



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 30TH NOVEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2524]

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Wednesday, 30th November, 1994.

The Assembly met at 2.30 p.m in the International conference Centre, Kampala.

P R A Y E R S

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

(The Assembly was called to order).

COMMUNICATION FROM THE CHAIR.

THE CHAIRMAN: I do not have any Communication from the Chair so let us proceed.

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

CHAPTER ELEVEN FINANCE

ARTICLE 178 - TAXATION.

THE CHAIRMAN: Hon. Delegates, yesterday we did agree on the procedure to be followed. We agreed that we shall utilise the Report of Committee Three and in particular Appendix 1 where we have a report of the Committee on Article by Article. The first part we are dealing with relates to Finance as you can see from the Order Paper. The Clerk has called Article 178 as it appears in Appendix Three. As you do recollect the Chairman of the Committee stated that they had re-organised and reduced on the various Articles and Clauses in the Chapters concerned. And now Chapter Eleven was reduced in accordance with the report and therefore we follow that instead of the text which appears in the original draft which was before us and which we referred to the Select Committee.

I will be doing it this way. The Clerk has called Article 178 on Taxation. In this Article we have a number of clauses including a new clause. What we will do is to go clause by clause and I will be calling upon the chairman of the committee to report as to the rationale either behind the retention, amendment or a decision to recommend a new formulation and then it will be available for debate then we pronounce ourselves on that clause and we go on to other clauses and then finally I will come back and put the question on the article either as amended or in conformity with the recommendations. Am I clear on that procedure?

DR. ODUR (Dokolo County): Thank you, Mr. Chairman. I was under the impression that where there is an amendment, there would be a formal Motion by the Committee which will then raise a debate on that particular amendment so that justification is given for whatever the decision the committee gave. This was my understanding of the procedure. Could you clarify to me if this is the situation?

THE CHAIRMAN: The Chairman of the Rules and Orders Committee heard that and can he react before I say anything. Did you hear what Hon. Odur said. Hon. Omara Atubo?

MR. OMARA ATUBO: Thank you, Mr. Chairman. Mr. Chairman, we are at the consideration stage and we would be governed by the provisions in rule 48 and in particular, subrule (5) which says "*The Clerk shall call the number of each article in succession...*" and if we go back to Select Committees, which is Rule 37, particularly sub-rules (5) and (6). It says, "*A Select Committee may propose amendments to Articles of the Draft Constitution relevant to the subject being considered by the committee*" and (6), "*Amendments to articles of the Draft Constitution recommended in the report of the select committee may be moved*" - and the emphasis is "*may be moved*" - "*at the appropriate time by the chairperson or a member of the committee*".

Mr Chairman, reading this sub-rule together with sub-rule (5) of rule 48 of the Consideration Stage which says "*The Clerk shall call the number of each article in succession*", that means if you go back to the Draft Constitution and say we are in Chapter Eleven, Finance and you call Article 178, then the Chairman of the Select Committee 3, if there is an amendment, he will be able to move it at an appropriate time that is likely in Article 178 Clause 1, there is no amendment and I believe that will be passed, if there is an amendment as we go on in succession, then the Chairman will move that amendment at the appropriate time. Mr Chairman, I think that is the relevant provision. Thank you.

THE CHAIRMAN: So, there is no conflict there really because in other words and for the benefit of Members, although the rules do not say that where there is no amendment the Chairman should not move it, it would be good if the Clerk calls the Article because that is what the rule says. We are discussing article by article but articles have clauses in them so

the Chair says then that we are now at clause (1) and we discuss Clause (1) and if there is no amendment to it, it stands part of article Eleven and then we shall eventually come back to the full article to put it as amended or as approved but for the benefit of Members, there must be a reason why the Members felt in Select Committees that Article 1, I mean Clause 1 should go unchanged. So, for me now, the Clerk has already called 178, (1) will then say we go to Clause (1). The recommendation there is that Clause (1) should remain as it is and Members are free to discuss it. I will now call upon the Chairman of the committee merely to state why in their view, that article should stay then we solve that clause then we move from there.

MR. KABERUKA (Ndorwa County West): Thank you, Mr. Chairman. On Clause (1) of Article 178, we had only one amendment and that amendment sought to introduce the word "levy" so that the clause would read that "No tax or levy shall be imposed except under the authority of an Act of Parliament". During the discussion, Mr. Chairman, Members were of the view that the word "levy" and "tax" mean more or less the same and therefore since there was no other amendment, we passed the article without inserting in the word "levy".

THE CHAIRMAN: Hon. Delegates, Clause (1) of 178 reads "No tax shall be imposed except under the authority of an Act of Parliament" and then we go on from there.

MR. ABU MAYANJA (Busujju County): Mr. Chairman, I thought that the chairman of my committee had raised his hand. Perhaps I would rather prefer that he speaks first. That is Committee No. 4. Hon. Katenta Apuuli.

MR. KATENTA APUULI (Conservative Party): Thank you, Sir, Chairman. Mr. Chairman Sir, I would like to move an amendment on this article and clause. - *(Interruption)*.

THE CHAIRMAN: I see there is a point of order. Hon. Guma.

LT. COL. GUMA (Bukanga County): Thank you very much, Mr. Chairman. We sat here before we formed the committees and I think Hon. Katenta Apuuli will know that I had interest in his committee. I have been visiting him. I do not know whether it is

in order for him to come back here when he had all the time to visit these committees, to give in his proposals, unless we are thinking that this one is a perpetual job of writing a constitution. Is he in order, please? Thank you very much, Mr. Chairman.

AN HON. MEMBER: Information!

THE CHAIRMAN: Well, you see, he has raised a point of order and those who are raising their hands are out of order because you do not make speeches on a point of order before the Chairman rules. The point being raised is fundamental, the Member is saying, in other words that the material from our committees should not be interfered with - *(Interruption)* - I have not ruled yet, I was only getting the understanding of his point of order. I think what we did was to say, let us adopt the other methods of work, what comes from the committees are a report to the plenary. the plenary is entitled to agree or disagree with what comes from the report but that is said with caution because it has to be really a very serious departure otherwise we jeopardise the work which has been going on in the committees. There must be serious reasons why we should find ourselves, may be, fully disagreeing with what has come from the committees but otherwise, from the rules as they stand, the plenary has received a report and it is entitled to discuss it and agree or disagree with it. Now, Hon. Katenta Apuuli says he would like to move an amendment to Clause (1). I think the procedure we shall have to adopt is this that when an amendment is raised and if that amendment was raised in the committee and was either discussed and rejected or modified, we shall be seeking the guidance of the Members of that committee so that the House is fully informed that what is being raised had been raised so that we do not have people coming here with matters which they raised and they were fully discussed and now they are trying to have a second go. To have a second go may be we shall have to ask our Legal and Drafting Committee and the Rules Committee as to whether we can not set ourselves a criteria for re-opening so that we do not do double work, work which was done in the committees is again brought here and repeated and we again lose time and make nonsense also of the good job that has been done in our committees.

DR. SEMAJEJE (Lwemiyaga County): Thank you, Mr. Chairman. I understand what you are saying is clear and fair but even when we have amendments to these recommendations, don't we

first circulate these amendments, Mr. Chairman? Shall we just be bringing the amendments in an ad hoc way like this and can this work?

THE CHAIRMAN: Of course, it can just work whether it is desirable or not is a different matter. The amendment can be brought here but whether it is desirable or not is a different matter. As to whether it can work, yes, someone can read an amendment and we discuss it but what amendment to Articles? If we were to say that all of them can go back and be re-written, it may cause our work to be delayed but if there is an amendment, the amendment should be reduced in writing and then be given to the Chair so that we have it here and it can be, if Members so wish, circulated to Members but otherwise some of these amendments can be handled right on the floor otherwise how do we proceed and we were doing so before. Now, Hon. Katenta Apuuli could we hear you first before we decide whether you should move the amendment or not.

MR. KATENTA APUULI (Conservative Party): Thank you, Mr. Chairman. I am seeking to delete Article 178 Clause (1) and in its place, insert the following: "Subject to the provisions of this Constitution, no tax shall be imposed except under the authority of an Act of Parliament." Mr. Chairman, I beg to move.

THE CHAIRMAN: What Hon. Katenta Apuuli is suggesting is not so much deleting this really. He is inserting immediately before the present sentence the words "Subject to the provisions of this Constitution..." That is all he is trying to do, the rest seems to remain as it is. Is that seconded? Okay, I can see many seconders. Now, this is not a drastic amendment in so far as changing the text is concerned but may be the import could be different. Now, could Hon. Katenta Apuuli give us his reasons why he thinks it should change?

MR. KATENTA APUULI: Thank you, Mr. Chairman. Mr. Chairman and Hon. Delegates, we in Committee Four are still considering finances of the local government and by our rules of procedure, we are bound to follow decisions that have been previously arrived at in considering articles that come ahead of those that we follow afterwards and because of that constraint, it will be difficult for us to make any recommendations that require or enjoin Parliament to authorize local governments to impose taxes. It is for this purpose that I am seeking to move

this amendment so that when Parliament is considering authority to allow local governments to impose taxes, we are not confined by what would have been passed here to stand part of the Constitution. That is basically the reason why I am seeking that we add the words "Subject to the provisions of this Constitution" in order to be able to accommodate us in Committee No. 4 to enjoin Parliament to allow local governments to impose taxes especially in areas where local governments enjoy exclusive supremacy over the administration of certain subjects. We have developed a schedule that we shall recommend to you eventually that the Central Government has exclusive rights in certain areas and jurisdiction in certain areas and local governments have either concurrent or exclusive jurisdiction in certain areas. It is in those areas that are pertinent to local government that we wish to seek permission to allow Parliament or to request Parliament to allow local governments to be able to impose taxation. Now, if we merely said no tax shall be imposed except under the authority of an Act of Parliament, you stop us being able to request the Constituent Assembly to enjoin Parliament to allow local governments to impose taxes. Mr. Chairman, I beg to move.

