



THE REPUBLIC OF UGANDA

PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

WEDNESDAY, 31ST MAY 1995

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 4573]

Wednesday 31st May, 1995.

The Assembly met at 9.00 a.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)

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

THE CHAIRMAN: Hon. delegates, this morning we have before you the agenda which starts with matters that were stood over. We thought that we better get them out of the way so that the Technical Committee can begin finalizing those chapters as we go towards the end of our work. But at the same time, implicitly give the various tendencies and contact groups chance to talk to each other quietly during the plenary, to continue talking to each other not loudly. But for the time being, I take you to Chapter Seven Article 107 the Executive. I think the recommendation related to challenging Presidential elections, Clause (7) as Chairman of Committee (2) would be guiding us because the matter was referred back to Committee Two for drafting. I will give the Floor to the Chairman of Committee Two to lead us.

MR. MULENGA JOSEPH: Mr. Chairman, when Plenary was considering this Article 107, a number of amendments were made which resulted into questions being asked whether Clause (7) should be recast taking into account the fact that the process of challenging the Presidential elections could take more than two months if there were petitions to Court. Mr. Chairman, Committee Two sat way back in March 21st, 1995, and reconsidered the clause and principally, the points considered were, whether there was need to reframe the Clause in view of the decision of the Plenary to increase in clauses (2),(3) and (6) of the same article, which meant that a process of challenging the election of the President would not be concluded within 60 days between elections and the end of term of the incumbent if a fresh election was held after the first challenge and the result of a fresh election was also challenged. Secondly, we were required to consider - at one point in time, the Speaker should

assume office in the event of such challenging of the Presidential elections going beyond 60 days. The Committee observed that in the event of the process of challenging the Presidential election extending beyond the 60 days, the clause would still be applicable, there was no need in other words to reframe it. the annulment of election results by Court does not relate to the continuation of the incumbent in office up to the end of his term. Thirdly, the candidate declared elected after the election should not assume office while there is a petition against his or her election pending decision of the Court.

For that reason, we are recommending insertion of another clause so the recommendations of the Committee, Mr. Chairman, are as follows:

- 1) that Clause (7) as recommended in the Committee be retained without amendment,
- 2) that the Speaker should assume office of President on expiry of the term when there would be no President or Vice President to carry on with the office. In other words, if there is still dispute and proceedings in Court have not been concluded and,
- 3) the Committee recommends that a new Clause (8) should be inserted to read as follows: "*A person declared elected as President shall not assume office while there is a petition challenging his or her election pending determination by the Court.*" This, Mr. Chairman, would mean, the present Clause (8) would be numbered (9). The present Clause (8) reads: "*Parliament shall make such laws as may be necessary for purposes of this article including laws for ground annulment and rules of procedure.*"

Mr. Chairman, some total recommendation of our Committee is that, Clause (7) need not to be rephrased, but should there be a challenging which goes beyond the 60 days period between election and assumption of office, then the Speaker at the end of the 60 days would take over the office of President until the court decides. The person elected or rather if the person elected is successful, he would assume office, if he is unsuccessful in the second petition, then the Speaker would continue, under another clause we already passed for 6 months maximum. Because within 6 months, there would be a fresh election. Mr. Chairman, I beg to report.

THE CHAIRMAN: Hon. delegates the Report is that we retain the formulation which was recommended to us by the Committee in respect of Clause (7), and it is also further recommended that we add clause (8) to read: "*a person declared elected as President shall not assume office while there is a petition challenging his or her election pending determination by the court.*" Let us do it this way. I will first of all seek your reaction to Clause (7), and then we go on to the recommended (8). I think the Committee has done a good job, they went into the matter deeper than we can here and my recommendation would be that in the absence of serious objections, we should accept the committee's recommendations.

MR. KIWAGAMA (Bunya West): Mr. Chairman, I am only seeking a simple clarification where a Speaker assumes office of the President, for the at least 6 months. Now, during those 6 months, another set of elections is carried out and we get a successful candidate and is declared a President. What would happen to the term of office of the five years? When would it be counted from, from the 6 months the Speaker takes office or is it at the time he is declared a President? And what would happen to the fixed date of election for a President in the subsequent election five years later?

MR. MULENGA: Mr. Chairman, we have already made a provision trying to get the correct clause or article. Provision in respect of the term of office of the first President elected under this Constitution, and what you might call mid-term President. We have provided that those two would serve for a term more or less than five years in order that the election of the next President - on the Presidential election date nearest to the 5th anniversary, I think Hon. delegates will recall that phrase because we dwelt on it during the discussions in the consideration stage. So the relevant article would apply to this one.

MR. AWORI AGGREY: Mr. Chairman, I am seeking further clarification from the Chairman Committee Two on a matter of a President elect. I do not know whether it was a mistake or a constitutional provision, what happens to President elect while the petition is pending in court in terms of privileges and in terms of benefits from the state.

MR. MULENGA: My answer is that, he is not yet President, and therefore, does not get privileges,

but administrative arrangements most probably will be made like, does he get security around him and so forth, but that is not covered by the constitution.

MR. KARUHANGA (Nyabushozi): Mr. Chairman, I wanted to know from the Chairman the import and meaning of this clause so that I can be satisfied in my mind that, that is what it actually means. The petition which is challenging the Presidential election result is from any voter. Does it mean that even a nuisance voter who really has not got a prima facie case, who wants to spoil and delay the country from going on, he just lodges a petition just for delay, and the country is held by this one person, is there a measure of determining this? Is it a prima facie case or should his petition be supported by a number of other petitioners or is it just any voter in Uganda who says I am not satisfied and then he puts a case in Court and then the whole country just is held at ransom and we have a Speaker and all this?

