Court under Clause (3) shall be final. But we deal with (3) first.

**MR. OKALEBO:** Madam Chairman, according to the explanation given by the Hon. Chairman of Committee Five, I even see that his feelings are different from what is actually on the paper because by reading what is here now, it clearly says that an aggrieved party from the High Court appeals to the Court of Appeal. Even an aggrieved party aggrieved of a decision of a tribunal appeals to Court of Appeal. That one, we are saying, is a wrong position because the Tribunal whatever it is, since we are not told what kind of tribunal and who will be there, cannot be of the same status with the High Court so that it qualifies to have its appeals direct to the Court of Appeal. By what is suggested by Hon. Karuhanga, I do agree and support that here we say a person aggrieved by the decision of the High Court in respect of whatever matter which is allowed to go to the High Court appeals to the Court of Appeal. If a person is aggrieved by a decision of a Tribunal, then he appeals to the High Court but not direct to the Court of Appeal.

**MR. KAWANGA:** I think Madam Chairman, the amendment by Hon. Karuhanga has a point. The problem is with the language of sub-Clause (3)

which says; "*A person aggrieved by the decision of the High Court or a Tribunal under this Article may appeal to the Court of Appeal*". The way this Article reads, it means the person who is aggrieved by the decision of a tribunal can choose to go either to the High Court or to the Court of Appeal. So, the amendment brought by Hon. Karuhanga tries to cure this by saying that the person aggrieved by a tribunal under this Article may appeal to the High Court. But if you want to make a provision for what appears in sub-clause (1) you may have to add another Article that a person who is aggrieved by the decision of the High Court under this Article shall appeal to the Court of Appeal. When you split the two, then the whole thing shall be opened up. I hope Hon. Karuhanga will agree to that.

**MR. BASALIZA(Fort Portal Municipality):** Madam Chairman, although I am not a Lawyer by profession, the whole thing seems to be logical because in the first instance, we have already passed Clause (2) and there it is the tribunal which is dealing with the individual. But the High Court has not yet aggrieved that individual. So, it should be the tribunal which should be included in Clause (3). Madam Chairman, how does the High Court come in here in Clause (3) when the individual has not been aggrieved by the High Court? So, the most important thing here, Madam Chairman, is the tribunal. For that matter, Madam Chairman, I support Hon. Karuhanga's amendment.

**THE DEPUTY CHAIRMAN:** Hon. Delegates, the argument on the Floor is that Clause (3) can be split into two. The first one to read as Hon. Karuhanga has put it. The second one to be similar to Hon. Karuhanga but instead of "tribunal", there is "High Court" and then we have Court of Appeal.

**MR. KARUHANGA:** I think the Members, to me, seem to be understanding the point I was making very clearly. The amendment is as follows: "*A person aggrieved by a decision of the Tribunal under this Article may appeal to the High Court against the decision*".

**THE DEPUTY CHAIRMAN:** It is passed. Next!

**MR. KARUHANGA:** Madam Chairman, the second issue which was raised by Hon. John Kawanga, where he wants to say that a person who is aggrieved from the decision of the High Court should go to the Court of Appeal is obvious and is

not necessary in my view because if you are aggrieved by decision of the High Court, where else do you go?

**MR. MULENGA:** Madam Chairman, I wish to inform Hon. Karuhanga that on matters of appeal, unless a Court is vested with jurisdiction, there is no automatic appeal. There would have to be some where either in this Constitution or in the Judicature Act a provision that, appeals from the High Court sitting on these matters of boundaries and comprehends from would lie with the Court of Appeal. Without that Provision, it would not automatic.

**MR. BIDANDI SSALI(Nakawa Division):** Madam Chairman, as an assessor, I listened carefully to the earlier comment by Hon. Mulenga and he seemed to have indicated the need for a grievance concerning a demarcation of government to move from the Tribunal to the High Court and from there to a Higher Court. I wonder whether we could amend Hon. Karuhanga's first amendment with an addition that "*whose decision should be final*". This could end in an element of undeclared injunction where an election will not take place until all this procedure is finalised and I think the question of a demarcation or boundary if it is dealt with by the Tribunal and finally decided on by the High Court, I think that one should be final.

**MR. RUZINDANA:** Madam Chairman, Hon. Karuhanga's amendment does not wholly cover Clause (1) and (2). If we are systematic, Madam Chairman, the problem with Clause (3) is that it tries to answer the appeal for both (1) and (2). In (1), there is no problem about appealing to the Court of Appeal. That is what is partly reflected in Clause (3). In Clause (2), that is where the problem is. The appeal should be to a High Court. But because in (3) the appeals for both (1) and (2) have been mixed up, the Tribunal ends up with an appeal to a Court of Appeal rather than High Court. If the appeal for (1) and (2) are split, I think there would be no problem. I think the issue is that in (1), someone should have a right to appeal to the Court of Appeal and in (2), someone should have a right to appeal to something else and in this case, it should be the High Court. Thank you very much, Madam Chairman.

**MR. MASALU MUSENE(Manjia):** Madam Chairman, I entirely agree with what has been stated by Hon. Ruzindana and I wish to put forward

the following solution in that there will be two clauses instead of one. There will be a new (3) and (4). The present (4) will become (5). So, the three will cater for an appeal under Clause (2) and it will read as follows: "*A person aggrieved by the decision of the Tribunal under Clause (2) of this Article shall appeal to the High Court whose decision shall be final*". That applies to Clause (3). Then a new Clause (4) will provide as follows - it will cater for Clause (1). "*A person aggrieved by the decision of a High Court under Clause (1) of this Article may appeal to the Court of Appeal*". So, these are two new amendments which have been split which will cater for both situations, Madam Chairman.

**MR. KUTESA:** Madam Chairman, if we agree that under Article (1) we are talking about matters that appear before polling and during polling which is what Article 86 (e) is talking about, if we agree that those are the matters on which you appeal to the High Court, then we should agree that the High Court on those matters should be final because, for example, the register has not been displayed, or during the elections someone changed something. Really, you are talking about expeditious trial or hearing or resolution of that problem. I do not think after you have gone to the High Court on a matter like that, I do not think you need to go to the Court of Appeal. If we agree that that should be the position, then Clause (1) already adequately caters for that. Because it says; "*any person aggrieved by a decision of the Electoral Commission, in respect of any of the complaints referred to in paragraph (e) of Article 86 of this Constitution may appeal to the High Court for determination.*" So, if we agree that the High Court is sufficient, then Clause (1) caters for that. Now, when we come to the Karuhanga amendment, the Karuhanga amendment is that if you are aggrieved by a decision of a tribunal, you should appeal to the High Court. Now the decision of the tribunal can only relate to such other matters like boundaries other than what is contained in Article 86 (e). Therefore, in my view Karuhanga's amendment, if we agree that after you have gone to the tribunal and then you appeal to the High Court, that should be sufficient and therefore, Hon. Musana's new amendment does not arise.

**MR. KAWANGA JOHN (Masaka Municipality):** I think what the Chairman of Committee Five has said is enough. When you have really been to the tribunal and you have appealed to the High Court, surely that should be the end of the road. Rather than making constant appeals, it will make

the whole process very, very long. I think by the time you reach even the court of appeal, the elections may have started in other constituencies. I think this House should agree that any appeal to the High Court of appeal should be final and the decision should be final in that matter.