THE CHAIRMAN: Now, before Members finally consider this, I think the fears of the Mover arise from Rule 48 sub rule 17. No amendment shall be made which is inconsistent with any article already agreed upon by the Assembly, and so on. Now, what the Mover has explained is that they may be proposing to say that local authorities and governments may collect or impose taxes and he is saying that if 178 is not modified the way he proposes, then their subsequent decision to say that Parliament can authorize local governments to impose taxes would be negating 178(1). For the guidance of some of the Members who may not be familiar with some of these intricacies, the question arises whether what they propose to do would actually be inconsistent with 178 (1) or would be a mere derogation of 178(1) because derogations have been allowed in the Constitution making process but the rule does not say which we derogates from. In other words, if you say Parliament can, under its authority by an Act, impose a tax, it can also by its Act authorize someone else to impose a tax. Now, is it derogating or is it in conflict? So I thought Members should have this in mind as we debate this Motion.

DR. ODUR (Dokolo County): Thank you, Mr. Chairman. When we look at the provision for

finances of a district, that is Article 213, I think there should be no worry because even in case of taxes for or to be levied by district councils, the provision intends that it should be Parliament to provide laws for that exercise as per Article 213. So, I do not see any contradiction there.

MR. TIGWEZIRE (Bunyangabu County): Thank you, Mr. Chairman. Mr. Chairman, indeed I can see the fears of the Mover but then when we say the authority of an Act of Parliament like you have just told us, indeed there can be an Act of Parliament empowering a local authority to collect taxes. So I think there is no worry here, when we say by an Act of Parliament, it covers everything. There can be another Act of Parliament empowering local Governments to collect taxes. So, Mr. Chairman, I think there should be no fears there.

MR. KIRENGA (Mityana North): Thank you very much Mr. Chairman. Mr. Chairman, I disagree with the previous speakers who said that the provisions of this clause would empower local governments to impose taxes if there was an Act of Parliament passed to that effect because we intend to give powers to the local governments which cannot be taken away by Parliament. The powers of the Local Governments will be so strongly entrenched in the Constitution that they cannot be taken away, they will be entrenched in this Constitution. So we need actually to put it in the Constitution that Parliament has no power to take those powers away. So I support the amendment by Hon Katenta Apuuli.

MR. WASSWALULE (Rubaga Division North): Thank you very much, Mr. Chairman. I support this Motion and it is quite different from Parliament passing a law. What we are trying to do here is to have the powers of local government units derived from the Constitution, they are not going to be subjected to Parliament, not subjected to Government but the local government units themselves will have substantive powers. So in this particular respect as opposed to the borrowed powers that had been in the Draft prior to whatever amendments we might make, we are trying to ensure that the powers are substantive, they are real, they are not just imaginary. So in that respect, Mr. Chairman, I support this Motion.

MR. MUSUMBA (Buzaaya County): Thank you very much, Mr. Chairman. Mr. Chairman, I do not see anything by way of a fundamental change to

what is being proposed or to what exists in 178 (1). 178(1) is simply saying that tax will not be imposed unless there is an authority of an Act of Parliament. The meaning of this, Mr. Chairman, is that whatever Committee 4 passes, if it said for instance that Stamp Duty on transfer of property in a certain local authority will be subject to tax by the local authority, still Parliament will have to sit and pass a law setting out the modalities under which that provision in the Constitution - that particular tax will be administered. It will, for instance, set out the rates, it will for instance set out which property will be subject to Stamp Duty. By all means there is no way you can put a provision in the Constitution which will in effect provide for the administration of the tax. That process, Mr. Chairman, will have to be replied to by Parliament which will put in place the laws that will govern the principle set out in the Constitution. Now, therefore, the provision as it stands in 178 provides sufficient ground upon which anybody seeking to implement a principle decision set out in the Constitution will be governed. Mr. Chairman, in my view, the amendment is not a waste of time, it is superfluous. I beg to oppose it Mr. Chairman, it is redundant.

MR. KAYONDE (Gomba County): Mr. Chairman, as a Member of Committee Four, what we are discussing now on matters of the finances of the local governments or the districts is that we feel there should be powers, Constitutional powers, given to a district to levy taxes by their rights not to be subjected to an Act of Parliament. For instance, Mr. Chairman, we are saying for instance Import Tax, that could be an exclusive right of the Central Government but Graduated Tax, as even of now, it is a prerogative of the Local Government. So here we are - I am supporting this amendment because we feel there should be - the districts should be given authority, Constitutional rights to collect taxes which are specified. Constitutionally because we feel Parliament may at some point hamper the district authority if we do not specify and in fact if we subject this to Parliament, Parliament may even withdraw those rights if we do not specify what taxes can be collected by the districts and what can be collected by the Centre. So I think, Mr. Chairman, the debate in Committee Four is still continuing and this amendment is to allow this Assembly, should we recommend and adopt what we are proposing, then we shall not have to come back to this Clause. I support this amendment.

MR. WANENDEYA (Budadiri East): Thank you very much, Mr. Chairman. Mr. Chairman, we seem to be rubbing shoulders for no good reason. If you look at the original Article 178 and what is being proposed by Hon. Katenta Apuuli, except for the words “*Subject to the provision of this Constitution*”, you find that the rest of the Article is just the same and even when it was approved in Committee Three, “*No tax shall be imposed except under the authority of an Act of Parliament*”, Mr. Chairman, there is hardly that much difference at all. The only thing, Mr. Chairman, is that in the last Constitution and I think it is still the law that District Administrations can propose a by-law and that by-law is taken to the relevant Ministry and when the relevant Ministry sees it fit, it approves but if it is entrenched in the Constitution like it is being proposed by Hon. Katenta Apuuli, let us go ahead and abandon the one on Committee Three because I was a Member of that Committee but we are trying to rub shoulders for really no good reason and this should not take a lot of our time. I beg to support the amendment Mr. Chairman for the sake of good order in moving forward. Mr. Chairman, I thank you.

MR. MULONGO (Bubulo County East): Thank you, Mr. Chairman. Mr. Chairman, I speak also as a Member of the Committee. We did consider amendments to this effect but still resolved and recommended to the plenary that 178 remains as it stands in the Draft. Mr. Chairman, first of all, as other Members have said, there is no fundamental difference between what the honourable has suggested and what exists as expressed in 178(1). When you look at sub-article (2), inconsistency is well catered for. There is nothing which is inconsistent to this Constitution that can take precedence of what is passed in the Constitution. So anything that is passed in other Chapters, I am sure will have to be in line with the rest of the Articles or else they are inconsistent. Mr. Chairman, whether this matter has to be constitutional or has to be left to the legislature, when you look at the nature of taxes, taxes depend on the programmes of the government in the day, depending on the economic atmosphere. This one will change with time, the world economic order changes. There is no way you can just make this constitutional as if things will not just change. So the regulation, therefore, should be left to Parliament to change as the need arises. So I think this should be left to the legislature and I think at this juncture I would like to implore the Members that we should not lose faith in our Parliament before it comes into effect. We must have faith in our Parliament and I

am sure most of us will end up in Parliament unless we are losing faith in advancing ourselves, the legislature will do a good job. I do not think they will begin doing things contrary to what we wish to have here. So, Mr. Chairman, I stand to oppose the Motion that 178 as it is sufficient and that this should be left to Parliament. I beg to move.

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman, my contribution is partly a clarification from or seeking clarification really. The way I see it is that nobody is saying that local government should not be given powers to tax people. I also assume that nobody is saying that the supreme authority over taxation in the country is in Parliament. Mr. Chairman, is it now not a function of the Legal and Drafting Committee to bring the two together? Because when you say we vote that it should be subject and another one says it should not be subject, are we on the gist, are we on the principle or we are voting on interpretation and are you expecting me as a non-lawyer to vote on a point that is a matter of legal interpretation, whether this one contains the other? I seek that clarification, Mr. Chairman.

THE CHAIRMAN: Well, I will ask Hon. Abu Mayanja to use his legal wits and comment on that.

MR. ABU MAYANJA (Busuju County): Thank you, Mr. Chairman - *(Interruption)*

THE CHAIRMAN: There is clarification sought, Hon. Abu Mayanja by Hon. Ben Wacha.

MR. ABU MAYANJA: But I had not opened my mouth.

THE CHAIRMAN: No, I think he was following on to seek clarification on the point raised by Hon. Bidandi Ssali.

MR. ABU MAYANJA: But I am going to make some clarification on that point if Hon. Ben Wacha can be patient for a minute.

MR. BEN WACHA: You could do both, Sir.

THE CHAIRMAN: Hon. Ben Wacha, I had given the Floor to Hon. Mayanja and he does not seem to be taking clarification at this juncture, let us listen to him then you will come back if it is necessary.

MR. ABU MAYANJA: There are two Articles, Mr. Chairman. 178 which should be read in conjunction with 213. 178 deals with general powers of

taxation in the country and says "No tax shall be imposed except under an authority of an Act of Parliament". Now, 213 Mr. Chairman, tried to make a provision for district councils, it says that "Parliament shall by law provide - for the taxes that may be levied, collected or appropriated by a District Council ..." even including those which may be collected by the District Council as an agent of the Central Government and passed on to the Central Government. The Committee which is dealing with the Local Government matters of which I am a member is considering this matter as our Chairman has already informed this August House. The question which is being considered is that the power of the District Councils or Local Government Councils to levy taxes should not exclusively be derived from an Act of Parliament, that there should be areas - the Committee has not yet decided but that there should be areas where powers to impose taxes will be exclusively that of Parliament and areas where local governments should, independently of Parliament, be able to levy taxes and the reason for that is that under another Article, I think 211, our Committee will be recommending to the plenary that there should be a division of powers, some of which should be exclusive to the District Councils and where exclusive powers have been imposed on District Councils by this Constitution, then this Constitution must make some form of provision for these Councils to be able to raise finance to meet the obligations which will be imposed by this Constitution and though the powers must derive from the Constitution.

Now, that being the case, therefore, the reason for making the Article 178 subject to the provisions of the Constitution is that in the event that Section 213 provides that Districts may be able to levy some taxes independently of Parliament, then that will be provided for. You would have made this Article not inconsistent with the other. Mr. Chairman, I do not know whether this helps but really the fundamental problem - because it is a matter of fundamental importance, the fundamental problem here is whether District Councils as organs of Local Government shall be empowered by the Constitution to levy taxes in some specified fields or areas or whether they shall be without that power and wait for Parliament to make laws to enable them to do so and that is the matter of importance and it is still being considered by the Committee and I think it is unfortunate but there it is, because if we pass this as it is, we may bring something which may be inconsistent with it. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, I can see from that explanation that the work in Committee 4 in dealing with the financing of Local Governments, the trend seem to be leading to a situation which, I think, the Chairman of that Committee was worried about. May I suggest that we stand over this particular clause and wait until we have seen what has come out of Committee 4 then we can deal with the other provisions of that Article. What do you think of that?