THE CHAIRMAN: But Hon. Karuhanga, haven't you read the clause (8) we approved as it stands today? Parliament will make laws which may be necessary for the purpose of that article including laws for grounds of annulment and rules of procedure, and if someone - I would assume that Parliament will set the grounds on which one can go to court to challenge a Presidential election, and a measure of whether the petition is justifiable or not and can be struck out or would be measured against the grounds so made and the nature of evidence required to be able to sustain it. I do not see that -

MR. KARURANGA: Mr. Chairman, I am satisfied.

THE CHAIRMAN: Thank you.

MR. WANENDEYA (Budadiri East): Mr. Chairman, I would like the Chairman of the Committee to explain in connection with a Speaker when he takes over the office, would, as an example, the five years fixed count towards the new President, and what would happen to constitutions like in the United States where the elections are held in November, and the President takes office in January, about the 25th or there about. What would happen in that case? Would that term of the Speaker be counted towards the new President, and how would that be connected with the elections in November and assuming office in January?

THE CHAIRMAN: I thought that was answered.

MR. MULENGA: Perhaps, Mr. Chairman, I can indicate the clause so that the Hon. delegate can read it himself. It is Article 108 Clause (2).

MR. OBUA OTUA(Erute North): Mr. Chairman, I want to say something for the record in reference to what Hon. Elly Karuhanga said. I do not want it to go on our record that there is such a thing called nuisance voter. Mr. Chairman, I think we should strike that sort of terminology away from our record and if it is left like that, we have to define what is a nuisance voter. I am saying this for record purposes. This Assembly is discussing things about rights and duties and so on, we are not discussing here who is a nuisance and who is not a nuisance, I want that recorded, Mr. Chairman.

THE CHAIRMAN: Okay, noted.

MR. KAGGWA MED(Kawempe South): Mr. Chairman, the clarification I want to seek from the Chairman Committee Two is that, this person in the person of Speaker has been asked to be a caretaker as President when the supposed President still has legal problems to contend with, after 6 months this person leaves office, the other President has been cleared one way or the other, would this person one, go back to the position of Speaker? Two, would he qualify for the retirement benefits pertaining to the office of the President since he would have been in that position?

MR. MULENGA: Mr. Chairman, I do not think we have made a decision or written anything as to whether or not such a person who acted as a President would go back to be Speaker. But I can answer from the provisions that are in place. When a Speaker ceases to be a Speaker, another one is elected. I would imagine that when the Speaker becomes a President, it will not be an acting Speaker but a Speaker that is elected in Parliament and therefore, I would not see how he goes back to claim his seat when another person is elected as President. But decision hasn't been taken, I am only interpreting. Although we see him as an acting President for 6 months, what I do recall is that, during the debate here, it was asked whether such a person could stand for election as President once he has been acting and the unanimous answer seemed to be yes, he would be eligible to stand as President. Now, if he should do that, can he still hope to go back if he

loses to go back and be Speaker? But presumably, one could look at the question in its narrowest sense. If there is a petition pending and it goes beyond the term and a Speaker is acting maybe for a week or two, and the Court gives its decision and a man who was declared elected is cleared and takes his office, the Speaker was really in this sense a caretaker. That is I think the question that should be addressed.

THE CHAIRMAN: But my understanding is that three offices must be filled at all times. The office of the President, the office of the Vice President and the office of the Speaker. Regardless - because there must be no gap at any time when there is no President of Uganda. Whether he is a caretaker or he is actual. So, the Speaker there, when the other person assumes office, he resumes his seat as Speaker subject to the rules governing the office of the Speaker. When does a new Speaker get elected? And I think that is most important and I think that one has been covered elsewhere.

MRS. RWABYOMERE(Presidential Nominee): Mr. Chairman, I am afraid I have to oppose this Clause (8) very strongly -

THE CHAIRMAN: Okay, can we do it this way. We are satisfied with (7), agreed?

HON. DELEGATES: Yes!

THE CHAIRMAN: Okay, let us look at the recommendation on (8) because otherwise we will be indisciplined in our debate. So now, let us turn our attention to recommendation 8, Clause (8). "*A person declared elected as President shall not assume office where there is a petition challenging his or her election pending determination by the Court.*" Hon Rwabyomere, you have the Floor.

MRS. RWABYOMERE: Thank you, Mr. Chairman. I was saying that I strongly oppose this incursion of Clause (8) for the reasons that it is injustice on the part of the elected President. If the results are at once declared that a person is the winner, that person should take the oath and assume office. And if there is a petition you wait for that petition, if the Court finds the petition to the effect that there were some irregularities and this President should not have been declared a winner, it is at that moment that the President steps down. Secondly, Mr. Chairman, there can be confusion where

you have a state of affairs that you delay this person assuming office. You can have confusion and anarchy. Also, Mr. Chairman, we know of the examples where a President has been declared winner and there is a petition pending but that President remains in office for example, in the case of Brazil. Mr. Chairman, also we had an example here, Hon. Masika stayed with us here although there was a petition pending challenging his election to the Constituent Assembly. So, I would like to propose strongly that when a President has been declared winner, that he assumes office until the Court declares otherwise.

MR. OGWEL LOOTE (Moroto Municipality):

Mr. Chairman, I seek clarification from the Chairman of the Committee. Now supposing the incumbent President has been re-elected as to take the second term of office, now during this re-election the petition is launched. Now what happens to this incumbent President because he has still made his 6 months or so many weeks to have his office expire before he resumes a new office. What happens in that situation?

PROF. SENTEZA KAJUBI (Kyadondo North):

Mr. Chairman, the clarification I was seeking unfortunately was addressed to Hon. Rwabyomere who is not on the Floor but, I was drawing attention to Article 101 clause (4), which reads: "While holding office, the President shall not be liable to proceedings in any Court." So if the President is elected and then he assumes office, how can the Court proceed to investigate him?