**THE DEPUTY CHAIRMAN:** I have something here drafted that new Clause (3) should read; "*A person aggrieved by the decision of the tribunal under Clause (2) of this article may appeal to the High Court whose decision shall be final.*" I now put the question.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** So (3) is amended as read.

**MR. MULENGA:** Madam Chairperson, I am just trying to make sure that we are neat. As I have said, without specific provision to this jurisdiction in the Court of Appeal, there would be no automatic appeal. So, Hon. Sam Kutesa is correct to say that Clause (1) is self sufficient if we do not want to provide for appeal. But what troubles me is in the same Clause (3) where we are saying the decision of the High Court shall be final. This may lead to dispute and someone says, the one in Clause (1) is not final otherwise we would have said it. Therefore, either we insert the same in Clause (1) or we delete it in (3). Can we ask the Technical Committee to synchronize the two so that the same language is used rather than show a difference between Clause (1) and Clause (3)?

**THE DEPUTY CHAIRMAN:** I think that is a better request rather than asking us to go back where we came from. So there is a proposal that we request the Technical Committee to synchronize Clause (3) and Clause (1) and we have already put the question on Clause (3). Can we go to Clause (4).

**MR. KUTESA SAM:** Madam Chairperson, the Committee recommends that a new clause (4) be inserted after the existing Clause (3) of Article 89 to read that "*Parliament shall make laws providing for the expeditious disposal of appeals referred to in this article.*"

**MR. OMARA ATUBO (Otuke):** Madam Chairperson, there is a mention of the Chief Justice appointing a tribunal and so you are having two institutions here handling the election or three in

fact; the Electoral Commission, the Parliament also making a law, and the Chief Justice also appointing a tribunal. The sort of clarification I would like to have from the Chairman is whether the Chief Justice who would of course, by necessity make some rules in respect of some of the responsibility put on him, would it be necessary to say the Chief Justice shall make rules, or should we suppose that in the act of Parliament which will make necessary laws, they will provide for the Chief Justice to make the rules? This is what I would like to find out from the Chairman of the Committee.

**MR. SAM KUTESA:** Madam Chairperson, I think in the interest of brevity and being concise, we cannot include everything here in this constitution. As you remember Hon. Ruzindana raised the issue of who finances it and what rules of procedure, I think those should be left to the subsidiary legislation that is going to be made by Parliament - in the act of Parliament which we have provided for under Clause (4). I think those details are better left at that stage.

**MR. WANENDEYA (Budadiri East):** Madam Chairperson, I would like the Chairman of the Committee to clarify to us whether or not they considered the solution which was given in the Constituent Assembly Bill Rule number 28 subrule (2) which said: "*every petition filed under subrule (1) shall be determined by the Court expeditiously and in any case, not less than 3 months from the date the petition is filed.*" Madam Chairperson, I believe that if this kind of sentence or sub-section or rule is included in the Constitution, it will make things to move faster because according to our history, in the past things have dragged on and I remember very well the Hon. Kitariko case which took nearly five years. So I wonder whether up to now it has never been decided. Madam Chairperson, and Hon. Delegates I want the Chairman to clarify to us whether that kind of requirement should be included in the Constitution so that even if you have the set rules in a law and as I keep on saying, when Mr. Kiwanuka was taken to Court at 5.00 O'clock when judges had gone, whereas everybody knows the rules, it is almost like, Madam Chairperson, when everybody knows that to change governments you need pluralism but we want to stick to our guns. Madam Chairperson, I want the Chairman to clarify to us that.

**MR. SAM KUTESA:** Madam Chairperson, I agree with Hon. Wenendaya that sedition should be

expeditiously finished. I also equally recall the example he has given of Hon. Kitariko and that his petition was not - in fact he said his petition was not disposed of for five years. To my knowledge, up to now it has never been disposed of but I think it must have lapsed as a result of the death of the person he was standing against and of course, maybe because of other elections. But having said that, I think again that is a detail that should come in the laws that are made by Parliament under this provision. Because how long it should take, whether we should do it in 3 months, is a detail important as it is, that I think we will not include in the Constitution.

**MR. MULENGA:** Madam Chairperson, my concern is the wording of this clause which seems to restrict Parliament. When Hon. Sam Kutesa was answering earlier on, he did not note that Clause (4) would cover things like were raised by Hon. Ruzindana but the Clause seems to limit the laws to be made by Parliament to those aimed at expediting disposal of appeals. I was wondering whether it could not be made wider by adding, for example, at the end "*and other matters incidental thereto*". Because here it just says; "*Parliament shall make laws providing for the expeditious disposal of appeals*". It seems that would not bring in finance, how the Chief Justice is to appoint the tribunals and so forth. I was wondering whether we could not make it wider.

**MR. KUTESA SAM:** I have no objection to adding those words but personally I am of the opinion that this is large enough to allow Parliament to make all rules. Because if you are talking about expeditious disposal of an appeal or a matter, surely you must think about what court will do it, what procedure will be used how that court will be financed or that tribunal. But if Hon. Mulenga insists on adding words like "*and matters incidental thereto*", I do not think that they add very much but they are not harmful.

**MR. KAGGWA MED:** Madam Chairperson, I was also having similar problems like Hon. Mulenga because I think it was Hon. Ruzindana and Hon. Ringwegi, they were concerned of how a person who is aggrieved will get to the Court and in light of that, I wanted to have this provision read in the following terms: "*Parliament shall make laws providing for the procedures for disposing of appeals referred to in this article.*" Because as far as I am concerned, I feel the expedition of the case is

part of the procedure but the procedure will also include among other things how the person aggrieved will get there, and this is a concern of the Members. I beg to move.

**MR. MULENGA:** Madam Chairperson, I would go along with Hon. Kaggwa's formulation in a preference to mine.

**THE DEPUTY CHAIRMAN:** So the proposal is we replace the word "expeditious" with "the procedure". Agreed? Okay. Now I put the question because we are on (4), is there another one. I think that is all on 89. So I put the question on 89. So I put the question on Article 89 as amended -

**MR. LUBULWA MIGADDE (Katikamu South):** Madam Chairperson, when we change that word and replace it with "procedure", I think the intentions of the Committee will be changed. I think the intentions of the Committee Madam Chairperson was, I think, that this exercise should be done very fast. But when you talk about "procedure", just "procedure", I think the meaning is quite different.

**THE DEPUTY CHAIRMAN:** So, we have two alternatives. The proposal by Hon. Mulenga was that we leave the word "expeditious" there and then add "*and other matters incidental thereto*". Then Hon. Kaggwa was saying we just put the word "procedure" and Hon. Mulenga conceded. But it seems the other Members are not happy with the concession by Hon. Mulenga. Let us hear from the Chairman.

**MR. KUTESA SAM:** Madam Chairperson, I think there is no harm in saying that Parliament shall make laws providing for the procedure for expeditious disposal of appeals.

**THE DEPUTY CHAIRMAN:** So I put the question on (4).

**MR. MULENGA:** Madam Chairperson, I want to add to what Hon. Sam Kutesa has said. Instead of saying "procedure" or "expeditious", I just wanted to add "and" between "procedure" and "expeditious", if Hon. Kutesa can re-read it inserting "and" between "procedure" and "expeditious".