MR. ABU MAYANJA: Excellent.

THE CHAIRMAN: Hon. Kabugo you seem to have a strong view. Now, I am entertaining comments on my proposition not on the original Motion.

MR. KABUGO (Nakaseke County): Mr. Chairman, I do not see any problem if we allow this amendment because unless the chairman of Select Committee 4 says that Local Governments are no longer allowed to make their own bye-laws but if this is open to Local Governments, the provision that worries our Committee Members would not arise because these people will still go ahead, meet in their District Councils, executive district councils, and make by-laws to levy taxes and the more avenues they think of will be the better to improve on their work performance and financial standing.

THE CHAIRMAN: Okay, but I think there is a misunderstanding. If you take 178 clause (1) as it is and 213 as they are, there is no conflict and under that, Local Governments can be empowered to make bye-laws and may be for the benefit of some Members, it will be important to know that bye-laws, - well we have a structure of legislation like this, you have the Constitution, you have the Statute, you have the regulations and then you have the bye-laws and then rules or sometimes rules at the same level as bye-laws or even higher if they are those rules of courts and other things and so the Constitution is being made today, the Statute should be made by Parliament and bye-laws are made under authority of an Act of Parliament and those are normally made by a body like councils and other subsidiary bodies like boards. Regulations are made by Ministers so that the power is structured that way. Now, under the present situation as it is, Councils would be able to make bye-laws. What I think the Mover of the amendment is saying and is very ably explained by Hon. Abu Mayanja is that there is a thinking within Committee 4 that certain of the taxes that are to be

collected by or imposed and collected by Local Government, that authority should emanate from the Constitution directly rather than by an Act and I was saying that if that is a very strong thinking within Committee 4, would it not be wise that we stand over a decision on this particular clause until such a time as we know what the conclusion is reached in Committee 4?

MR. RINGWEGI (Padyere County): Mr. Chairman, my mind is disturbed. In light of the explanation you have just given, it would appear that Committee 4 intends to empower District authorities or local authorities to be more powerful than the Central Government. In other words, we are saying that if the District Councils can make bye-laws deriving their power directly from the Constitution, would it not in effect mean that the District Councils are more powerful than the national Parliament? In that respect where the law to levy tax is concerned, that is the question which is disturbing my mind.

MAJ. TUMUKUNDE (Rubabo County): Mr. Chairman, when we were considering this subject in Committee Three, we agreed that the hierarchy of authorities as you have ably explained shall determine the hierarchy of the laws. We hereby said that Parliament shall still remain the supreme body that makes laws and that any other authorities shall make laws that shall not be inconsistent with the laws made by Parliament. So, Mr. Chairman, we agreed that 178(1) has no conflict with 213. In fact, when you advised, Mr. Chairman, I was of the view that you would come to the conclusion that there is no conflict and both should be left as they are and there is no need for any amendment because what is coming up here is that the Local Authorities, Mr. Chairman, are about to be empowered with permanent and pensionable laws in this Constitution on taxation and we agree, Mr. Chairman, that with a developing economy and many other aspects that have been seen to change in our economic system here, we may need to be changing laws to fit our situation. So, Mr. Chairman, the more reason why we should leave Parliament to continually change laws even affecting the districts. Thank you, Mr. Chairman.

PROF. NSIBAMBI (Presidential Nominee): Thank you, Mr. Chairman. I think the previous speaker is trying to disintegrate us. Hon. Members, you should remember that according to Article 2, the Constitution is the supreme Law of Uganda and shall have binding force on all authorities and

persons throughout Uganda. We have also empowered the people. So in the process of empowering the local authorities, we are trying to determine what will be the source of power in some areas. Will it be the Constitution or will it be the central institutions in this context, the legislature? We are saying that it is not wise to make the Central Legislature the source of power in all cases. I have just completed a detailed survey of the role of the legislatures in this country and I have established empirically that sometimes it has been compliant, sometimes it has been autonomous and I have analyzed the factors which make it compliant, sometimes it is self-interest, sometimes external factors gang with the presidency and bulldozing takes place. There are so many factors which operate on those institutions and this is not confined to Uganda, this is a continental problem.

Therefore, we are saying that under these circumstances, what arrangement can we make to ensure that we have durable empowerment of our local institutions. We are therefore saying that we are contemplating a situation where certain taxes which are peculiarly local will be given to the local authorities and if you examine the Constitution of Papua New Guinea, you will discover that there are certain taxes which are kind of provisional and which apply to provinces, the equivalent now of the local authorities. These include, for example, retail sales, taxes on public entertainments fees for licenses, taxes on land and these can be found in the Constitution itself. So we are contemplating a situation where we might have a similar arrangement and it does not harm because we are creating durable arrangements for empowerment of the people, otherwise we shall simply be talking about it until God comes back. The time has come to empower these local institutions and the people. That is the message we are giving to you and if you oppose it, you may fall in the category of inhibitors of empowerment of the people but I would hope that this Constituent Assembly will be a facilitator of the forces of empowering the people. I beg to support the amendment.

LT. COL. ODONG (NRA DELEGATE): Thank you very much, Mr. Chairman. Mr. Chairman, I am sensing a very disturbing trend here. The argument that the local authorities should derive power directly from the Constitution to me is disturbing in the sense that some time, if you should have a very greedy local authority which will tax chickens, gardens of cassava, granaries, where will the local people have the avenue for redress if you do not have reserve powers

with the Central authority? I would therefore suggest, Mr. Chairman, if Members will agree, we go along with the suggestion you have already raised that let us stay this decision until we have heard what Committee 4 is going to say on this issue. I beg to move, Mr. Chairman.

MR. TIBAMANYA (Kashari County): Thank you very much, Mr. Chairman. Mr. Chairman, so far, we do not know what provisions there will be in the Constitution empowering any other body to impose taxes other than Parliament and in that regard I think we should first decide on those bodies that will be allowed to impose taxes before we subject this clause to this Constitution. In other words, I agree that the clause should be stood over until we find those areas which we shall empower to levy taxes directly. I thank you.

MR. ELYAU (Kalaki County): Thank you, Mr. Chairman. I also find it a problem now. May I be given to know what are those interested taxes that are hidden that we should also know because I know of the normal taxes but I do not see any difference at all because this clause does not exclude anything and, moreover, in Parliament that is where we always get a redress should anybody overtax the citizens. I remember recently, there was some row in some districts about taxation, now who will come in if the things go wrong? So I think we should study that area very much and I also say that let us wait until these people finish their report and we see what is the point burning there. I thank you.

MR. KOMAKEC (Aruu County): Thank you very much, Mr. Chairman. I think we should not start debating Motions which are not really before the House. What we are now thinking about is whether to include those phrases "Subject to the Constitution" which is the only additional thing here. To me, this problem is straight forward and I think we can actually decide on this if we cast our minds on one fundamental issue. When we say, "Subject to the Constitution", we know that it is the Constitution which gives authority or supremacy over taxation to Parliament. Parliament derives its authority from the constitution itself and when it comes to other bodies like local governments making taxation, it is in fact the new clause 213 only which stipulates what Parliament must do according to the Constitution. To me, I think it is a very good amendment, this amendment in fact would enable Parliament to operate within the Constitution. Parliament is not

supreme by itself. In fact any powers any institution or any individual has comes from the Constitution and on that basis, I do not see why that phrase is offensive to Members of this Assembly. So I think that we should allow this phrase in which is an enabling situation. We are only telling Parliament that it shall have the authority but the authority is according to the Constitution. To me, I think that is straight forward and nobody should confuse it with bringing this local government, these are just examples. In fact it is better we debate this one on its own basis - the phraseology on its own basis rather than tie it in with the powers that will be given to local government or not. To me, it is a better phraseology because it tells Parliament, it tells anybody who reads this Constitution that whatever power it has over taxation - over anything, it derives from the Constitution. What is wrong with stating that one?

THE CHAIRMAN: Okay, I do not think it is right to tie two subject provisions to non-subjecting provisions. I think we can only do so if there are other provisions which limit the operation of what we are passing, otherwise it would not be wise to say subject for its own sake and I could hear some Members shouting procedure but I think when a Member has the Floor, we can only take it away from him by a point of order but on a point of procedure we do not.

Now, I think we have a very wide survey on this one. My view really is that a strong case has been made but at the same time, it is difficult for people to say let us vote, subjecting this clause to what they do not know. So I think what we should do is to stand it over and then we shall come back to it after we know what has come from the Committee. I think that is fully agreed. That is stood over and we shall come back to it together with the amendment when they come back with the result from Committee Four. Now, we are still on Article 178, we are now considering Clause (2) and I call upon Hon. Kaberuka to give reasons why they propose to amend Clause (2) as they suggest.

MR. KABERUKA: Thank you, Mr. Chairman. *(Interruption)*.

THE CHAIRMAN: There is a point of order by Hon. Abu Mayanja.

MR. ABU MAYANJA: Mr. Chairman, Sir, in view of the conclusion we have just arrived at, would it not be preferable and in order to stand over the whole of Article 178?

AN HON. DELEGATE: Thank you, Mr. Chairman. Again on article 180 clause (1), we did not have any amendment at all, so was clause (2).

MR. BATEGANYA: Thank you very much, Mr. Chairman. I have a problem with 1(b). It says: *“Where the issue of those moneys has been authorised by the appropriation Act...”* my concern is with the supplementary appropriation Act. The way I have seen Appropriation Acts in action, they tend to be made purposely to cover up the financial indiscipline of the government of the day. It is not necessary that they are going to supply more goods and services that particular year. No, they just supply the same amount of goods and services but instead of operating within the limits that have been authorised by Parliament, they pass tax burdens to the tax payers. So, I feel that we should not constitutionalise supplementary appropriation acts because it will propagate financial indiscipline of future governments and thereby fuel inflation. I therefore propose that we leave out supplementary Appropriation Acts. Thank you very much Mr. Chairman.