MR. ZZIWA GEORGE (Kawempe North):

Mr. Chairman, I was a member of the select committee 2, and the question raised about the President taking a seat before he is cleared was thoroughly discussed and among the points raised, was the influence of the President when he is in office. As Hon. Senteza Kajubi has rightly pointed out, when the President takes over or when he is in office, it is extremely difficult for anybody either in the Civil Service or in the Judiciary, to act impartially as we put it in the Committee. And we found it extremely necessary that, when the President is petitioned, he should be cleared, he should not take his seat before he is cleared just because of the influence he might assert on to the people or to the Civil Service. And this is a very cardinal point we wanted to emphasise. In fact this is why we wanted to make sure that all the petitions are cleared within the 60 days

before the expiry of the term of office of the President, and I would ask Hon. Rwabyomere to assent to that view that the President should not take over when he has a petition hanging on his side. Thank you, Mr. Chairman.

MAJ. TUMUKUNDE (Rubabo): Mr. Chairman, we are in a country that is very well known to ourselves, we know our problems. We know our Courts, we also know the kind of results sometimes we get from Courts and usually, Mr. Chairman, we know the kind of instability we can have with a President pending a petition, having won an election for example, Mr. Chairman, with an 80 per cent vote, yet because his case is pending in Court with that kind of majority, this man has got to wait out of office for as long as our usually slow courts do determine this petition. Mr. Chairman, I think I will join Hon. Rwabyomere to request this August House to reconsider this position because it may not work in our interest, and I think during this time when the President is awaiting petition, we are likely to have a lot of unanticipated problems in our country here which I think we should try hard to avoid, Mr. Chairman.

MR. ELYAU (Kalaki): Mr. Chairman, you see we are going to face a very interesting elections for the first time of electing a President. Now, I foresee that there will be some problems because I cannot be convinced about the kind of irregularity which will cost the President to pend. Supposing the President has got overwhelming majority in the votes which normally decides who is the winner, now what are such irregularities which will cost somebody to doubt him? I suppose he should take the office, then if he is proved later on, he can be unseated like a Member of Parliament. Because I do not see any reason why a man should be stopped when he has got a lot of votes. Can I be clarified.

MR. ONEGI OBEL (Jonam): Mr. Chairman, I see the spirit in which this clause has been recommended. Because this is obviously going to bring some complaints about the election of the President. But we have to be careful, Mr. Chairman, that what has been suggested as inefficient voters coming forward to put claims can be real. But I would like to support this proposal only if, Mr. Chairman, we make a proviso giving a definite period within which this matter must be settled. Because elsewhere in Chapter 6, we agreed to recommend a very vague Clause that Parliament will make laws to

exercise expeditious resolution of petitions. That is good enough but not as good where the fate of the country, the security of the country is involved without an effective President being in power. So, Mr. Chairman, we could improve on this by giving a time limit within which this case must be heard and resolved. I have in mind people who have been judges in the High Courts or Ministers of Justice. We have got two, I think if not more, who could tell us the process of resolving this kind of problem so that the petition does not go too long. The clearing of the petition should not go too long and subject a country to instability. Mr. Chairman, thank you.

MR. OKALEBO (Bukedea): Mr. Chairman, first of all, I wish to begin by saying that we take note of the very fact that we have already considered in this House when we were discussing Judiciary, that a matter of importance of a national nature like this one should be handled expeditiously. So there is no question of beginning to doubt how soon the judicial system will function to finalise a petition in respect of an election of a President. I am sure that one is there, and it is to be waited to be seen and I believe such decisions will be put out expeditiously.

Secondly, we have said here that decisions of the courts should be a binding on all persons and authorities that they concern, and now if we look at a person who has been elected President, leave alone the percentage that elected him - it could be 99 per cent - and then there is a petition against him raised by 1 per cent of the population, and they have that right to petition or to challenge the election of a President because they may be right in their allegation they have against the person declared as a President, so if that is the case, we should also bear in mind that under Article 102 Clause (3), it is the duty of a President or a person in the name of a President, it is his constitutional duty to uphold and respect this constitution. It actually says, Mr. Chairman, if you can allow me to make reference correctly. It says that: "*It shall be the duty of the President to abide by, uphold, and safeguard this constitution and laws of Uganda and to promote the welfare of the citizens and to protect the internal integrity of Uganda.*"

So, if he has that duty of upholding the constitution, there is no question of saying that you see, it is embarrassing for a man who has been declared a President and then you say you do not take your

office until the petition has been finalised against you. The amendment here which is suggested by Committee 2, makes it very clear. It says declaration of results of election per se, is not enough. We have put here constitutional steps which must be taken, which must be followed before the enthronement of a person into the chair of presidency, and challenging an election of such a person is one of such steps which must be cleared before the President takes office. This one is meant to take care of the very fact that if you swear in a person as a President, he may turn round when you challenge his election to plead immunity under Article 101 Clause (4) which says: "*while holding office, the President shall not be liable to proceedings in any court.*" Now if you have already sworn him in, definitely he is a president. Now you come round and challenge me and say, don't you see, I will wave the constitution to you and say, don't you see I am protected. I have the immunity, you don't have even to talk about me, I am already a President. I think here you have gone out of - you sat on your rights and here the person who has been declared President must wait until any challenges about him are settled and cleared that is when he becomes free. So, I think this recommendation of Committee 2 actually settles the matter and should be upheld.