**MR. KUTESA SAM:** That is okay.

**THE DEPUTY CHAIRMAN:** So it will read that "*Parliament shall make laws providing for the procedure and expeditious disposal of appeals referred to in this article.*" Now I put the question.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** So I put the question on Article 89 as amended that it do stand part of this Constitution.

*(Question put and agreed to)*

**THE DEPUTY CHAIRMAN:** So can we move to 90.

**MR. KUTESA SAM:** Madam Chairperson, the Committee recommends that Article 90 be retained as it stands in the Draft Constitution to read; "*The appointment of officers and employees of the Electoral Commission shall be made by the Commission acting in consultation with the Public Service Commission.*"

**THE DEPUTY CHAIRMAN:** We do not seem to have any problem. I put the question on Article 90 that it do stand part of this Constitution.

*(Question put and agreed to)*

**MR. KUTESA SAM:** Article 91 Clause (1). The Committee recommends that Clause (1) of Article 91 be amended by deleting the word "reasonably" so that it reads: "*Parliament shall ensure that adequate resources and facilities are provided to the Commission to enable it to perform its functions effectively.*"

**THE DEPUTY CHAIRMAN:** Okay agreed. We move on.

**MR. KUTESA:** Clause (2). The Committee recommends that Clause (2) be retained as it is.

**MR. RUZINDANA:** Madam Chairperson, this Clause (1), of course, I agree with the principle of providing adequate resources but how will Parliament ensure that - why do we put the duty on Parliament? Parliament will always provide the funds proposed in a budget put before it by the relevant authorities in government, and now we are putting the burden on Parliament, is it really the duty of Parliament to ensure, isn't this an executive

function, the provision of funds or resources and facilities and so on? How will Parliament provide facilities to the Commission.

**MR. CHEBET MAIKUT:** Madam Chairperson, I want to agree with what has been raised by Hon. Ruzindana because when you look at sub-article (3), of the Clause (3) of the same Article 91 where it provides for the expenses of the Electoral Commission to be charged on the consolidated fund, in my view when that one is provided for, then there is no need to put the burden on the Legislature, on Parliament. So I think let the responsibility lie with the government because we have already said all the expenses will be charged on the consolidated fund. So unless the Committee has a different view, I totally agree with the view raised by Hon. Ruzindana.

**MR. LULE WASSWA:** Madam Chairperson, I disagree substantially with the previous two speakers. As we are all aware, I enumerated a few days ago what is involved in the independence of an organ of government. An organ - Independence in this respect is independence from the influence of the executive and I enumerated three ways; I said the nature of the appointment, the nature of the removal and also the remuneration. To place the remuneration to be at the whims and fancies of the executive is to dilute the very essence of the independence of this institution. It is paramount that if we were to have checks and balances in our Constitution that are meaningful, that this function and responsibility is left to Parliament to ensure that the monies allocated in the budget are adequate for the institution but not for it to be an administrative action of the executive which defeats the very purpose of setting an independent Commission and that is the very reason why the other day I said putting in the word "independent" is totally superfluous and meaningless if we do not put in the substance of that independence. And this is one area where it counts. If the executive can decide on how much to remunerate these people, or what little Pajeros and whatever they can give them to make them happy, then they are directly at the mercy of the executive and the executive can pull the strength as they like. But Madam Chairperson, I strongly oppose the move to leave that responsibility with the executive. The responsibility should be with the Parliament. Thank you.

**MR. KARUSOKE:** Madam Chairperson, the responsibility to decide on what money to be given to

who lies with the Parliament. If we say here that the Executive shall have the duty to ensure that adequate resources are given to the Commission, we shall be losing the way. Because, Parliament may decide to give less than adequate to this particular body and the Executive has nothing to do about it. So, Madam Chairperson, we should not move away from Parliament, we give the burden to Parliament because it is Parliament that approves all votes of government. Thank you.

**THE DEPUTY CHAIRMAN:** Any contrary view?

**HON. DELEGATES:** No!

**THE DEPUTY CHAIRMAN:** Then I do not see any purpose of talking again. If there is no opposition we take it that 91 (1) is accepted. Thank you.

**MR. KUTESA SAM:** Madam Chairperson, the Committee recommends (2) be retained as it appears in the Draft Constitution to read as follows: "The Commission shall be a self accounting institution, and shall deal directly with the ministry responsible for finance on matters relating to its finances.

**MR. KARUHANGA:** Madam Chairperson, I appreciate the intention behind this but if we leave this in the Constitution, it is subject to very serious interpretation which could mean differently from what I think the Committee really set out to mean. This actually gives power to the ministry responsible for finance to deal with the Commission directly. It means it can reduce some money or increase some money on its own. If we leave it like that, this is dangerous. What we mean is that Parliament as we have said earlier, is responsible for making sure that there are adequate resources and facilities are available to the Commission which is supposed to be independent. To subject the Commission to a ministry is dangerous. We want the independence, the self accounting institution but they cannot go to the Parliament without agreeing with the Ministry if we leave it like this on their budget. So, I was thinking that the article we have passed above is actually adequate, it covers it and whether the relationship is between the Electoral Commission and Parliament, nowhere should we give a minister power to deal with the Electoral Commission and influence it. We want the vigorous independence of the Electoral Commission. You avoid this by deleting it. For example, we had

this problem with the judiciary, the Attorney General was always bringing the budget to the Parliament for assisting the Judiciary. I remember attending the Legal Committee trying to solve the problem - the Mulenga Committee - and we avoided this problem by avoiding the Attorney General to handle Judiciary and there was a direct link between the Registrar of the court and the Parliament. That is how we solved the problem to ensure that the Judiciary is independent from the Attorney General.

**MR. KUTESA SAM:** Point of clarification! I would like to be clarified by Hon. Karuhanga how he intends to have this money come from the Treasury to the Commission. I would like to get a small explanation how he intends to do this because we have said Parliament shall provide for it, we shall subsequently say that it will be charged from the Consolidated Fund. Now, we are saying that the Commission should deal directly with the Ministry as opposed, maybe, to going through another Minister of Constitutional Affairs which would have been the problem that the Judiciary was facing with the Ministry of Justice. But in this case I want to know if Hon. Karuhanga thinks that a direct link with Treasury will influence or become more cumbersome to the Commission than if it had to go through another minister who goes to the Minister of Finance.

**MR. KARUHANGA:** Madam Chairperson, my position on this is that we have other independent organs, we have created commissions or tribunals or what have you. We want them to be rigorously independent, we have to synchronise their relationship with Parliament and with ministries. What we have done with the Judiciary is what we should do with this, and I would rather that the Technical Committee *(Interruption)*-

**MR. KITARIKO (Democratic Party):** Point of information! All we are saying here is that the secretary to the Commission will be the accounting officer for the funds and will be the one to deal with Parliament directly.

**MR. KARUHANGA:** So if that is the case - anyway Madam Chairperson, I have raised my fears, I better stop there. I have consented that we leave it as it is but I hope that the Legal Committee will look at it and synchronise other commissions together so that we come back when have one common position.