MR. ADYEBO: Mr. Chairman, I am sorry that the previous speaker is trying to mislead the House and it is very unfortunate. I cannot imagine a situation where you just leave government expenditure at the will of any government at any one time. It is very important to make it part of the constitution how government expenditures will be met through supplementaries. If we do not do that, then you are going to expose the country to uncontrollable rates of inflation. Supplementary expenditures come about because what is budgeted within any financial year is not possible or it is too small. Take the case of us here, we honourable Members here gathered were given some time within which to finish within the financial year, but because of the task which is enormous before us, what is budgeted for or was budgeted for is going to run out and you need to go to Parliament for a supplementary vote so as to run the activities of the CA without causing inflation. Now my Honourable Brother is arguing that we should not put it in the Constitution. It is very dangerous because you are proposing that government must be free. We must give government free help to just go and spend as and when it has a task to perform. That is dangerous. We go and budget in Parliament, we go and pass budgets in Parliament so that the economy is controlled within the financial year. But if we run out of what is budgeted for, then

we must go back to Parliament to ask for more and in that we go along to control the inflation and hence that is the provision of this - and also the expenditure. So I am advising my brother not to argue dangerously like that otherwise if he becomes a Minister of Finance next time, then I do not know how he will go along. So Mr. Chairman, I am discouraging his argument and I am strongly advising that let this provision stay as it is. It is very healthy, I do not see any contradiction here in 180 (a)(b) and even (2). I do not see any contradiction and I would also urge my Colleagues not to spend a lot of time here because even those Honourable Members who deliberated in committee 4, I understand that there had been some of them who are financiers, some are economists and so on and they have made all these recommendations and unless we have really very wide deviation from their presentation, we should not spend a lot of time here. I may urge you, Mr. Chairman, with due respect, to optimise our time by maybe putting the question to 180 (a)(b) if not (2). Thank you very much.

MR. GEORGE KASAJJA: Mr. Chairman, I am just giving more information on budgeting. In the literature of budgeting Mr. Chairman, supplementary is part and parcel of the activities that go under that exercise. Now when Hon. Dick Bateganya says that supplementary should not be part and parcel of the government act, it is not proper because when we are budgeting, we do not get what we call an ideal situation. We normally use what we call estimates. Now when you are estimating, what comes out is what we call actual. The actual expenditure is what normally is guided by the amount of the supplementary. Mr. Chairman, I want even to continue to inform him that even the developed countries - USA, UK, it is also part and parcel of the government activity that supplementaries have to be there. This fear that it will encourage over expenditure or lavish expenditure, I think that one can be controlled by the Parliament and right now, we are controlling that activity by the provisions that we normally pass and even by the committee which do stand in the Parliament like the Public Accounts Committee. So what we can do in order to avoid his fear is to strengthen the Public Accounts Committee and so I would wish to end by advising that it is part and parcel of the budgeting activity, Mr. Chairman.

THE CHAIRMAN: Hon. Delegates, I think this has been properly clarified and the recommendation is that clause two should remain as it is. I see no

objection, clause (2) is approved. Clause (3), I call upon the chairman of the committee.

AN HON. DELEGATE: Thank you Mr. Chairman. We had an amendment on clause (3) which sought its deletion. The reasons being that the Auditor General, since he performs postmortem, he should not at the same time approve expenditures before they are expended. He should not scrutinize the expenditures before spending. But the movers were informed that with this safeguard, government has been able to stop so many forgeries and therefore save government funds. So when that motion was defeated, there were no other amendments and therefore we carried it also. Thank you.

THE CHAIRMAN: But I see you are also seeking to amend it.

AN HON. DELEGATE: No, we simply replaced the word Uganda Audit Commission by Auditor General. That one I think will come later when we reach the Auditor General's report.

THE CHAIRMAN: Of course this puts us in difficulty. You have not yet told us why you have changed from Audit Commission to Auditor General and yet the words Auditor General are supposed to substitute.

AN HON. DELEGATE: Is it worth that we should introduce that here or we wait for that section first?

THE CHAIRMAN: In what article does it appear?

AN HON. DELEGATE: Because what did happen, Mr. Chairman, we stood over this section until we dealt with the part which deals with the Auditor General.

THE CHAIRMAN: Now, what we can do is approve the substance in principle and if we agree with your later formulation that there should be Auditor General, then the other things can fall by the wayside and change. But Hon. Mulenga seems to have some good idea.

MR. MULENGA: Mr. Chairman, I am seeking more explanation. The chairman Select Committee Three says clause (3) was retained because of an explanation that government has used this method to curb some forgeries or thieves. But we are drawing

a constitution for the future. It did not require a constitutional provision for government to ask the Auditor General to audit ahead of time. Is it necessary that now it must be institutionalised, put in the constitution for ever whereas maybe in future, there will be found other ways of preventing forgeries? Because to me, it looks odd that an auditor should audit before the accounts. As an ordinary person, I understand an auditor to audit what has been done not to preempt.

THE CHAIRMAN: There is in some jurisdiction an institution called the controller and auditor general. Is it not meant that he is also the one who authorises the issue of money out of the consolidated fund although then later on he audits it? I think this is what he is trying to look at.

MR. RUZINDANA: Thank you Mr. Chairman. Mr. Chairman, the reason the Auditor General does this is not for catching thieves. He does it as an agent of government. And so when he is approving, he is approving to see whether the funds which are about to be spent are spent in accordance with the authority of Parliament and that is all that he is doing. He is doing it as an agent of Parliament because Parliament cannot do it otherwise. That is the major reason Mr. Chairman and our Auditor General here acts as a controller and Auditor General. Maybe if there may be need to add that other title to him but it is in that capacity that he acts, not in the capacity of catching thieves. Thank you Mr. Chairman.

MR. ABU MAYANJA: Mr. Chairman, I am speaking from memory but it seems to me that the idea that cheques paid out by the government before they are paid out are first scrutinized by the Auditor General is new. It is something which I found I think after exile. It was not here before. And I tend to agree with Hon. Mulenga, it is something which was, I think a device which was imposed on us by the new method in which people have learnt to steal government money. It does not appear to have been part of the proper functions of the Auditor General to authorize expenditure or to do that kind of thing. He was auditing accounts after expenditure and then reporting to Parliament and Parliament through their committee would then come and look at. The auditor deals with history, he used to deal with history. Now he anticipates events.

THE CHAIRMAN: Yes, I think Hon. Mayanja, you may not have properly read that particular

provision as it reads. "No monies shall be withdrawn from Consolidated Fund unless such withdrawal has been approved by the Audit Commission". That is payment out of the Consolidated Fund. Government cheques are not paid out of consolidated fund. They are paid from operating accounts maintained by various Ministries. But those which are paid from Consolidated Fund are specifically appropriated by various pieces of law which, say, either salaries of judges or like the money payable to us as you run the services of this Assembly. So, I think here they are talking about the transfers of money from the Consolidated Fund to the various operating accounts. What you describe was a new development which said you authorize payments but it is the only mechanism for checking whether those cheques also being printed on other government accounts are correct or not and whether taxes on them have been paid. I thought that was the function which is in relation to a different transaction than the original one of authorizing withdrawal from Consolidated Fund. I could be corrected in this.

MR GEORGE ZZIWA: Mr. Chairman, I would also like to give information to the Delegates that the impression that an auditor has to do a postmortem is wrong. An auditor has quite a number of various methods of auditing the books and one of them is what Hon. Mayanja has been saying, what we call the pre-audit. And then we have what we call continuous audit and these two strengthen the whole practice of auditing. So it is not only at the end of the year or at the end of a particular period that an audit is carried out. So, Mr. Chairman, a continuous audit is now being applied by this clause (3) whereby say, whenever money is being withdrawn from the Consolidated Fund, the Auditor has to keep an eye on it and it is quite in order Mr. Chairman.

MR. SSENDAULA: Mr. Chairman Sir, I appreciate all the explanations that have been advanced in this matter and the practice which is operating now is exactly what most Hon. Members have explained. But on a further scrutiny of this issue, particularly this stage when we are writing a constitution, I find that it has its own weaknesses. I would have felt that in this constitution now, we should have either created another office to handle this exercise of pre-auditing, because we are talking about pre-auditing. We are talking of safeguarding our money. The Auditor General is the one who is supposed to audit the accounts of various bodies at the end of the financial year when the expenditure is taking place.

In other words, it is the same Auditor General who carries out the postmortem, the checking whether the expenditures were done properly and if it is the same Auditor General who pre-audited before the money was disbursed, I find a weakness because he was already part and parcel of the exercise. So if we have retained almost the same people on the same tables continuously, you will find that you will be losing more money because I will know for example, that I would like money to go through this kind of Ministry and it will go through that and I authorize initially and when it comes to auditing, I am the same party. So I would stand to be corrected over this matter. Me, I feel that we had to remove the Uganda Audit Commission but we should have replaced it with another office but not the office direct of the Auditor General. The Auditor General should come later to carry out the postmortem. This is my view.

MR. KABUGO: Point of information. Mr. Chairman, consolidated funds are not the same as going to a commercial bank to draw one million or 100,000/-. A consolidated fund is a place where all the money or revenue from Uganda is kept and the Auditor General is supposed to see how much is being withdrawn and how much is being put there. So in this case, Mr. Chairman, there is a need and there are some specific forms which the Auditor General has to sign before even the Minister for Finance or his Minister of State surrenders or release those funds.

THE CHAIRMAN: In other words, I think there is confusion. We are talking about two things. Is it not? Some Members are talking about government payments which are ordinary payments and payment out of the consolidated fund. (*Interjections*). Well, they are all one and the same but unless you want to say there should be internal auditors in various departments and they are there.

MR. WASSWA LULE: Thank you very much, Mr. Chairman. The import of this clause (3) implies that the Auditor General actually approves the transactions, all the transactions. I think it is important to understand that every single transaction, the Auditor General, whatever you wanted to change the name to, that he would approve all the transactions. Now such a responsibility is normally for the financial managers. The auditors are there to check the financial managers. Once you fuse the two responsibilities, the auditor is in a very difficult position because he will no longer have any moral authority later on to come back to audit or to criticize what the

financial managers have carried out. In the profession, we talk about auditors and we say we auditors - at least the professionals, we are watch-dogs but not policemen. So, for us we are there to - while we oversee what is going on, we are not involved in the day to day transactions.