MR. MULENGA: Mr. Chairman, although Hon. Okalebo has gone to great length to answer Hon. Onegi Obel, the concerns of Hon. Onegi Obel and Hon. Tumukunde are about the time it takes court to decide. Mr. Chairman, the clauses we have already passed in this article fix the time within which the petition has to be concluded. Clause (1) provides for the right of the voters to petition. Clause (2) stipulates or limits the time within which a petition must be filed. This Assembly increased it from 3 days to 7 days. Then Clause (3), I read it: "*The supreme Court shall inquire into and determine the petition expeditiously and shall declare its findings not later than 21 days from the date the petition was filed.*" So, in other words, within one month, the petition must be finished by the constitution. The court, therefore, does not have the discretion of extending or doing so and what is more, you will notice that there is a court comprising of three (3) justices of the Supreme Court. So it is envisaged that these rules that will be made by Parliament, the laws of procedure will make it like a tribunal rather than going to the very lengthy way of trying the ordinary cases. Mr. Chairman, I will respond to the others later, but I thought this ques-

tion which kept on cropping up should be cleared that the time is already fixed under the provisions we have passed.

MR. AMBROSE ATWOKI (Youth Northern): Mr. Chairman, when I looked at the Committee recommendation, I felt that it has done a good job which is worth supporting. Mr. Chairman, I believe that the rationale behind the recommendation of the Committee is to ensure continuity and smooth transition in case there is petition against a presidential candidate or there is some quarrel concerning the election of the President. So I believe that it is very important that we should ensure that a person is declared President, alright but the assumption of office must be after all problems associated with the election of the President has been cleared so that we do not create a situation where there will be insecurity or instability arising from some people who are saying the President has been declared, elected and also sworn in, yet we have some quarrel with the credibility of the President! So I think it is important that the rationale of continuity and smooth transition is the one big aspect which the Committee considered in order to ensure that all petitions are cleared before the President is sworn in.

Mr. Chairman, I want also to observe that a President who has petitions pending against his qualification for election does not have the moral authority and credibility to be sworn in as President. Because the person of the President must be respected nation wide, but if there is some section of society questioning the moral authority and the credibility of the President in form of pending petitions, I believe that this one would also not augur well for national security, peace and order. So the question of petition against presidency must be cleared before the President is sworn in to assume the mantle of leadership of the country. Mr. Chairman, I also believe that there is no way we can oppose this committee recommendation because if we were to maintain internal consistence in this Constitution, several Members have quoted a clause in 101 which says that after being sworn in as President, the person is not liable to court proceedings. I mean If we say that, if we recommend here that as Hon. Rwabyomere is saying that the person should be sworn in and declared President, when declared President, it means we are already creating an internal inconsistency in the constitution because in 101 we are saying he is not liable to

court proceedings and yet here we are saying he should be declared President and sworn in and then petitions concerning his election is in court. I think we will not be consistent in our thinking.

Mr. Chairman, I also believe that to create that confidence, it is important that the President is declared but not sworn in so that eventually the question of considering whether the petitioners are right or not, and the result of the petition as being declared by court will be seen as impartial unless the President is first cleared of the petition and then eventually assumes the office. So, Mr. Chairman, I am strongly in support of the Committee recommendation that a person elected as President shall not assume office while there is a petition challenging his or her election pending determination by court.

MR. SABIITI (Rukiiga): Mr. Chairman, I find this amendment a little bit unfair to the President elect and indeed the electorate, those who voted to put the President in power. I feel this amendment is contrary to the very principle which says that one is presumed innocent until proved guilty. The people cast their votes to elect a person to be a President, the Commission will have done its job, the Commission will have declared results by accepting first what the presiding officers and returning officers will have declared openly to the people, and then at the end of it all you say, what the people have decided is wrong. Now I think this principle of one to be presume innocent until proved guilty should stand. The President should assume office and then if he is found guilty, if the petition goes through, he vacates that office. I therefore, feel that the Chairman should reconsider his stand on this and we throw this amendment out and then we proceed.

MR. KATUREEBE (Bunyaruguru): Mr. Chairman, I must agree with Hon. Rwabyomere in opposing this amendment. Mr. Chairman, in debating this amendment, we should also be guided by where does the national interest lie. A country has gone through a long expensive election, people have elected a President, an independent Electoral Commission has declared him elected, and then any registered voter lodges a petition, and we tell the country that that man may not assume office! I do not think that is in the national interest and it says any registered voter -

THE CHAIRMAN: - "Man or woman" because you are causing a gender problem.

MR. KATUREEBE: Man or woman because it says any registered voter-

THE CHAIRMAN: But the gender problem is there because you are saying that "*man may not assume office.*"

MR. KATUREEBE: Sir, I beg your pardon. That man or woman may not assume office because a registered voter, all registered voters have lodged a petition or petitions. Now, even if each petition is going to be handled expeditiously, for a national President you could have may be a thousand petitions, and you may have the court sitting to hear a thousand petitions because they may not necessarily all be joint. Is it in the national interest that the whole country is held at ransom? Mr. Chairman, I would suggest that it is in the national interest that once the Electoral Commission has declared someone elected, that person should assume office and if the petition is successful, then of course, he will quit office, and we would have to apply it also by analogy. If we have set it as a principle that a President who has been challenged does not assume office, then even Members of Parliament who have been challenged should not assume office. Then you may have a situation where half of the Members are challenged and you do not have even a quorum in Parliament to elect a Speaker. Now is the country going to have this type of stalemate and chaos? Mr. Chairman, I strongly suggest that the Committee agrees with us that the earlier recommendation they had made was much better, someone should assume office immediately they are declared, and then if you are successfully challenged, you quit office. Thank you, Mr. Chairman.

THE CHAIRMAN: We have heard a broad survey of the situation. Let us decide whether we accept the recommendation or we do not. The recommendation from the Committee is that we insert a new clause to the effect that a person declared elected as President shall not assume office while there is a petition challenging his or her election pending determination by the court. So those voting for the recommendation will say aye, those against the recommendation will say no. I now put the question.

(Question put and negatived)

THE CHAIRMAN: Hon. delegates I can take note of the two who have stood up, we now proceed to put the question on 107.