**MR. OMARA ATUBO (Otuke):** Madam Chairperson, I think Hon. Karuhanga has a good point except that he has abandoned it rather too early. I wish he could look at the provisions relating to finance in Chapter Eleven of this Constitution, particularly Article 180 which we have passed. His argument that if you give a strict interpretation to this clause that *"the Commission shall be a self accounting institution, and shall deal directly with the Ministry responsible for finance on matters relating its finances"*, what about the constitutional provisions we have made on finances, and would it, therefore *(Interruption)*- well, I have referred you to Article 180 and to other provisions of the finance provisions particularly where it says - because Hon. Karuhanga was saying, does this mean that he will not go through the responsible ministry through Parliament and so on, and therefore, even if we provide for this, still the Commission will be subject to the provisions of this Constitution. By the way we have drafted it, are we saying that the Commission will not be subject to the provisions of the Constitution and other laws made by Parliament? And if so, how can you take care of it? I thought that was a very valid point.

**THE DEPUTY CHAIRMAN:** Hon. delegates, just hang on, let us see what you are talking about. Now we are saying that they will deal indirectly with the ministry responsible. That is the ministry that releases the money. Now if you do not get money from the ministry of finance, where else can you get it from? Even a self accounting body gets money from the Ministry of Finance and that is the ministry we are talking about and it is clear. Otherwise, where does Parliament get money from? From finance! Where does Makerere get money? From finance! I think that is what they meant. Hon. Karuhanga, I do not think really we should continue with this one. So we leave it as it is. Number (3) Hon. Kutesa Sam.

**MR. SAMKUTESA:** Madam Chairperson, Clause (3) of article 91: The Committee recommends that Clause (3) be retained as it appears in the Draft Constitution to read: *"the administrative expenses of the Commission including salaries, allowances and pensions payable to or in respect of persons serving with the Commission shall be charged on the consolidated fund."*

**MR. KABUGO (Nakaseke):** Madam Chairperson, as we go to another clause somewhere here, which I can't see immediately, it says that the

Commission is supposed to serve for seven (7) years and when we talk of pension, I do not think the employees, including the commissioners, will be qualified for pension, they may be just qualified for service gratuity. In this case I suggest that "pension" changes to read "service gratuity" if the Chairman can agree.

**MR. LUBULWA MIGADDE (Katikamu South):** Madam Chairperson, I just wanted to inform Hon. Kabugo that I think the seven years we are talking about refer to the commissioners. But I think the Commission will have permanent staff because we said even the appointment will depend on the recommendation of the Public Service Commission. So I think those people are going to be there.

**THE DEPUTY CHAIRMAN:** I think Hon. Kabugo you are clarified, that clears three (3). Now, I see that we did not make any amendment on Article 91. So I put the question that Article 91 do stand part of this Constitution.

*(Question put and agreed to.)*

**THE DEPUTY CHAIRMAN:** That is passed. Article 92.

**MR. KUTESA SAM:** First of all, let me say that apart from Clause (1) which is separate, the rest of Article, that is (2),(3),(4) and (5) which were decided by the Committee were decided before the discussion on the chapter on Legislature was held. So, some of the dates that appear in (2),(3),(4) and (5) need to be synchronised with what was passed in the chapter under the Legislature. These are out of date, the Plenary has already passed certain dates for voting under the Legislature. So I will start with Clause (1) and then go up to Clause (5). I would request that the Technical Committee should reconcile them with the date we have already agreed upon in the chapter on Legislature so that there is no conflict at all between our chapters. The reason it appears in our report is that we had agreed as a committee on these dates and since together we came and became part of the Plenary, I think we can no longer try to enforce the dates we had agreed on that are now superseded by the decision of the Plenary. So, when I come to (2), (3),(4) and (5), then I ask that we put them to the Technical Committee to reconcile them with what is contained in the chapter on Legislature. Unless Members of our Committee insist that they want to

discuss these, but that may become difficult according to our rules because a decision that is already made by the Plenary at Consideration stage, we may not be able to contradict. Otherwise, we may have to reserve our position at the consideration stage. But Madam Chairperson, as Clause (1) is not affected by all these, let me first of all move Clause (1), and then when we get to Clause (2),(3),(4) and (5), we shall cross the bridge when we reach it.

Clause (1): the Committee recommends that Clause (1) be retained as it appears in the Draft Constitution to read; *"The electoral commission shall ensure that elections are held at times fixed and notified in advance to the public."*

**MR. NYAI DICK (Ayivu):** Madam Chairperson, I just believe that it is a slight oversight on the part of our Chairman that at the Committee Stage, I did indicate that I was going to raise this as a Minority Report. And I have circulated a Motion to that effect, Madam Chairperson, which I would like to read with slight improvement for clarity. The Motion I wish to move would make 92 (1) read as follows: *"The Electoral Commission shall ensure that elections are held at a time fixed and notified in advance to the public provided that Presidential elections, except those specified in clause (2) (e) and (c,) are held on the same day"*. Then a second provision -

**THE DEPUTY CHAIRMAN:** Hon. Dick Nyai, I have a completely different wording.

**MR. DICK NYAI:** Madam Chairperson, I said that I was going to read it with a certain improvement. I beg your indulgence.

**THE DEPUTY CHAIRMAN:** Then you better be slow and clear.

**MR. NYAI DICK:** Maybe, Madam Chairperson, I can repeat. The first part of 92 goes as it is in the Draft Constitution. I am introducing two provisos, Madam Chairperson. The first one is as follows: *"provided that Presidential and Parliamentary elections except those specified in Clause (2) (b) and (c) are held on the same day"*. The second proviso is as follows: *"provided that subject to the provisions of this Constitution, Presidential and Parliamentary elections shall be held on the same day."* I beg to move.

**MR. KARUHANGA:** Madam Chairperson, although I have just noted the amendment by Hon. Nyai, I want to ask just one question. If we pass this as it is and the President dies in office, does it mean that Parliament is also dissolved so that the next elections of the President shall be held on the same day with the Parliament, or we only hold the elections of the President in contravention of this Clause?

**MR. NYAI DICK:** Madam Chairperson, I am very amazed by Hon. Karuhanga because I am putting this amendment to the provisions in the Constitution and maybe, Madam Chairperson, when I come to move and give my reasons, he will get better clarified.

**MR. OMARA ATUBO:** Madam Chairperson, I am one of those who have seconded this Motion, and I have been trying to help Hon. Nyai to have it drafted properly. Actually, it is only the second proviso which should now apply not the first one. The one he has read with "Electoral Commission" and so one really should go off so that the proviso to Clause (1) should be the second proviso he has read that: "*subject to the provisions in this Constitution, Presidential and Parliamentary elections shall be held on the same day.*" because once you say "*subject to the provisions of this constitution*", you are already referring to Clause (2) (b) and (c) of Article 92, and you are also saying subject to the provisions in this Constitution referring to the Presidential elections and referring to the situation which Hon. Karuhanga has referred to namely; when the President resigns, dies or he is removed from office. So the election of the President or Presidential and Parliamentary elections, subject to the provisions of this constitution, and those provisions are the ones which will change the various days. Otherwise, for normal elections, they will be held on the same day. So I think this is catered for by that "*subject to the provisions of this constitution.*"

**MR. RWABITA (Ibanda South):** Madam Chairperson, I stand to oppose the amendment. (*Interjections*) - Okay when you move it I will oppose it.