THE CHAIRMAN: But I think Hon. Delegates, we are arguing in circles. The sequences as I understand them is this that the clause is saying all monies in form of revenue on behalf of government of Uganda should go into the consolidated revenue fund. And then it says, to get money out of that fund for any service, there must be an Act of Parliament, an Appropriation Act which says so much for each department. But also under the Public Finances Act, the Minister of Finance is required to appoint an accounting officer for each Ministry or Vote. Now the legislation would say the Appropriation Act would be an authority to pay out of the consolidated fund to the finance managers and the finance manager are really the accounting officers of the various Votes. So, the release of the money from the consolidated fund is what we are talking about and then the finance managers expend and are called upon to answer by the Public Accounts Committee on how they used the money upon the Auditor General having checked whether they used the money properly in accordance with the law. But what you are talking about is at the narrow point which (3) is talking about and this is what traditionally gave the Auditor General the additional title of controller. That the controller would only - you see the Statute would read, this is to authorize the Minister upon a warrant under his hand with the approval of the controller, to issue out of the consolidated fund so much. So the warrant would read, "I so and so, hereby appoint you accounting officer". Then the next stage would be, "I hereby authorize the issue from the Consolidated Fund so much money to account so and so for the services of" - then the Ministry is named and the accounting officer is named. We are at that narrow point but not on the expenditure by the accounting officers who are appointed for purposes of each Vote. I do not know whether I understand it correctly or not.

MR. MULONGO (Bubulo East): Mr. Chairman, thank you for that exclusive explanation. But the question or the principle of internal control and check-up and balances must be addressed here. While the Auditor General is a watch-dog, this additional function makes him look at the remains of

the expenditure as drawn from the Consolidated Fund. But eventually, he is the same person who has to express an opinion at the end of the year as to how the finances have been utilised in terms of drawings on the consolidated fund. Mr. Chairman, the drawings on the Consolidated Fund do not just go to finance managers as such but they also go to cater for administrative expenses like salaries and so on, public service and all these others. That is what it is. So Mr. Chairman, it is very crucial that we cannot give conflicting functions to one position to do the pre-audit, at the same time to do the proper audit that is the postmortem. This is what is happening and as Hon. Ssendaula has put it and Hon. Wasswa Lule, this is an issue that we have to rectify now. As we stand today, the Auditor General's office is handling a lot of pre-audits. Even of these small, small things. All cheques have to go down to the Auditor General's office and then later on, at the end of the year, he is the same person who expresses an opinion of these expenditures. Now, if this is the same person doing this, you cannot avoid conflict of interest and opinion once it is the same office doing the same jobs. So Mr. Chairman, I think it is very crucial that we either separate the office in terms of functions or we do not give the same person the two functions.

DR. BYARUHANGA: Thank you Mr. Chairman and thank you for your elaborate explanation. But Mr. Chairman, even looking at that level alone without looking at the everyday expenditure in the Ministries, this clause makes the auditor general the treasurer of this country. Whereas we would have wished that the Secretary to the Treasury be the treasurer, the Secretary to the Treasury as usual appoints his accounting officers in the Ministries and then they spend the money as directed by Parliament and then the Auditor General comes to find out whether these gentlemen are spending the money properly. But when we bring this Auditor General and get him involved in pre-audit, we get this confusion which Members have clearly talked about and which confusion is actually pertaining even today because for example, in the Public Accounts Committee of the NRC, we have had cases there where you cannot hope for clear evidence because the very person who is giving you the facts about how the money got lost was actually involved in the loss of the money because he was presently there and this money was getting misused. So, Mr. Chairman, I would like to request this Assembly that we remove this duty of pre-audit or we remove this duty of controller from the Auditor General. Let us give it

to somebody else and I would wish that this somebody was the Secretary to the Treasury. Thank you Mr. Chairman.

MR. DICK NYAI: Thank you very much, Mr. Chairman. Mr. Chairman, I find the confusion here a little baffling. It is as if we cannot conceive of the Auditor General in two capacities. One, he is the father who is keeping all the money. You can give your wife half a million shillings and you release that money. At the end of the month, you ask her to account for it. That would now be the second audit. I do not see them as contradicting or conflicting. Somebody who is going to release money from the Consolidated Fund must know that these requests actually concur with the budgets drawn and who is better than the Auditor General to do that? Mr. Chairman, we are really taking a lot of time on what is normally done because the Auditor General is the chief depositor of our Consolidated Fund. Who else can release the money? Thank you Mr. Chairman.

THE CHAIRMAN: I thought that this matter could be dissolved quickly but it would appear it is generating debate and had been going by way of people making clarifications. But now it would appear we need to be more disciplined really. Does someone want to move a motion that we delete so that we proceed that way?

MR. ROBERT KITARIKO: Thank you, Mr. Chairman. I think there is a misunderstanding. When Parliament has passed Votes, all the Ministries put in what they call requisition to incur expenditure. On receipt of these documents, the Treasury then requests the Auditor General to release this money to the Ministries in accordance with these requisitions and the money is paid to the Bank of Uganda for each Ministry from where the Ministries draw money. So really, the controller or the Auditor General really ensures that money is released to the Treasury for other departments in accordance with the Votes approved by Parliament and that is all.

MR. WANENDEYA: Thank you very much, Mr. Chairman. I would like to clarify as follows. Mr. Chairman, what has been going on in our country is what is getting the debate to take the form it is taking now and Hon. Ssendaula pointed something which has been going on in our country. Mr. Chairman, we inherited this practice from our colonial masters whereby people were not qualified and they came through the ranks as clerks until some of them

became the Auditor Generals and not only that Mr. Chairman, you find that some of the auditors in different departments are posted by the Ministry of Finance to audit and when they are in those Ministries, when they get to steal money, they are transferred again to some other Ministries which makes a very big complication Mr. Chairman. Therefore, Members should know that in order for us to go forward, we should appoint competent and professional people to be accountants and auditors in some of those Ministries. Mr. Chairman, I say this in all sincerity because we have, as the Committee on Economy of NRC, deliberated on this issue so much so that the offices of the Auditor General and the Treasury must be properly scrutinized and maybe at this juncture Mr. Chairman, we better look at the whole procedure and come up with a paper which will make the position quite clear to all the Delegates. I thank you Mr. Chairman.

THE CHAIRMAN: Okay, I think I will now entertain someone who would like to move a motion so that we discuss it, otherwise I will put it this way because of the controversy and the Chairman of the committee was reluctant to move an amendment because we do not yet know whether the word audit commission will be changed with auditor general. I had suggested that we approve clause (3) in principle subject to whatever happens in subsequent proposals. But now there is on the Floor a general confusion. Hon. Kitariko, as far as I am concerned summarised it beautifully and that is what the position is as I understand it. What is confusing us is that along the way, they added an additional job to the Auditor General to review the cheques as they go from Ministries and I think that is what is causing this confusion. But if it was purely for the purposes of releasing money, this is a traditional clause for releasing money. But the confusion is whether we should continue the practice where all cheques of ordinary payments must go through the Auditor General. I think that was decided for two reasons so that the auditor general can check whether those cheques are genuine and the payments are genuine and also whether taxes, if there are large contracts, have been paid. You know like Commercial Transactions Levy and so on and so forth. But that is a different matter. I do not think we can put that in this constitution really. So I would suggest that we approve in principle clause (3), subject to changes when they have - whether we shall call it Auditor General or Audit Commission. On this one I will put the question on the motion moved by the Chairman.

MR. WASSWA LULE: Mr. Chairman, I think if we constitutionalise this clause and as Members of professions, we have some guiding principles. If it is unethical professionally to fuse two particular jobs, I think it will cause a problem for members of the profession to carry out that job. So now if we constitutionalise it to say that every single transaction that comes out from there will be authorised by the Auditor General and you fuse those two offices, I think it will create a problem. Not that Auditor Generals would not necessarily audit transactions at that stage but the element of approving is where the problem is.

MR. BEN WACHA: Sir, I want to inform the Assembly that this is not a new provision. In the 1962 Constitution under section 100 sub-section three, the provision reads, *"No money shall be withdrawn from the consolidated fund unless such withdrawal has been approved by the controller and auditor general and except in the manner prescribed by Parliament."* The 1962 Constitution also provides for the auditing of accounts of Uganda under section 106 sub-section (2) and it reads: *"The Public Accounts of Uganda and of all officers, courts and authorities of the Government of Uganda shall be audited and reported on by the controller and auditor general and for all that purpose, the controller and auditor general or any person authorised by him in that behalf shall have access to all books records, returns and other documents relating to those accounts."* In other words Sir, these two purposes which are being argued by Members have been authorised under the previous Constitutions.

MR. MUSUMBA: Thank you very much Mr. Chairman. Mr. Chairman, I wanted to share some limited experience I have with the Members of this House. Until I came here in this CA, I was working in the Ministry of Finance as their legal advisor. Now, Mr. Chairman, this matter has been explained by you very, very clearly and Hon. Kitariko. The purpose of this clause is based on the following premises. One, all money collected and put on the consolidated account is only released under an Act of Parliament. An Act of Parliament which has already been talked about here sets out how the money will be appropriated from the Consolidated Account. Now the Auditor General, in order for him to have a basis to audit, he must be aware of how much has been released under the law. On that basis, the Auditor General has to know what has been approved, what is being released from the consolidated

account, whether it is in accordance with what was released under the Statute. It is the rationale on which this clause is based. It is not that without his or him approving then there will be no audit or it must constitute a pre-audit. This is to ensure that if 50 billion shillings have been budgeted for the Ministry of Defence, it is in fact 50 billion which has been released and not 30 or 60. So Mr. Chairman, we are just wasting time on this one. It is a traditional clause and it is necessary. It is not a pre-audit as such. Mr. Chairman, I move that you put the question.

MR. ERESU: Mr. Chairman, after a long deliberation, I think it high time you put the question.

THE CHAIRMAN: The thing is this that the chairman said the provision was to continue as it is except for the words audit commission. It was therefore to carry an amendment. But we cannot carry that amendment yet. So I was put in difficulty whether to put this question or to say we approve in principle. So let me put the question that subject to subsequent review with regard to the words "Uganda Audit Commission" appearing in that, clause (3) as it is do stand part of article 180.

(Question put and agreed to).

THE CHAIRMAN: It is recommended that clause (4) as it appears be retained.