MR. KARUHANGA: Mr. Chairman, I wanted to point out the conflict now we have created in the law because Article 101 (4) says that "*while holding office, the President shall not be liable to proceedings in any court*". Now by the fact that we have rejected this amendment, it means that the President can now swear and take over office and then the petition can come. But once he is sworn in as President, we have said already that he is not liable to any proceedings in court. So then what happens now? So can we revisit that clause which we passed and put a proviso to say that he is only liable in cases where there is a petition against an election?

MR. KATUREEBE: Mr. Chairman, I do note what we provided for in 101, but also 107 is providing specifically about challenging elections, and I would have thought that in the normal rules of statutory interpretation, at least as I understand them, a later provision would be understood to either have been meant to add or to offer a qualification to the first one. Because here you are now, if we were to ask the intention of the Constituent Assembly in providing 107, we would be understood to say that, a Presidential election can be challenged notwithstanding the provisions of 101. I have no problem in reconciling the two myself.

THE CHAIRMAN: Now, I think we are going to waste time. We can leave this one for the technical team to come back to us if necessary. We have said that a President is not open to court proceedings fine, but as Hon. Katureebe has said, we have also said specifically in 107 (1) that any voter is free to go to court in relation to the election of the President. Now we have not yet set out the grounds on which a petition may be made. The grounds could be that for instance, the returning officer or officer has misbehaved, now that may not necessarily necessitate a petition against the President, it could be a petition against the Electoral Commission for having mismanaged the process. There you are not actually taking the President to court, you are going to court to complain against the Electoral Commission for having mismanaged the process. It is possible that the President as candidate may have

misconducted himself. But that specifically is provided for in 107. I do not see any contradiction. You cannot say that 107 is there but it is inferior to 101 (4). But in the process of interpretation really, one would say there is sufficient authority to say that this is an exception to the general rule, the general rule is that the President is not open to court proceedings. But in case of an election, 107 has said he is. I could be wrong because I have not practiced law for now 10 years.

MR. MULENGA: Mr. Chairman, I just wanted to add for clarity that, in the event of an incumbent President wanting a renewal, he goes for election, he is declared a winner and there is a petition against his success. He does not step down in order to go with the petition. So in any event, it is likely to happen that a President who is petitioned against while in office would have to answer the petition, and it would be in his interest to do so. So, if the Technical Committee, or rather, if delegates feel strongly that there is need to make that point, it can be done as Hon. Katureebe has said. But the provision which we have just rejected was - and I want to make this also for reminding delegates - was to cover a situation where there has been two elections and two petitions which overlap or go beyond the estimated 60 days. Otherwise, the ordinary period between election day and assumption of office which we entrenched in the Constitution would cover the period of petition. In other words, we have election day in February, assumption of office in April, and one of the reasons we left that period of 60 days is so that all these matters may be disposed of.

THE CHAIRMAN: I think we are alright. So now let me put the question - because now all the clauses in 107 have been considered so that stands part of the Draft Constitution. I now put the question.

(Question put and agreed to)

THE CHAIRMAN: Now we go to 117. It was sent back to the Committee for re-casting. I give the Floor to Hon. Mulenga but before you take the Floor, I think, if you look at the Order Paper for today, we have got I think 116. What happens with 116 I think is that there was a Motion by Hon. Kenyatta that we should delete 116 which I think provides for the appointment of people from Parliament to be Ministers and that they should not continue to be so. We voted on it and the view of

the minority was lost but the numbers we had were such that should we reverse, they would have gone into a deadlock, according to our Rules of Procedure. So we said that let the Members consult among themselves and come back and decide the matter here.

Article 116 says: "All Cabinet Ministers shall be ex-officio Members of Parliament but shall not have the right to vote on any issue requiring a vote in Parliament." Now, could Hon. Mulenga indicate to us, maybe you are in a better position as to what the real issue now is. The Minutes read as follows: "Hon. Mulenga moved as recommended by the Committee that; "(1) all Cabinet Ministers shall be ex-officio Members of Parliament but shall not have the right to vote on any issue requiring a vote. (3) subject to sub-section (2) of this Article, a Member of Parliament who is appointed a Minister shall vacate his or her seat" - *(Interruption)* - Order, order! I am reading the minutes of the day. "Then Hon. Kenyatta moved the minority motion that clauses (2) and (3) of Article 116 be excluded i.e. the one which says "The Ministers are ex-officio Members and that once appointed Ministers - if you are a Member of Parliament, you vacate your seat in Parliament." Then we proceeded to discuss that matter and a question was put; should M.P's vacate their seats on being appointed Ministers or not. We went into a division, there were 215 Members in the House and those in favour of vacating seats were 113, those in favour of retaining seats were 102, abstentions were zero, but as you know, for the proposition to carry, it had failed to get the two-thirds and so the Chairman advised the Members to go and think over the matter and come back the following Thursday but we never did vote on the matter. Now that you have taken months to reconsider the matter, I presume you have arrived at a conclusion.

What we are going to do is simply to vote because really we had debate and this is a matter where I think the Chairman is entitled to say let us divide. Should Members of Parliament on being appointed Ministers vacate their seats or not. We are going to divide, we discussed this thing for a very long time, the only thing that you are to do was to think about it. So we shall do it this way, those in favour of Ministers vacating their seat shall go to the Chairman's right, those not in favour of that shall go to the Chairman's left. Let us divide. Those Members who have no views can come to the centre here,

those who can not make up their mind come to the centre here.

(The Assembly went in Division)

THE CHAIRMAN: Please resume your seats so that we announce the result of the division. We had a division, we went into the lobbies on the proposition put to the House by way of a Minority Report by Dr. Kenyatta and as I read in the minutes, he had moved that Clause (2) and (3) be deleted. Those are the ones relating to whether or not Members of Parliament appointed Ministers should vacate their seats in Parliament. The lobby results are as follows; there were 221 Members at the time of the Division in the House and there were no abstentions, those in favour of the Motion - because we were voting whether we accept Hon. Kenyatta's recommendation which means those in favour of Hon. Kenyatta and those against Hon. Kenyatta. Those against Hon. Kenyatta's proposition were 57 and those in support were 164. *(Interruption)* Yes. Hon. Kenyatta's proposition was that the clauses should be deleted, that we should delete from the report of the Committee those clauses which say - I will start again because I think the Members are not understanding it properly.