**MR. KUTESA SAM:** Madam Chairman, it appears to me that the Minority Report that has been read out is substantially different from what we had discussed in our Committee, and that Hon. Nyai has a right to raise this matter, there is no doubt about it. And it seems to me that as it has been

pointed out by Hon. Omara Atubo, they have not finalized the form in which this proposed amendment should come, worse still, we have just heard it read out, we have not seen it in print. I was going to seek your permission that we stand over this particular article and amendment and move on until it is properly circulated and we study it and really have even properly formulated. Because it does not seem to be properly formulated at the moment. I do not know what the Mover would feel about this, but it seems to me to be a more sensible way of going about it.

**THE DEPUTY CHAIRMAN:** There is that consensus that we have this one properly done because I am also confused. Up to now, I do not know what we are discussing. So we agree that we stand over 92 (1) for proper wording and synchronization with what we have already passed.

**MR. KUTESA SAM:** Madam Chairperson, with regard to clauses (2) (3) (4) and (5), what we had recommended is there for everybody to read but as far as I know, it is not consistent with what was passed in the act on legislature, and Members of the Committee said we should present it as it is because that is the decision we had arrived at, but it is up to you to decide how we handle it, Madam Chairperson.

**MR. MULENGA:** I wanted to add to what the Chairman Committee 5 has said earlier on when introducing this article. He did mention that Clause (2) was inconsistent with decisions made by the plenary when dealing with the chapter on Legislature in respect to time. But there is more than that, not just the difference between the times of 60 and 30 days. There is also a recommendation that was made and accepted by the Plenary that Parliament should always serve its full term. It can't be dissolved or should not be dissolved mid-term, it should not dissolve itself. So paragraph (b) and (c) of (2) were rejected when considering the chapter on Legislature. I therefore would like to mention that while the article is referred or the clause is referred to the Technical Committee, this is kept in mind also.

**MR. OBUA OTUA (Erute North):** Madam Chairperson, I am making reference to the position explained by the Chairman of Committee 5. In standing over this article, what would happen in the event that we passed others which would render this one no longer applicable?

**THE DEPUTY CHAIRMAN:** You are referring to (1) or (2)?

**MR. OBUA OTUA:** I am referring to the proposed amendment by Hon. Dick Nyai which the Chairman of Committee thinks should be stood over and properly circulated.

**THE DEPUTY CHAIRMAN:** No it was not the Chairman, the proposal came from Hon. Omara Atubo who is one of the movers.

**MR. OBUA OTUA:** But I am asking a question of procedure!

**THE DEPUTY CHAIRMAN:** But I am saying, address it to the proper person!

**MR. OBUA OTUA:** I am addressing it to you, Madam Chairperson!

**THE DEPUTY CHAIRMAN:** I said it is not clear. So, even if we made a decision now - you cannot make a decision on something that is not clear.

**MR. OBUA OTUA:** But Madam, the clarification I am seeking is, what would happen supposing we go ahead and discuss other articles and the decisions made after discussing those articles render this one the proposed amendment no longer discussable?

**THE DEPUTY CHAIRMAN:** You raise a point of - you will point it out, you should be alert and say, now this one will not be as we require, otherwise you cannot predict what is going to happen or we cannot stop debating just because something is not clear. We are on (2) then you are taking us back to (1). So we are saying, we are referring to - can we have a clear statement Hon. Kutesa Sam.

**MR. KUTESA SAM:** I am sending this to the Technical Committee so that the decisions taken by this Plenary on the chapter on Legislature are synchronised with the provisions of this one.

**MR. CHEBET MAIKUT (Kween):** Madam Chairperson, I would like to suggest that in light of what has been pointed out by the Chairman of Committee 5, I think we defer the subsequent articles since we have agreed that we stand over discussion of the proposed amendment by Hon.

Nyai dick because now we have a problem. I do not know how we are going to discuss this particular position taken by the Committee, more so when we are not in light of what the Technical Committee may put in place about what was passed when we were discussing the chapter on Legislature. So I propose that we adjourn up to tomorrow (*Laughter*) - this is my proposition because I do not know whether we are going to be referred to the Technical Committee now and then if we were to discuss the subsequent clauses or sub-articles of that clause.

**THE DEPUTY CHAIRMAN:** Let us do it like this, if there is a problem, it should be with Article 92. 93 is on voting, referenda and what have you. So we can go to 93 and stand over 92. Why should we adjourn when we have a whole hour and a half?

**MR. BIRIMUMASO (Bukoto West):** Madam Chairperson, I entirely agree with you because when you look at 93, it has no relationship with 92, even 92 (6), we can discuss that and 93 instead of adjourning.

**MR. LIIGA (Buvuma Islands):** Madam Chairperson, I think I am in agreement with Hon. Birimumaiso that we skip this paragraph 2, and continue with Clause (6) on page 21 which to me looks not controversial, then number 7 and we call it a day over article number 92, then we can proceed on with Article 93. We wait for the Technical Committee to synchronise these other two which we can deal with tomorrow.

**THE DEPUTY CHAIRMAN:** So, the proposal is to stand over (1)(2)(3),(4) and (5).

**LT. COL. KIZZA BESIGYE (NRA Delegate):** Madam Chairperson, I do not think that it is fair on ourselves to act as if we are not the ones who passed the provisions on the Legislature. Really, clearly the provisions in (2),(3),(4) and (5) were fully taken care of in the provisions of the Legislature. So I think what we ought to do is simply to delete (2),(3),(4) and (5) and then we deal with (6).

**THE DEPUTY CHAIRMAN:** That does no harm if we leave it to the Technical Committee to give us advice. Whether we delete it or not, we are not losing anything. But let us get the advice from the Technical Committee. So the proposal is, we stand over (1),(2),(3),(4) and (5) and go to (6).

**MR. KUTESA SAM:** Madam Chairperson, in Clause (6), the Committee recommends that Clause (6) be retained as it appears in the Draft Constitution to read: "*All candidates in an election shall be guaranteed equitable access and use of the public communication media.*"

**DR. KIYONGA (Bukonzo):** Madam Chairperson, I am seeking clarification from the Chairman of the Committee. It is my understanding that as of the time the constitutional commission was going around, certain developments in the country had not occurred. We are now in a situation where the mass media has been liberalised to a great extent and further developments are likely to take place which could even lead to privatisation of *Radio Uganda* and even *New Vision*. So that is my first point. The second point, Madam Chairperson, I think it is necessary that the Constituent Assembly also gets concerned about the private mass media because we can have unfairness and inequality even in the private media. You could have very rich people who own the private media and they selectively allow candidates in elections to get access to those Media. So for us merely to say that we are concerned with only public media would just be scratching the surface. But before I go further, let me seek clarification from the Chairman of the Committee and see whether these points were foreseen.

**MR. KUTESA SAM:** Madam Chairperson, we did consider mainly public media. We are also aware that there is private communication media that has come about. The only area that we thought we could control was that kind of communication area that is out of the tax payers' money and that is why even if it is being privatized, whatever remains of public communication media, should be shared equitably. Whatever remains of it, even after *New Vision* has gone, even after *Radio Uganda* has gone, maybe we shall share the *Gazette*. But as for private media, at least I feel that unless they are doing something illegal - unfortunately the ways of the world are that those who are richer than others will buy more air time and there is no way we can stop it. If you want to stop it, then you may really be getting into another area which is that of price control. I do not know whether we can legislate that *Radio Sanyu* or *Sanyu TV*, or *Radio Capital* shall charge this much and if Hon. Wasswa Lule comes with his money on Monday, and says I have booked Monday, Tuesday and Wednesday, when Hon.