MR. KABERUKA: Thank you, Mr. Chairman. Again on clause (4), we had one amendment which sought to add the words *"whichever is earlier"* at the end of the clause so that the clause would have read, *"If the appropriation Bill in respect of any financial year has not been passed into a law by the beginning of the financial year with the approval of Parliament by resolution, the President may authorize the withdrawal of monies from the Consolidated Fund for the purposes of meeting expenditure necessary to carry on the services of government for a period not exceeding four months from the beginning of that financial year or on the coming into operation of the Appropriation Act whichever is earlier"*. And during the deliberation, it was found that the words *"whichever is earlier"* in that case is redundant and therefore it was dropped.

THE CHAIRMAN: Now, to discipline our debate, even clauses, I am now going to call them so that they stand part of articles. Let me now frame it and then you can seek clarification. The question is that clause (4) as it appears do stand part of article 180.

MR. SAM KUTESA: Thank you, Mr. Chairman. Mr. Chairman, I would like to be clarified by the chairman of this committee or any Member of it. I have always had a problem, particularly about supplementary estimates. You can see here that before any Appropriation Bill becomes law, there is authorization by Parliament limiting the level of expenditure that can be incurred without the authority of Parliament. Now when it comes to supplementary estimates, the experience I have seen in government budgeting is that Ministries go and spend limitlessly and they come back and seek retroactive approval of their expenditure. At that time, in my opinion, the hands of Parliament are tied because indeed it is a postmortem and there is nothing that can limit the quantum of supplementary expenditure. Now I am trying to seek clarification from the Members of this committee who considered these clauses in detail, whether we can put a limit as to how much can be spent on supplementary estimates prior to seeking the approval of Parliament. I have always had this problem in practice because when you bring supplementary estimates to Parliament to approve, really many times people just will move a motion of reduction to express their anger and that is all they can do. But the money will have been spent. I am trying to find an appropriate clause, I do not know whether it would be under this one or any other where we can in a way tether the hands of spending officers by requiring them to get approval of Parliament either by resolution. I can see it is possible here before an Appropriation Bill is passed and obviously the intention is that the spending of moneys is limited and subject to the approval of Parliament but I have never found anything that could help us to control supplementary expenditure in a similar manner. Thank you, Mr Chairman.

THE CHAIRMAN: Have you looked at Clause (5)?

DR. MAGEZI (Jinja Municipality East): Thank you, Mr. Chairman. If only I could add a bit on what Hon. Sam Kutesa has been talking about. I think supplementaries cannot be really regulated. We can only, may be, put in a provision that it is with the approval of the Cabinet because it is unknown how much can be incurred and you cannot paralyse the government tying it down to parliamentary approval before expenditure. However, the clarification I am seeking is whether the idea of a Vote on Account is being overtaken by Clause (4) where by Parliament normally sits and they pass a Vote on Account which

is about 10 percent of the budget votes for that particular year and whether this Vote on Account now is being given to be controlled exclusively by the Government if Parliament, for instance, is in recess because by the President authorizing, this is after Parliament has failed to give approval for this resolution.

THE CHAIRMAN: Is someone trying to clarify that point?

MR. MULENGA (Democratic Party): Mr. Chairman, I thought that the approval of Parliament by a resolution is to cover the situation of Vote on Account because the President may authorize - perhaps drafting was a bit upside down. "*The President may authorize with the approval of Parliament by a resolution the withdrawal of money from the Consolidated Fund*". This is what it is saying. They do not use the expression "Vote on Account" but I think that is what it means.

THE CHAIRMAN: But I think Hon. Magezi, it reads exactly like it is, is it not? It is saying "*The President may authorize the withdrawal of money from the Consolidated Fund*" but it says "*with the approval of Parliament by a resolution*" and this is what the crisis has been. You have been passing a resolution not a Statute. Yes, Hon. Magezi, do you still think it does not cover?

DR. MAGEZI (Jinja Municipality East): Thank you, Mr. Chairman. In that case, Mr. Chairman, I have great fears because this withdrawal of funds under Clause (1) -

THE CHAIRMAN: Sorry, but we have not come to that one yet. But you see what you are talking about - the only difference I can see from the present arrangement is that it is lifting the approval from the Minister for Finance to the President. Under the present arrangement, it reads exactly the same except that it says "*The Minister for Finance may authorize withdrawal*" but here they are lifting it to the level of the President. Of course there is what they call delegation but that is a different matter.

MR. NDEGE (Luuka County): Thank you very much. I think under Clause (4) this just limits or covers the Vote on Account. In other words, immediately after the budget, the Government has to spend. So while Parliament is considering the budget, there must be some money which must be appropri-

ated to the various government ministries for them to function. So normally, this is a quarter of the total budget which the Ministers ask for. Now, as regards the supplementaries, I was also afraid that under the old Constitution, the Minister is allowed to spend any money beyond the money which Parliament has appropriated and report to Parliament later on. But I think now, this is covered by point No. 5 which limits every expenditure to the amount which Parliament has approved. So I think the Minister will have to ask Parliament if he needs to exceed the amount which was approved by it. I think both points are covered and in my opinion, it is very appropriate.

THE CHAIRMAN: Thank you but still I want to raise the question. The question as to the level of which the Vote on Account will be sought from Parliament and approved. Should it be at the level of the President?

MR. RUZINDANA (Ruhama County): Mr. Chairman, I agree with you. I do not think the President should be the one mentioned here, we should put the Minister of Finance and secondly, Mr. Chairman, I wanted to clarify that both Clauses (4) and (5) really concerns Vote on Account not supplementaries, a supplementary vote like Hon. Kutesa was talking about. Clause 5 is setting the limit of Vote on Account.

THE CHAIRMAN: No, it is not.

MR. RUZINDANA: Yes, it is, Mr. Chairman.

THE CHAIRMAN: It is referring to Clause (1).

MR. RUZINDANA: No, it is saying that it will not exceed a certain amount corresponding to what was there in the preceding year and that is the normal limit actually of Vote on Account.

THE CHAIRMAN: I think there is a drafting mistake if that is what they intended to say.

MR. RUZINDANA: But Mr. Chairman, maybe I should move that we delete "the President" in Clause (4) and replace it with "Minister for Finance".

THE CHAIRMAN: Is it seconded? Okay, it is seconded so we shall just have to speak against or for it. Now Clause (4), there is a proposal that it should be amended by inserting the word "Minister re-

sponsible for financial matters" instead of the word "President" and it was seconded.

MR. BATEGANYA (Bukooli Central): Thank you very much, Mr. Chairman. I wish to oppose that Motion of substituting President for Minister. Where matters of finance are concerned, especially Vote on Account, we should really leave them to the President to handle because for the first time, after we have promulgated this Constitution, we want the head of state to be fully responsible for the financial discipline of his cabinet otherwise if you leave such a matter to the Minister for Finance, he is going to abuse this facility as they have always done by delaying preparation of estimates due to either incompetence or laziness such that they drag on until or they do it deliberately in order to use this facility so that they can may be overspend. So, I would like to say that the President is the appropriate person to handle this one as he superintends over his cabinet. He can supervise them to ensure that they prepare estimates in time and it will be seen as a shortcoming on the President's part to ask for this Vote on Account. It should be an extraordinary occurrence, it should not be an everyday thing and it will count on his record if he asks for such a facility. So on those grounds and to ensure financial discipline for future governments to ensure that estimates are prepared in time and to ensure that expenditures are within the estimates. I would like to appeal to colleagues to leave the President to be the one to be saddled with this unpleasant duty of asking for the Vote on Account. Thank you very much, Mr. Chairman.

THE CHAIRMAN: Hon. Ruzindana, I should have given you the Floor actually to justify your Motion but it is never too late.

MR. RUZINDANA (Ruhama County): Thank you, Mr. Chairman. Mr. Chairman, the President is not normally involved in the administration of funds. There is a Minister responsible for finance and there is normally a Finance Act under which he operates. Now, if we bring in the President, then you will have to amend the Finance Act, for example, in order to bring in the President to authorize withdrawal of funds from the consolidated Fund which he normally delegates to the Minister responsible for finance and once it becomes a constitutional matter and you are specifically mentioning the President, it becomes a bit of a problem. Maybe when he is responsible for finance as well as a Minister for Finance like it was some time in the past, then that is when he could do

it but there is delegation of authority which perhaps will give him, under some Article in this Constitution and it is the responsible Minister who really should authorize this withdrawal rather than the President. The level of the President is not normally involved in this type of things and I do not know whether in the Constitution we shall even provide that he will become an M.P. or things of that type and he may need to authorize or he may need to justify whatever he has done before Parliament and so on. So I suggest, Mr. Chairman, very strongly that we replace the President with the Minister responsible for finance or whatever he may be at any single time.

DR. BYARUHANGA (Kitagwenda County): Clarification, Mr. Chairman, I want the Mover to clarify to me whether it is proper for us to give a duty to some one whom we have not yet created in this Constitution, whether we can refer to a Minister for Finance who or which post has not been created by this Constitution. Number two, since the President - we are going to give him powers to delegate his functions to Ministers - whether this one which is constitutionalised cannot be delegated.

THE CHAIRMAN: But Hon. Byaruhanga have we created the presidency?

DR. BYARUHANGA: Yes, in the Chapter on the Executive we talk of the President and Vice President at least.

THE CHAIRMAN: - because if we take your logic to the end, we have not yet created the office of President. What stops saying the Prime Minister shall be the head of the government? So I think really the argument is different.

MR. RWABIITA (Ibanda South): Clarification. Thank you, Mr. Chairman. Mr. Chairman I want clarification on this Clause because the normal practice about the Appropriation Act is that when the Minister responsible for Finance reads a budget, then Parliament is called to make a resolution and pass a Vote on Account for the first quarter of the year. Now, this has been the normal practice. Are we changing it to give that authority to the President, is it necessary or we should keep the same system we have been using? Mr. Chairman, because if we have to bring in the President, this can be disturbing when a President just wants to have some money allocated for certain activities when he has no power to pass a vote on this so I think it should be in the power of

Parliament to pass a Vote on Account for the first quarter of the year rather, than a single person like the President to authorize expenditure of that amount.