The recommendation of the Committee was as follows: (2) was that "*all Cabinet Ministers shall be ex-officio Members of Parliament but shall not have the right to vote on any issue requiring a vote.*" (3) says; "*subject to sub-section (2), a Member of Parliament who is appointed Minister shall vacate his or her seat.*" That was the recommendation of the Committee. Dr. Kenyatta said no, he did not accept that, therefore, he moved by a way of a Minority Report that Clause (2) which I have just read and (3) which I have just read should be deleted i.e. just leave the one which says that: "*Cabinet Ministers shall be appointed by the President with the approval of Parliament from among Members of Parliament or persons qualified to be elected Members of Parliament.*" That is 116 (1). Then (2) was saying that these people once made Ministers whether you are a Member of Parliament or not, you become ex-officio and (3) that if you were a Member of Parliament, you vacate your seat upon being appointed a Minister. That is what the Committee had recommended. Then hon. Kenyatta says by a minority report, no, delete those which say that you are just an ex-officio member, delete that which says you vacate your seat and you leave that

which says you are appointed whether from inside or from outside without mentioning that you vacate your seat and so the results are, those who favoured the proposition to delete those two were 164, those who said do not delete were 57.

Now, by our rules which require two-thirds, I do not think we have to go any further. The Minority Report becomes the majority view in the Plenary and supplants the majority view of the Committee by deleting those two provisions but there is a catch there. (2) was reading: "*all Cabinet Ministers shall be ex-officio Members of Parliament but shall not have the right to vote on any issue requiring a vote in Parliament.*" By deleting that and leaving clause (1) which says that: "Cabinet Ministers shall be appointed by the President with approval of Parliament from among Members of Parliament or persons qualified to be elected Members of Parliament", in Clause (4) you are saying: "*the total number of Cabinet Ministers shall not exceed twenty-one except with the approval of Parliament.*" If you leave it as it is, what is the status in Parliament of persons who are qualified to be Members of Parliament, they are not Members but they have been appointed Ministers? Do you want them to be full-time Members of Parliament? In which case you have given the President the right to increase Parliament by twenty-one Members at least or do you want them to be ex-officio Members without the right to vote?

MR. BEN WACHA (Oyam County North): Thank you, Mr. Chairman. Mr. Chairman, I have considered the scenario that you have just put before the House and I think it would be unfortunate if the Constitution indirectly gave the President powers to make nominations and appointments to the House. In view of this, Sir, I beg your indulgence to move a new Clause (2) to read as follows: "*Persons appointed Ministers from outside Parliament shall by virtue of that appointment become ex-officio Members of Parliament without voting rights*".

THE CHAIRMAN: The Motion was very clear that "*persons appointed Ministers from outside Parliament should, by virtue of that appointment, be ex-officio Members of Parliament without -*" I think we shall say - "*without the right to vote on any issue requiring a vote in Parliament*", if you do not mind.

MR. BEN WACHA: Yes.

THE CHAIRMAN: Okay, that is the Motion by Hon. Ben Wacha. Hon. Leander Komakec, do you want to oppose it?

MR. KOMAKEC: I am seconding it.

PROF. KABWEGYERE (Igara West): Thank you very much, Mr. Chairman. I would like to oppose the amendment as proposed by Hon. Ben Wacha. I think, Mr. Chairman, when a person is appointed Minister and participates in the formulation of government policy and presents this policy in Parliament, he should have the right to defend it fully including his vote. Mr. Chairman, if we are talking of saying that people who are appointed Ministers from outside are equal to those who have been appointed from Parliament, then we must give them equal status. Otherwise, let us then pick them from Parliament and forget because, Mr. Chairman, I would myself find it unfair that you have two colleagues, one who can go and attend Parliament all the time and defend himself and defend his policy and then you have another one equally called a Minister who cannot defend his position fully including putting his neck at the voter. I therefore oppose this, if we were picking from outside, let them become Members of Parliament and be full participants. If, therefore, we feel that this is a hole which can bring in nominees by the President, we block it and we recruit from Parliament only and finish.

MR. SAMKUTESA (Mawogola County): Thank you very much. Mr. Chairman, I appreciate the reasons advanced by Hon. Kabwegyere with regard to creating two classes of Ministers. I think that the arguments that were advanced in favour of Hon. Kenyatta's Motion which we have just passed were that Ministers who do not have constituencies are insensitive to the needs of the electorates and those were some of the grounds why some of us supported Hon. Kenyatta's Motion. But having allowed people to be appointed outside Parliament, then allowing them to vote, I think it is giving the President a way of bringing in Members of Parliament by the back door. If you want to have the President have nominees to Parliament, say so and limit the number but with this provision, he could get twenty one Ministers from outside Parliament or forty two, all of them, he could get them outside Parliament and if over and above that you give them the right to vote then you are making the President

elect forty two people and give them a vote in Parliament. Personally, I think that the reason we have permitted this clause is to allow the President to invite and bring on board some expertise that may not have emerged in Parliament but to go beyond that and give them voting rights, one would ask why they did not stand. Why has this Minister got through an election and another one comes and enjoys the same status? I can understand that in the past there were some historical members who became Ministers and had not stood but there you are according them the right of their historical role but this guys are just picked out of the blue!, He comes and he has been made a Minister, you have seen the feelings of this House, many people think that being a Minister is being privileged which in many cases is the case, then over and above that, you make him vote, I think it is weakening Parliament and I am opposed to it. I would, therefore, support Hon. Ben Wacha.