Aggrey Awori comes on Tuesday, *Capital* should say no. Mr. Wasswa you can't have Monday, Tuesday and Wednesday, because on the door is also Aggrey Awori. I am not sure that we can go that far.

So to answer your question Hon. Kiyonga, we have only addressed Media that is owned by the State and we have said that, that one should be shared by all - candidates should share equally. Further down, we say that for purposes of Presidential elections, it should be shared equally because we are aware of the numbers of candidates that may come up in other elections. Really, I am not sure that our Committee did consider tying the hands of the private Media yet.

**MR. AGGREY AWORI:** Madam Chairperson, I am seeking clarification from the Chairman of the Committee 5 on the Media issue. Now, Madam Chairperson, billboards are a very effective system of Media communication. Now, some of the billboards are controlled by the State indirectly. For instance, the City Council can establish where you can advertise using billboards for campaign. In this City of Kampala, we have seen a tobacco company advertising its goods using facilities of the City council which is indirectly part of the government. Madam Chairperson, as a Presidential candidate, if I decide also to have billboards in the city using City Council facilities, would that be in the same category as this amendment tends to tell us, Madam Chairperson?

**MR. KARUHANGA (Nyabushozi County):** Madam Chairperson, there is a principle that if you write a law and it is not effective, that law is really useless. If you say all candidates in an election shall be guaranteed equitable access, first of all, who is going to guarantee this equitable access to all candidates in an election? Even the *New Vision*, even if it wanted, it cannot really have all of us here having the same access on the same day and during the same time. Secondly, where are you going to get time or space? I think really the intention of the Committee was about Presidential elections. It cannot be all candidates in a municipality and in a local government and in Parliament and RC1; R.C.2 - it is impossible and if you write this impossibility in the Constitution and in future, you know in another ten, twenty years, communication media will change dramatically. It is one of the things which have changed this century in such a

dramatic way that you find people - in my office I am on an international line where I get communication on medical developments in Japan every day. Now, what is going to happen? The way Ross Perot campaigned in the last elections, he used telecommunication methods which the other candidates did not use. He reached every household in America, and the man put fifty million dollars on that item alone. Now, to say all candidates in an election shall be guaranteed equitable access is, I think, writing an impossible situation in the law and really, I appeal to Presidential aspirants to concentrate on the aspects of the President only, maybe there we can say if the radio is controlled by the taxpayer then equal time - if Mr. Aggrey Awori wants to put up and gets a license for a radio station and wants to go there and harangue his messages the whole day, who is going to stop him and say no, no, I must come to your radio station and also speak mine? Nothing, you set up yours! So, I think this is one of those clauses which we may conveniently delete so that we concentrate on Clause (7) where we remove the word "in particular" and say "Presidential candidates" and we stop there.

**MR. SSEBAANA KIZITO (Makindye East):** Thank you, Madam Chairperson. I also want to agree that this is an impossible provision to be practically implemented. If you take the last C.A. elections as an example, there were more than one thousand candidates throughout Uganda and I do not know how you are going to make equitable distribution, whether each one is going to get half a minute of air time on *Radio Uganda* or on *UTV*. Therefore, although we want to be fair, people should enter politics knowing that when you go into politics, you are going to spend money in order to be known and, therefore, if people cannot afford that, they better not go into politics. Madam Chairperson, I think it is very difficult to put this provision in practice and because of this, it is unnecessary, it cannot be constitutionalised, Madam Chairperson.

**MR. ONEGI OBEL (Jonam County):** Thank you, Madam Chairperson. Madam Chairperson, I support the clause as written and reported by Committee Five. Madam Chairperson, it is said that a person with a full tummy does not know that hunger exists but it does exist. I look at this clause, Madam Chairperson, merely as an enabling clause because it is unlikely that all candidates, much less from places like where I come from, will travel all the

way here to ask for time on *Radio Uganda* but the provision is good that should I want to do so, should I want to come to Kampala and ask for an opportunity to say something to the voters of Jonam or the voters of Uganda generally, I should be allowed to do so. To say there are too many people as candidates is a very lame excuse. We are already talking about human rights and that right should be extended to the rights to use machinery which is actually mine. *Radio Uganda* belongs to me just as it belongs to any citizen of Uganda. Now, the talk about privatisation while we know that there is privatisation but we also know - I do not know the date because I am not in the inner circle of decision making - we do not know the date of the elections but it could be well before privatisation of *Radio Uganda* takes place because it is a slow process and even *UTV*, it is a slow process - (Interjection).

**THE DEPUTY CHAIRMAN:** Clarification from Hon. Hashaka.

**MR. HASHAKA (Kibale):** Thank you, Madam Chairperson. I would like Hon. Onegi Obel to clarify to me if he came from Jonam specifically to give some talk on radio to his voters and he found the programmes are full up, would he appreciate if he would be told so and go back to Jonam to arrange another time to come back? Would he appreciate that or he would say he has been mishandled? Thank you.

**MR. ONEGI OBEL:** Madam Chairperson, that to my mind is irrelevant because if I chose to come, I am prepared to be disappointed. The only point here is the right, the mere fact that I have been allowed, that I would be allowed to make the request or to use *Radio Uganda* is satisfactory enough but the line-up of being eliminated because there are too many people or I cannot wait would be my problem. Thank you, Madam Chairperson.

**MR. KAGIMU KIWANUKA (Bukomansimbi county):** Thank you, Madam Chairman. Madam Chairperson, I agree with the last speaker. Now, I think the intention of the Committee was that nobody should be favoured against another, there should be no favoritism on the mass media but the Committee failed to put it well. I think that was their intention. Now, for me I suggest that we ask the Technical Committee to see how it can put it such that anybody who wants to be given access without favouring, for example if it is the NRM Adminis-

tration favouring those of NRM and if it is a UPC administration favouring those of UPC more than the others, I think that was the intention. So, Madam Chairperson, without wasting time - (*Interruption*)

**THE DEPUTY CHAIRMAN:** Just hang on please. Before we proceed, we see some very strong words "*shall*", "*guarantee*" "*equitable*". Let us look at Article 86 (e) "*To hear and determine election complaints arising before polling*". How about if a Member says I was promised I shall be guaranteed equity and it was not done. What would happen? I just wanted to remove that contradiction.

**MR. SAM KUTESA:** Madam Chairperson, I think I appreciate the comments made by Hon. Karuhanga that when you say I shall guarantee and what not, it may be an obligation you may not fulfil but the intention of the Committee is to ensure that there is no discrimination - to try and make sure that there is no discrimination. I will not guarantee you but when you come, I will not shut you out because you happen to belong to party X or to party Y. So as far as I am concerned, and you can see that it was one of the big problems that was in the report of the Odoki Commission, it was a problem in 1980, it has been a problem people singing about it that radio was being monopolised, that TV is monopolised, now, clearly a situation is emerging that more and more communication gadgets are in private hands. Maybe there is a formulation which Hon. Rukutana has been showing me here which may better reflect the intention of the Committee. I do not know if he could read it and see - (*Interruption*) - let me first take information from Hon. Odur.