THE CHAIRMAN: But Hon. Member I do not think you have read fully that provision. It is saying "If the Appropriation Bill in respect of any financial year has not been passed..." That is if the budget has been presented, they are debating, they take about two months to debate the budget, then they debate the Appropriation Bill and Finance Bill. At the end, two things happens, One, there will be a provision or taxation Bill which imposes immediately the taxation measures even before the Finance Bill is passed then the other one, the other side of the coin is to authorize expenditure on the basis of one quarter or is it four months until such a time as the Appropriation Act has been passed but not exceeding whatever the period is. Now, they are saying in relation to expenditure, here they are saying the President should approve but subject to a prior resolution of the Parliament. So, the practice is still the same if you read there. If it has not been passed into law by the beginning of the financial year with the approval of Parliament by a resolution, the President may... What Hon. Ruzindana is saying is that you may find difficulty with operating this procedure at the level of the President because unless he has delegated and he is not in the country and so on and so forth - because there will always be a Minister for Finance but other things could happen. So how do we proceed, that is why he was moving that amendment.

PROF. KABWEGYERE (Igara West): Thank you very much, Mr. Chairman. Mr. Chairman I do not know why we are spending too much time on this Clause because if the Appropriation Bill is passed, it is signed by the President. That is the law which authorises the expenditure. Now, before it is passed, we now want to have authority given to the Minister. I do not see how that is consistent with the powers of the President particularly when you have a resolution passed by Parliament. The clause does not say that the President on his own volition does that. no, the President is authorised literally. he is given authority by a resolution of Parliament just as he signs the Bill which has been passed by Parliament. So I do not see really how the Hon. Ruzindana wants now to have a Minister now doing the signing instead of the President almost because we are really saying that the power is being given to the President by the resolution just as the power to sign a Bill is given to

the President by Parliament. So I think the amendment is misinformed and I would call on him to withdraw it.

MR. ADYEBO (Kwania County): Thank you, Mr. Chairman. I should take this time to thank my Colleague, Hon. Prof. Kabwegyere for having clarified the position here. There is no contradiction here. Mr. Chairman, if Hon. Members could recall, in this Constitution we have made the President actually the executive authority. We vested the executive authority in the President and also in this Constitution we went further and said that the President shall take precedence over all persons in Uganda including even his Ministers and we even said, I think, in one of these clauses that the President is not only head of state, he is going to be also the head of the government. Now, in running government, you come at a crucial time when there are no finances, when money is run out, when the budget is already over and you are looking for money to run government departments, government activities, government programmes, government projects, and so on and within my limited experience, Mr. Chairman, there had been such times when you find even Ministers forced to pay petrol bills from their own savings, it has happened and it will happen in this country.

When we now come to this situation where the Appropriation Bill is not yet signed by the President also, you know it is the President to sign the Appropriation Bill, to make it effective so that the expenditure is executed but before we come there, government activities are grounded but they must run and we are saying that while we are waiting for that to be done, there should be an expenditure amounting to one-quarter of the total expenditure and that is not small money. Mr. Chairman, if you could recall this time, in fact this time this budget we are spending well over 800 billion shillings and one-quarter is 200 billion shillings and 200 billion shillings is not small money within Uganda here, it is a lot of money. Now, also from experience, you find that a Minister may find a tough time in Parliament. If you get a difficult Parliament, sometimes they give difficult times to Ministers, it is not, you know, an exception, it can happen. Now, here is a situation where the head of government must come in and that is the President, we have already made him - in this Constitution he is the head of government, he must make sure that government activities run and he is going to go to Parliament and say "Hon. Members of Parliament, please we are seeking a resolution to allow for

expenditure of up to one-quarter of the budget before the Appropriation Bill is signed" and in that respect, it will be just in order for the President to give all the weight because of the importance, because of the colossal sum involved and because of the nature of duty and as Hon. Prof. Kabwegyere said it is the President also who will, at a later time, sign this Appropriation Bill to make it effective because even if he refuses, when the President refuses to sign that Bill he will not go any further, he will not be allowed to spend money.

So, Mr. Chairman, with all these views I think it is pertinent, it is important and I think those who made this provision here also saw that sense and I would only urge my brother, Hon. Ruzindana, the IGG, to withdraw his amendment because really it is un-called for.

DR. MAGEZI (Jinja Municipality East): Thank you, Mr. Chairman. Mr. Chairman, I need your clarification, Sir. Is it that the President may authorize after approval of Parliament by a resolution or Parliament not having passed this into law, the President then would automatically authorize because from the explanation of Prof. Kabwegyere, he seems to think that it is after approval that the President may authorize. My understanding is that the President only comes in if Parliament has not authorised this Vote on Account.

THE CHAIRMAN: No, the way it is written is this that there is that period between the time the budget is presented like the practice now to the time when the Appropriation Bill is passed and signed by the President. For that period then, the Parliament should be requested upon a resolution like you have been authorizing in the present Parliament to pass Vote on Account but that resolution says it is the NRC is hereby authorizing the Minister for Finance to authorize, giving power to the Minister for Finance to authorize so much, not exceeding so much and normally, I think they indicate on each vote so that, that money can be used while Parliament is still considering the appropriation Bill and then when that is passed, the Vote on Account authority lapses and the money which has been spent is accounted towards the Appropriations of each vote in the Appropriation Bill.

MR. RUZINDANA: Mr. Chairman, I am not withdrawing my Motion. I want to give information as to how this thing was worded in the 1962 and 1967

Constitutions. Article 102 of the 1962 Constitution says the following: "*Parliament may make provision under which if it appears to the Minister responsible for finance that the Appropriation Act in respect of any financial year will not come into operation by the beginning of that financial year, he may authorize the withdrawal of moneys from the Consolidated Fund for the purposes...*" - the Minister may authorize. In the 1967 Constitution, Article 97, Mr. Chairman, the following is the wording: "*Parliament may make provision under which if it appears to the Minister responsible for finance that the Appropriation Act in respect of any financial year...*" - he may authorize, that is the Minister, may authorize the withdrawal of moneys from the Consolidated Fund for the purpose of meeting expenditure and so on. In these two Constitutions, it is the Minister. Now, I do not see how it is found odd that in the current Constitution we should now raise it to the level of President when, Mr. Chairman, before this resolution of Parliament is approved, it is the Minister who will have presented these requests to Parliament and then resolution is approved by Parliament and then you want the President now to authorize. Why does the President have to authorize when the Minister has done all the work before the resolution is approved by Parliament. Thank you, Mr. Chairman.

MR. ETONU (Amuria County): Thank you very much, Mr. Chairman. Mr. Chairman I think it is because of the past problems we have had that we are trying to make a new Constitution. To refer now to the 1962 and 1967 Constitutions could mean that we have not actually learned from our past. The fact is there has been an abuse of these monies during the time of Vote on Account and that is why I think we should now bring it to the President to authorize after the resolution of Parliament and, secondly, Mr. Chairman Sir, that even all Bills before they become law are always signed by the President. I do not see any problem of a President who is the top executive of the country to authorize this money so that he follows it to supervise the use of the money as it has been in the past grossly abused.

Mr. Chairman, in addition to that, this moneys, although the Minister is the one responsible for preparing, all that my colleague has already pointed out, it is the responsibility of the government, where the President is the head of that government, to ensure that the money is properly used and also to avoid, to allay the fears of the previous speaker,

which Hon. Kutesa who is not now in the House said that it has always caused a problem for again Ministers or Ministries asking for supplementary estimates, it should be controlled right from the beginning of the financial year or before the financial Act is approved that we control the funds. I beg to oppose the amendment, Mr. Chairman.

THE CHAIRMAN: I think let us pronounce ourselves on this, we are allowing a very long debate. Let me put the question. The question is that the word "*President*" appearing in Clause (4) be deleted and replaced with the words "*Minister responsible for financial matters or Minister for Finance*".

(Question put and negatived)

THE CHAIRMAN: Now, let me put the question on Clause (4) that Clause (4) be approved.

(Question put and agreed to)

THE CHAIRMAN: Well, Clause (5) Hon. Chairman of Committee Three. You recommend that it should be retained in the draft as it stands. Well, I have asked the Chairman to give us a very brief explanation.

AN HON. DELEGATE: Thank you, Mr. Chairman. On Clause (5) there were no amendments at all. So we carried it as it is. Thank you.

THE CHAIRMAN: Okay, let me propose the question that Clause (5) be approved. Some one wants to make an amendment or is seeking clarification.

DR. BYARUHANGA: Mr. Chairman, I have read this Clause (5) a number of times but it still appears to me that it is not referring to Clause (1) but to Clause (4). It would appear it is referring to Clause (4) but not to Clause (1) because when you look at it, it is as if it is talking about Appropriation in Aid, it is not talking about the supplementaries and proper appropriation money. Therefore, Mr. Chairman, I would wish to make an amendment to change this to read that "*the withdrawal of funds under Clause (4) of this Article*".

THE CHAIRMAN: You see, it is making a reference to (1) because it is trying to limit the amount of money which could be released on a Vote on Ac-

count. I think it was a typing error, but it is saying, yes, before the Bill is in place, the law is in place you can spend but the expenditure should not exceed - (*Interjection*) - yes, but that is what it should be saying. Okay, let me hear from Hon. Zziwa George.

MR. GEORGE ZZIWA (North Kawempe): I agree with the Delegate who has spotted this one, it says that the withdrawal of funds under Clause (4) it should not be under Clause (1) because Clause (1) is talking about the Appropriation Bill which is the full amount to be withdrawn from the Consolidated Fund and for that reason, an amendment has to be moved to say that the withdrawal under Clause 4 of this Article shall not exceed the amount authorised to be withdrawn from the Consolidated Fund not by the Appropriation Act but by the vote on Account. That is what he is talking about for the corresponding period in the immediately preceding financial year because the period is four months, they are talking about four months but this time the expenditure, the amount is put to a ceiling of four months of the preceding year. So, Mr. Chairman, that really is some mistake - maybe a typing mistake.

MR. KABERUKA (Ngorwa County West): Mr. Chairman, I want to draw the Hon. Delegates attention to 180 (1) (b), this one is already embracing -

THE CHAIRMAN: Is this in your report?

MR. KABERUKA: Clause 180 - Page 78. Mr. Chairman, of the Draft. It reads: (b) "*where the issue of those monies has been authorised by an Appropriation Act, Supplementary Appropriation Act or as provided under Clause (4) of this Article*".