THE CHAIRMAN: Let us put the question on this one. Let us vote. The Motion was read out by Hon. Ben Wacha seeking to make appointees from outside Parliament ex-officio Members of Parliament but without rights to vote on issues before Parliament. Of course, they can contribute and defend policies but they can not vote when it comes to vote. I think that is what he had in mind.

(Question put and agreed to)

THE CHAIRMAN: Now, let me put the question on 116 as amended to stand part of the Draft Constitution.

(Question put and agreed to)

MR. AWORI: Mr. Chairman, I had submitted an amendment earlier on on 116.

THE CHAIRMAN: 116 is closed more or less.

MR. AWORI: I submitted much earlier, Mr. Chairman.

THE CHAIRMAN: Hon. Awori had a Motion, is it seconded? But we had already voted really, I think this one will have to come at reconsideration stage. Hon. Aggrey Awori, do you really insist?

MR. AWORI: Mr. Chairman, with the indulgence of the Chair, the Motion is being circulated but, Mr. Chairman, my amendment was that: "*subject to the*

provisions of this Constitution, all Members of NRC and Constituent Assembly Delegates involved in the Constitution making process are not eligible to hold Cabinet positions for the next five years after promulgation."

THE CHAIRMAN: Order, order! I think in all fairness, let us be serious. Hon. Awori did hand me this Motion this morning but it is just that by the time I came to put on 116, he had not caught my eye but the Motion is seconded by Hon. Ambrose Atwoki, whether voluntarily or otherwise. Hon. Awori, could you be brief?

MR. AWORI (Samia Bugwe North): I will be very brief, Mr. Chairman. As a matter of fact, I even attract the rationale for this purpose. Mr. Chairman, this particular Motion is for the purpose of being transparent in the Constitution making process. From time to time, Mr. Chairman, it has been said that some of us when we were addressing ourselves to the problem of sharing of power, we have been dismissed as people looking for Cabinet positions. Mr. Chairman, to sanitize this situation particularly in the transitional period, I would say we disqualify ourselves in case somebody thinks we are designing or entrenching ourselves in a Constitution and to make sure also that we keep our positions and those of us who are outside, Mr. Chairman, whenever we make any serious Constitutional changes or proposals, changes some people think we are only proposing because we are seeking Cabinet positions. Mr. Chairman, I would say if that is the case, then let all of us who are involved in making this Constitution disqualify ourselves for the next five years and just remain legislators if the voters so return us.

Mr. Chairman, I know very well that all of us here have come probably with different agendas, some of us came here specifically to make a Constitution, a fair Constitution for this country but apparently, it is now quite clear that some of us have come to make a Constitution that will entrench us in executive positions such as the Cabinet. Mr. Chairman, I will endow Members of this August House who are seeking clarification.

THE CHAIRMAN: No, for me my position was that you should finish your justification because I could see so many hands, they will be given a chance to make a contribution in their own right.

MR. AWORI: Mr. Chairman, with your indulgence, I continue for thirty seconds. Mr. Chairman, I am addressing this particular issue on what is going on right now particularly on Chapter Twenty of the transitional clause. We have made several proposals, Mr. Chairman, that this transitional period - *(Interruption)*

THE CHAIRMAN: Have you finished?

MR. AWORI: Mr. Chairman, I know this particular amendment goes against the grain of those with vested interests in particular the executive position. Mr. Chairman, with your indulgence, I would wish you could give us an opportunity to have a fair debate rather than emotionally dismiss the matter. Thank you.

MR. BIDANDI SSALI (Nakawa Division): Mr. Chairman, I just wanted clarification from Hon. Aggrey Awori because he says that Members of this Assembly and for that matter, of the NRC will be misunderstood if any one of them is appointed Minister in the next administration, in which case it will be attributed to his having played a role in getting to that Ministry. Could he comment on a possibility of amending his amendment not to limit the restriction to Cabinet but also to the whole Parliament because there are so many decisions that have been taken by this Assembly regarding the next Members of Parliament and the NRC has also been involved especially with regard to constituencies. In which case, Members of the NRC individually might have been subjected to a pecuniary interest as to how the decision on constituencies will be made. Would he feel comfortable if this amendment covers Cabinet and Parliament so that the NRC Members and all Members of C.A. will not stand for the next Parliament?

MR. NASASIRA (Kazo County): Thank you, Mr. Chairman. Mr. Chairman, I oppose Hon. Aggrey Awori's amendment first and foremost because it is extremely inconsistent with clause (1) of Article 116 that we have just passed. Why do I say it is inconsistent, Mr. Chairman? We have already passed that the President will appoint people from Parliament and from outside Parliament. While Hon. Aggrey Awori wants to disqualify people who have been Members of the Assembly from the Executive, he wants us to go ahead and stand. He says as long as people can go and vote for me in the next elections, I should not be disqualified

to be a Member of Parliament but I should be disqualified to be on the Executive. Now, that would be inconsistent with Clause (1) of Article 116 which we have just passed because we are saying that the President can pick from Members of Parliament and from outside. Suppose a situation happens that all Members of Parliament in the next Parliament are former Delegates of CA? That would automatically disqualify any Member of Parliament being on the Executive and the President picking all the Executive from outside. Secondly, Mr. Chairman, I do not think the Constitution is made up of the Executive. The Executive is just one of Chapters which we have dealt with. Is he going to disqualify people who have been CA Delegates to become judges, to become public servants, to be on commissions because they participated in making this Constitution? Mr. Chairman, I think we should just throw away this amendment quickly so that we can get on with the business, it is ridiculous.

MR. DICK NYAI (Ayivu County, Arua District): Thank you, Mr. Chairman. Basically, I would seek clarification along the lines Hon. Nasasira has just so ably put. I believe that the Motion is very clear and Members understand it thoroughly, Mr. Chairman, without any waste of time, I beg you to put the question.