**MR. ODUR (Dokolo County):** Thank you, Madam Chairperson and I thank you Hon. Sam Kutesa for giving way. My information is that this kind of principle is usually adopted when you have parties. It is the parties who are given equal treatment. If you give a particular air time, for instance, to party X, you are supposed to extend the same facility to party Y but it appears that since we are shy to talk about parties, Committee Five has come with these very difficult situations to implement where all candidates are supposed to be treated equally. This is not possible but recognised parties should be treated equally with respect to public facilities which are being offered for use and I do not know whether the Chairman of Committee Five and his Committee did discuss this aspect of equal treatment. Thank you, Madam Chairperson.

**THE DEPUTY CHAIRMAN:** Let us hear what Hon. Rukutana has.

**MR. RUKUTANA (Rushenyi County):** Thank you, Madam Chairperson. Madam Chairperson, I want first to disagree with the Member who previously held the Floor when he said that such a situation would only be meaningful in a multi-party era when we have different parties. Madam Chairperson, to me I wish to submit that it is even more meaningful in the Movement type of system where we have individuals competing on merit. Now, I am a Member of Committee Five, our concern, the evil we intended to cure was the historical problems and errors of discrimination against some candidates and favoritism of other candidates as far as the mass media is concerned. I am also sensitive to the concerns that have been raised here when we try to say we can guarantee equitable access but to cure what we intended, to cure the evil we intended, I propose the following formulation to say: "*no candidate in an election shall be denied access and use of the public communication media.*" To me that one does not impose a terrible obligation as suggested by a guarantee and yet it remedies the evil that the Committee intended to cure. I so move, Madam Chairperson.

**MR. KARUHANGA (Nyabushozi County):** Clarification, Madam Chairperson. Thank you, Madam Chairperson, I would like Hon. Rukutana to tell me what he is going to do if that type of amendment was entertained in the Constitution, whether we say no candidate shall be denied access to use of public communication, and we are 284 CA Delegates here coming from one constituency; there may be ten people standing in each constituency. Now that would put it at the figure of two thousand eight hundred and forty. Now, I have a constitutional guarantee that I should not be denied access to the media. I come to *Radio Uganda* and they tell me that the programme is full from now until the day of the elections. I go to the High Court and I would like to cancel these elections and I quote this section and I go to Rukutana's Chambers. I would like him to give me the legal advice on my position.

**MR. RUKUTANA:** Madam Chairperson, the advice is very simple. That would be just a simple question of administration. In the first place, it cannot be feasible that all the 184 candidates country-wide will go to Radio Uganda to seek to talk at the same time. If we have so many candidates, what

*Radio Uganda* would do is to put a programme affording opportunity for each and every person who wants to use the media, the only thing it would do is to make some kind of time table to make sure that everybody is accommodated. But to alleviate those fears, I am still willing to say, to improve on my formulation and say: “no candidate in an election shall be unduly denied access and use of the public communication media.” The word “unduly” would cater for those eventualities that may arise if for logistic purposes it is not possible to have a particular candidate.

**THE DEPUTY CHAIRMAN:** Incidentally, is that Motion seconded? Okay, let us hear from Hon. Owor who is seconding the Motion.

**MR. OWOR (Aswa County):** Madam Chairperson, I would like to second the Motion by Hon. Rukutana. In fact, I was actually thinking of moving a similar amendment because the problem with the current provision is really in the drafting and the kind of alteration or the modification that Hon. Rukutana has moved would actually go a long way in solving the problem that we currently have. Madam Chairperson, it is clear that we have functioned in atmospheres of inequality with regard to access to public media and this has characterised most of our elections. I am sure that Members would still recall during the CA elections that not everybody had equal access to the media. In fact, some people were even certainly denied access to the public media. It was not uncommon to have a candidates meeting and the person on *Radio Uganda* who reports what took place in the candidates meeting would say there was a candidates meeting in Kampala or in some place and at the candidates meeting the Hon. Minister of this and that who is also a candidate said this and this and they will go at length for five minutes and then they wind up by saying that at that meeting - (*Interruption*) - let me finish this point, I will allow him. And then after going at length reporting what the Hon. Minister said, they will just say also in attendance were Charles Owor and so and so. Now this is the kind of thing we are fighting. You cannot tell me that both Charles Owor and the Hon. Minister had equal access to the media.

Madam Chairperson, I would also like to say that - I am told that if they mention your names then you are lucky - it is also true that there is not going to be any time in our history, in Uganda when we shall

not have public media. In fact, I do not know any country in the world that has no public media. However privatised the media is, there will remain that element of media for the purpose of government propaganda and it is that media that has always been exploited and abused by those who are in authority. We would like to make sure that nobody who would otherwise be free to use this media is denied. That is why I agree with this formulation. This formulation would mean that anybody who approaches the authorities in control of the public media and is denied reasonable use of that public media can go to Court and ask Court for what they call an interlocutory order, to ask that Court to give him access for the use - some lawyers are using these difficult words “mandamus” which is an order to say so and so must allow such and such a thing to take place and, Madam Chairperson, this is the kind of provision that a person who has approached *Radio Uganda* and has put his announcement and it never come out or he has asked to be given opportunity to explain his position as a multi-partyist and he is denied, can approach Court and rely on this provision and, Madam Chairperson, I would also like to say that I would like, with the agreement of Hon. Rukutana, to modify his amendment which in my opinion should read: “no candidate in an election shall be denied reasonable access and use of the public communication media”. “Reasonable” because it would mean you cannot go and say I want the news hour to cover me, it should be the kind of access that is also given to other candidates. Madam Chairperson, with these few points, I would like to support the Motion by Hon. Rukutana.

**MR. DICK BATEGANYA (Bukooli Central):** Thank you very much, Madam Chairperson. I would like to oppose the Motion on the Floor and instead move my own and my own amendment is that we should delete this particular clause. Thank you very much.

**THE DEPUTY CHAIRMAN:** I will start with the procedure. Where is the procedure?

**DR. KIYONGA (Bukonzo County West):** Thank you very much, Madam Chairperson. Hon. Rukutana moved a Motion and in his contribution Hon. Owor proposed some amendment and we do not know whether Hon. Rukutana has accepted this so that we know which Motion we are discussing.

**THE DEPUTY CHAIRMAN:** Now, you will have to clear Hon. Rukutana's Motion, if it is not carried, that will be a different matter. So it is, "*in an election, no candidate shall be denied reasonable access and use of the public communication.*"

**MR. RUKUTANA:** Madam Chairperson, I have no problems with that formulation, I accept it.

**MR. WASSWALULE (Rubaga Division North):** Thank you very much, Madam Chairperson. I would like the Movers of the Motion to clarify to the extent to which these amendments relate to elections. Does it include RC.1, RC.2, RC.3, RC.4, RC.5? All of them are public elections for public media, that is very interesting and the district ones as well.

**THE DEPUTY CHAIRMAN:** Let us hear from the Mover. I am trying to minimize the time wasted. Hon. Owor.

**MR. OWOR:** Madam Chairperson, I would say that the answer is in the affirmative. As long as this is a national election, this probably would not cover elections of members of the Rotary Club, it will cover elections that are of a national nature which the government has an interest in and I would therefore see no problem with the elections of RC.1 being covered reasonably. That is why we call it reasonable. Of course we cannot expect that the Chairman of RC.1 Kawempe would want the same coverage as a Presidential candidate, that would be unreasonable. I think therefore, if we read this by interpreting "reasonable access" properly, it will cover all this.