THE CHAIRMAN: Yes, but that is only saying that you can only issue either, by a Statute or by an Appropriation Act, a Supplementary Act or by resolution on Vote on Account but (5) is saying how much can you withdraw. Can I hear from Hon. Kabayo

DR. KABAYO (Kassanda south): Thank you very much, Mr. Chairman. I wanted to agree with the delegate who pointed out that Clause (5) should refer to Clause (4) because if it was in connection with Clause (1), there would be no need to talk about the preceding year. I think the original mind of the draft was to allow the President to approve a certain amount of money provided it did not exceed what was given in the year before and that is in connection

with paragraph four, Clause (4). So I agree that Clause (5) should be amended to say the withdrawal of funds under Clause (4) and so on. Thank you.

MR. KAGGWA (Kawempe Division South): Thank you, Mr. Chairman. Mr. Chairman, my understanding of this provision is that it caters for Clause (4) as well as putting a limit to the amount to be authorised not to exceed the money equivalent to four months of the previous Appropriation Act. In other words, whereas the new budget may have increased the figure, the draft is saying that do not exceed what you used last year until otherwise. That is my understanding of this provision.

MR. NDEGE (Luuka County): Mr. Chairman, the idea of this Clause (5) in my opinion, is trying to limit the Minister from drawing funds beyond what Parliament has approved. So instead of amending Clause (1), we should just delete from *the corresponding period in the immediately preceding financial year*. That will make it very clear and will remove Hon. Kutesa's fear that Ministers will spend before supplementaries are approved by Parliament. I think that is the whole idea, it is not to do with Clause (4) which is Vote on Account. Vote on Account is only for four months. Now the Appropriation Bill covers the whole year and what we want to say is that the Minister should not spend any money beyond the Appropriation Act or any Supplementary approved by Parliament or any moneys approved on Vote on Account. What I am proposing is that we remove from - "*for the corresponding period in the immediately preceding financial year*". I think that one would make the whole sense of what we want this Constitution to be. Thank you very much, Mr. Chairman.

THE CHAIRMAN: But Hon. Ndege, that is what you desire to make but the reading of clause (5) as it is does not make sense unless you change (1) to (4) because really it is saying in (4), before you have an Appropriation Bill in place or a Statute in place, there must be expenditure, that expenditure will be by a resolution of Parliament at the request of the President and upon that resolution, the President shall authorize money to be withdrawn from the Consolidated Fund to cover the period of four months. The presumption is that the law shall have been passed within the period of four months. Then the question is how much is he allowed to authorize. Clause (5) is saying we cannot tell you the figure because we do not know it but we can limit you on the expenditure

of the previous financial year by saying we can only approve that much. But if Hon. Ndege would like to have a rider to 180 (1), then that will have to be a specific amendment to introduce another provision to say, yes Parliament must approve all withdrawals but the withdrawals must not exceed the amount authorised by the Appropriation Act, by a Supplementary Act or by the amount referred to under Clause (5) meaning the one restricted to the amount appropriated in the previous year in relation to the year under question. It will be an interesting drafting process.

MR. NDEGE: Thank you, Sir, Hon. Kutesa and I would like to propose such.

THE CHAIRMAN: Can I suggest that you go to the Legal and Drafting Committee and come with a worded provision to see how you can limit that particular one.

MR. NDEGE: Thank you very much, Mr. Chairman.

MR. KAYONDE (Gomba county): Mr. Chairman, it is not even necessary to go to the Legal and Drafting Committee because Clause (1) of 180 (a) and (b) do specify the limit of what Hon. Ndege is trying to put in because (a) says; *“to meet expenditure charged upon the fund by this Constitution or by an Act of Parliament; (b) where the issue of moneys has been authorised by an Appropriation Act, a Supplementary Appropriation Act or as provided under Clause (4) of this article.”* So really, Clause (1) of 180 caters for the limit he is trying to seek.

THE CHAIRMAN: No, it does not. What they are saying is that from time to time, in relation to each year, there will be Appropriation Act, Supplementary Appropriation Act and moneys ascertained for purposes of 180 Clause (1) (a). The moneys ascertained, and I am using the word deliberately because it is saying to meet the expenditure charged upon the fund by this Constitution or by an Act of Parliament. For instance the Statute says that the amount of money to be expended on the work of the Assembly is directly charged to the Consolidated Fund. Now it is ascertained through budgeting process and approved but Parliament is only informed, it does not have to reduce or add on salaries of Judges which are by a Statute charged. They are saying that even there, it should not exceed what has been ascertained

for (a) or what has been approved by whatever means under (b) and they want to put an upper limit. This is what they are trying to do. As it is, it does not.

MR. KAYONDE: But sorry Mr. Chairman, if I can beg your indulgence. When you read (b) - (*Interruption*).

THE CHAIRMAN: Let us not argue as to what they will bring as their Motion. I think we are now being speculators as to how they are going to write it. What we should now argue about is, in light of the explanation given that actually the intention was to write (4) instead of (1), I would like to put the question so that we dispose of this one and if Hon. Ndege and Hon. Sam Kutesa want to bring another amendment, they can do so later on.

MR. LUBEGA WAGWA (Butambala County): Mr. Chairman, I am lost when you say we change Clause (5) putting (4) instead of (1). Clause (4) does not include the supplementaries. I do not know what will happen if we do not take (1)(a) and (b) because (b) takes into account supplementaries.

THE CHAIRMAN: But what the amendment is seeking to do is to say the withdrawal of funds under Clause (4) i.e. Vote on Account, *“The authorization for withdrawals on Vote on Account shall not exceed the amount authorised to be withdrawn from the Consolidated Fund by the Appropriation Act for the corresponding period in the immediately preceding financial year”*. i.e. next year, when we have a budget presented and if this Constitution is in force, then the Minister, in this case the President, will seek authority from Parliament to spend a certain amount of money before the Act has come into force and (5) is saying that will be okay but having authorised, the authority should not exceed the amount of money that is in the present financial Appropriation Act of the present financial year. It should not exceed that as a means of determining how much the authority in (4) can correspond to.

DR. MAGEZI (Jinja Municipality East): Thank you, Mr. Chairman. I would like to move a Motion now taking into account that actually the amount of money withdrawn from the Consolidated Fund by the Appropriation Act does not necessarily mean the amount passed in the budget and that to tie the maximum to that figure would be erroneous. I think the norm is that since the Vote on Account covers four months, we should make the limit to be one-

quarter of the vote in the Appropriation Bill hence my proposed amendment of a new Article (5) to read that "The withdrawal of funds under Clause (4) of this Article shall not exceed one-quarter of the amount in the Appropriation Bill of that year."

THE CHAIRMAN: But you see Hon. Magezi, you will get yourself into a lot of problems there because you do not know at that stage the amount in the appropriation bill, because the Appropriation Bill is prepared after you have passed the estimates and the estimates are available to Parliament to reduce. So you can not use the figures presented by the Minister for Finance to draft your Appropriation Act. They wait until you have approved the estimates then they know what amount should form the schedule in the Appropriation Act. It is with that difficulty that they chose to tie themselves to the previous financial year.

DR. MAGEZI: Mr. Chairman, Sir, right now when the budget estimates are presented, the next sitting, the Minister for Finance moves in the House to move a Vote on Account based on the estimates he has on the ground - (*Interruption*). You see, why I am saying that the Appropriation Act of the previous year is erroneous is that okay, we may be budgeting for 800 million this year, next year it could be 1,400 and one quarter of this year, 200 million is very different from one quarter of 1,400 and consequently if we are trying to enable the Government to operate until the budget is passed, it is always in order and expeditious steps have to be taken to ensure that the actual Appropriation and the estimates are passed so that you have an Act.

THE CHAIRMAN: Then my suggestion would be you should not tie the withdrawal to the Appropriation Act but should be tied to the estimates as presented by the Minister. Then there it can make sense but the problem now is purely procedural. I can not allow you to move that Motion yet because there is already a Motion on the Floor which we were debating - (*Interjection*) - no, there is one by Hon. Byaruhanga which was seeking to replace this single (1) to (4). You accept that do you not? But I am reluctant at this stage to put any of these issues to the vote because my attention has been drawn to the fact that we are down on the question of quorum and since we are at Consideration stage, we cannot pass it. So I think tomorrow we should have to. It is now ten to six, ringing the bells to ask Members to come in may not be helpful but my intention was that we complete this Article 180 but anyway, we will continue with it tomorrow. The position is that tomorrow we shall be considering further Clause (5) and I would sug-

gest that Hon. Magezi and Hon. Byaruhanga get together and synchronize their amendments so that they bring it as one so that we discuss whether we replace Clause (5) as it appears with the formulation of Hon. Magezi instead of referring to the previous financial year, we make reference to the estimates presented in respect of the proposed financial year. Hon. Magezi is that correct?

DR. MAGEZI: Mr. Chairman, thank you very much. My other worry, Mr. Chairman, is what happened this year whereby the period of Vote on Account expired before the estimates are passed and we need, I think, to constitutionalise what happens on that day because there will be no money, you can not Vote on Account twice in the budget, there has to be a provisional arrangement whereby if the budget estimates are not passed by the end of the quarter of the financial year, then the Government must operate somehow. So we need, I think, to constitutionalise that provision, Mr. Chairman.

THE CHAIRMAN: Yes, can I suggest that you consult and formulate it so that tomorrow when we come, maybe you will have found an answer to that because the reality of it happens to us that our Vote on Account for the first quarter was not sufficient to run us through and the delays to meet payments were really caused essentially by that because the Treasury said "sorry, the Vote on Account is finished and there is no authority from Parliament, we cannot pay". Luckily in our case, we argued and were able to prove that the provisions in the Statute setting us up envisage that we did not have to go through that process but by then we had suffered a lot of delay but I do agree that other departments suffered because the Parliament passed the Appropriation Act, I think, well beyond the Appropriation period of Vote on Account of four months and whether we should say efficiency should take over or we make a provision for it, that could come out of a formulation tomorrow to be considered and I would suggest that Hon. Magezi consults Hon. Byaruhanga and others and come up with a formulation since we have a bit of time until 2.30 tomorrow. Is that agreed?

HON. MEMBERS: Yes.

THE CHAIRMAN: Thank you. Now, with that we come to the end of today's deliberations and I adjourn the Constituent Assembly to 2.30 p.m. tomorrow in the afternoon. We stand adjourned. Thank you.

(The Assembly rose and adjourned to Thursday, the 1st of December at 2.30 p.m.)