**MR. LUKUMU (Buliisa County):** I have nothing to add.

**MR. BIDANDISSALI (Nakawa Division):** Thank you, Madam Chairperson. Whereas the intentions behind the amendment could easily be appreciated, the wisdom of entrenching it in the Constitution especially in a language that will not be ambiguous is really questionable. In my view, this should be covered by regulations that will be put in place by either the new Parliament or the Electoral Commission as directed by the Parliament. Now, this use of media, if I can give you an example, recently one of our Hon. Members here got hold of a television to cover his function and he was given really good treatment by television. Now, the guest of honour

was flushed for two seconds, the Hon. Member was flashed for about a second and the rest of the time which was about twelve minutes was to the few children, there were about five children singing his name, song after song and the impression created was that the Hon. Member's function had no audience - *(Interruption)*.

**THE DEPUTY CHAIRMAN:** Clarification.

**MR. KASAJJA BYAKIKA (Bunyole County):** Madam Chairperson, I wish Hon. Bidandi Ssali had been present at the function. What he saw was exactly not actually what was happening at the function. *(Interruption)*

**THE DEPUTY CHAIRMAN:** Hon. Byakika, nobody mentioned your name. Are you really in order? You should not be guilty conscious.

**MR. BIDANDI SSALI:** Madam Chairperson, it seems that Hon. Byakika might have suffered the same fate as the one I was quoting but all what I was pointing out is that as far as the TV was concerned and as far as the media was concerned, the Hon. Member was given good time, in fact, more than good time, 15 minutes, but the impression I got was that the Hon. Member including his chief guest was addressing just a few miserable fellows and the whole function was singing the name but just in the same way the Hon. Byakika is saying the same thing happened but what I actually saw was not what was on the ground. So all what I am pointing out is that you may have good time, you may accede to the media but it depends upon how you are reflected in that particular media.

So, Madam Chairperson, in my view, unless it is drafted by these family fellows here to the effect that nobody should be given undue advantage or something like that, if we say "access", everybody will have access, equitable or whatever way you describe it, it will not be something worth entrenching in a Constitution. That is why I am going to second the proposal by my neighbour here that this particular article should be deleted from the proposal.

**MR. LUBOWA (Budiope County):** Thank you very much, Madam Chairperson. I also find it very difficult to support the inclusion of this provision in the Constitution. For instance, the amendment by Hon. Rukutana and Hon. Charles Owor, if the

amendments of these honourable gentlemen are as expressed in the explanation of Hon. Charles Owor that, for instance, at a candidate's meeting at the end of the day in the radio coverage, you hear that the Minister in addressing a CA meeting like this and that also in the presence were such and such, I do not know really who is going to follow up this and I think it is going to be very difficult for the Commission to really judge whether the radio personnel were really wrong or unfair. For that matter, I really do not think we should have this one included in the Constitution. It is really difficult, even the Papers, there is no way you are going to say that in the case of an event having taken place, that please give equal coverage to the five people who appeared on an occasion, it is terribly difficult. So let us have it out.

**MR. BAGENA (Bufumbira East):** Madam Chairperson, I have been listening to a number of views being advanced. Either against the amendment by Hon. Rukutana or even for deletion. I think we are focussing on the wrong thing. Access does not mean that you will necessarily be reflected in a manner you would wish to be reflected. You may be given negative publicity but at least that you are allowed to come back and say that was not a fair picture of me, I think that is really fair. Now, when we say candidates who are standing for a public office, a public election should be given access to public communication media, we are thinking of the radio, we are thinking of the Papers, we are thinking of the TV. Fortunately, some of these media cover very little area here. Those of us who may not even have access to them because of our own limitations, we are not complaining but suppose we want to come and use them, we would not like to be discriminated against because it is not anywhere guaranteed for us to use. Madam Chairperson, if we have to inform the public fairly, that means all of us who have got something to say should be able to say it even if it costs something and we are able to pay, then it should be just and fair for us to really have a place to go to and have access to something you can use. It is true those who stay closer to where these facilities are have an advantage naturally but we would like to see, at a later stage, where the whole country can have Newspapers, can have radios to really highlight whatever is going on around the country-side and if elections are an important exercise for the nation, I really feel it would be very unfair to make sure in the Constitution the very means we could use to inform the public about who we are, what we stand for, if we

leave it out such that it will be a monopoly of those who can afford or manipulate the situation, I really think it would be very sad.

The spirit of this amendment as I see it or even the spirit which let the Committee to put it in there was to ensure that whoever has something good to say has access to a news media that will put it right. Access does not mean affordability, we are not saying if someone will charge for air time that, therefore you have it free without paying for it, no! If you want to advertise whatever you are standing for, that you have to get advertisement free, no! We are saying, given the media - because they have their rules - if you can subscribe to those rules, you really have access to them. So, Madam Chairperson, I really would like to support Hon. Rukutana's amendment or whichever other amendment will ensure that people feel Ugandans can use all the facilities that are accessible to all Ugandans. Thank you, Madam Chairperson.

**THE DEPUTY CHAIRMAN** Just hang on, I am sorting out something. Hon. Dick Odur, I think this paper is not very clear, you are quoting Article 92 Clause (1) and you are saying "*all political organisations in an election shall be accorded equal access to and use of political media*" but then Article 92 (1) is: "*the Electoral Commission shall ensure that elections are held...*" I do not see the consistency of this.

**MR. ODUR:** Sorry, it is Clause (6), the clause we are discussing now not Clause (1).

**THE DEPUTY CHAIRMAN:** Hon. Delegates, I think we are running into a debate which has no head or tail. Hon. Rukutana had his Motion which was improved on by Hon. Owor then somebody moved for deletion then I see another one coming on talking about political parties and so forth. So let us have a procedural discipline and perhaps deal with Hon. Rukutana's Motion first. Either we accept it or not and then we move.

**MR. OBUA OTOA (Erute County North):** Madam Chairperson, I just would like to remind the Chair that according to our procedure, I think we should deal with the one which talks about deletion first because it departs furthest and then we can deal with others in that sort of order of how far they depart from the one which is proposed by the Committee. So we should deal with the one which deletes first.

**MR. OMARA ATUBO (Otuke County):** Madam Chairperson, I would like to urge you that looking at the mood and the amendments which are coming in a rather hurried and disorderly manner, the Members may need time to put up their amendments in order. So you may wish to use your power and discretion, Madam Chairperson, to adjourn the Assembly until tomorrow so that it gives us time to sort out all these amendments and put our arguments in order so that we can make progress for tomorrow.

**THE DEPUTY CHAIRMAN:** I think you are right Hon. Omara Atubo and that is why I had indicated that we are debating something which has no head or tail and we are finding a problem of where the tail is or where the head is. So I agree with Hon. Omara Atubo after all, it is 6.00 O'clock, we adjourn until tomorrow. We shall start exactly at this point. We stand adjourned.

*(The Assembly rose and adjourned until Friday, the 26th of May 1995 at 9.00 a.m)*