THE CHAIRMAN: Okay, I think let us decide on this one. Hon. Aggrey Awori has moved that: *"subject to the provisions of this Constitution, all Members of NRC and the Constituent Assembly involved in the constitution making process are not eligible to hold Cabinet positions for the next five years after promulgation of the Constitution."* I put the question.

(Question put and negatived)

THE CHAIRMAN: I had re-opened 116, let me put the question that it stands part of the Constitution.

(Question put and agreed to)

THE CHAIRMAN: Now, we have Article 117. Can I suggest that on 117 - you see under 117, they are talking about other Ministers, then they say in (2) that: *"subject to the provisions of this Article, clause (1) and (2) of Article 116 shall apply to the appointment of Ministers under Clause (1) of this*

Article" but we have re-cast 116. Can I just suggest that we leave that to the Technical Committee to do any consequential changes which should arise? Agreed! Thank you.

Now, there was a matter which was sent back to the Committee on 117 regarding, I think, the working of Ministers and I will give the Floor to Hon. Ringwegi who is leading us since the Chairman is not the House right now.

MR. RINGWEGI: Mr. Chairman, Clause (4) of Article 117 was referred to Committee Two to consider whether the clause should be re-cast to remove possible ambiguity in respect of whether the Minister shall have responsibility and to avoid confusion in cases of two or more of such Ministers in the same Ministry as to who would, in the absence of Cabinet Ministers, act in that office. The problem, Mr. Chairman, has been that we have in certain Ministries appointments relating to Ministers of State. Instead of having one, you may have two and now we want the Constitution to be very clear who of the two Ministers of State in that particular Ministry would act as a Cabinet Minister in the absence of the substantive Cabinet Minister. The Committee reconsidered this clause and now recommends that that clause should be re-cast to read as follows: *"A Minister referred to in this Article shall have responsibility for such functions in the Ministry to which he or she is appointed as the President may, from time to time, assign to him or her and in the absence of the Cabinet Minister in his or her Ministry, shall perform the functions of the Cabinet Minister as the President may direct"*. The modification here Hon. Delegates is that we have decided that it should be the President to direct as to who of the Ministers of State in a particular Ministry should perform the functions of a Cabinet Minister in that Cabinet Minister's absence. That is the modification we have introduced in this clause. So the re-cast Article, Mr. Chairman, is as I have read it and I beg to move.

MR. OBUA OTOA (Erute County, North): Thank you, Mr. Chairman. Mr. Chairman, let me first of all say that it is unfortunate that I did not know we were going to proceed in the order of business in the manner in which we have because I would have brought my document, the report for Committee Two. Now, I find myself in a situation where I do not know what the original clause is saying and I know now what the new one wants to

say but I would be very much more comfortable if someone were to let me know what the original clause says so that I can compare it with the manner in which it is being recast. I am not opposing, I just want to be clear in my mind what the original clause says before I can make up my mind about the recasting.

THE CHAIRMAN: I can read it to you.

MR. OBUA OTOA: Thank you, Sir.

THE CHAIRMAN: It says: "*A Minister referred to in this Article shall have responsibility for such functions of the Ministry to which he or she is appointed as the President may, from time to time, assign him or her and in the absence of the Cabinet Minister, in his or her Ministry, shall perform the functions of the Cabinet Minister.*" I think this is the one which is recast, it appears in my control copy.

MR. OBUA OTOA: What I am saying, what about the original, what does it say? Because I cannot make up my mind unless I know what the original clause says. The recasting one, I have no quarrel with but I would like to know what the original clause says. I do not have my documents here, Sir.

THE CHAIRMAN: Hon. Ringwegi, I think you may have the original there.

MR. RINGWEGI: Yes, I do, Mr. Chairman. With your permission I can read it out. The original clause (4) of Article 117 reads: "*A Minister referred to in this Article shall have responsibility to such functions of government as the President may, from time to time, assign to him or her and in the absence of the Cabinet Minister, shall perform the functions of the Cabinet Minister.*" and it stops there. In fact when I was introducing the new clause, I said that the addition was only that we have enabled the President to direct who of the Ministers of State in a particular Ministry should act instead of leaving it blank because the intention was to remove the ambiguity. So the addition is just in the last word starting from "*as the President may direct...*" and we do not introduce anything very substantial, Mr. Chairman.

THE CHAIRMAN: I think the other one was to make it clear that the responsibility was to the Ministry to which he is appointed. In the earlier

formulation, it was left open as if he could be appointed to another Ministry although he is in one other Ministry and so the one to which he is appointed and then the President directs in the event that there are more than one. I take it that you accept that.

MR. OBUA OTOA: Yes.

THE CHAIRMAN: I now put the question on 117 to stand part of the Constitution.

(Question put and agreed to)

THE CHAIRMAN: There is 119. Hon. Ringwegi.

MR. SAM RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, Article 119 was also referred to the Committee to consider whether a Minister should vacate office upon the President, who appointed him, ceasing to be President or upon a new President assuming office. The matter, Mr. Chairman, was debated and the Committee observed that whenever the President vacates office, there is immediate succession by either a newly elected President or an acting President who has unfettered powers to appoint new Ministers or to re-appoint or reshuffle the Ministers of his predecessor. It is therefore recommended, Mr. Chairman, that there is no need to provide for the Ministers to vacate office upon the President vacating office in any manner.

THE CHAIRMAN: Agreed, so we leave it as it is. Now, I will put the question on 119 to stand part of the Constitution.

(Question put and agreed to)

THE CHAIRMAN: Now, Article 121.

MR. RINGWEGI: Mr. Chairman, I beg your indulgence. Article 121 was considered by my Chairman and the Committee when I was not present and when I was asked to take over this morning, Mr. Chairman, I did not get any proper briefing on this Article. So, Mr. Chairman, I stand to be guided by any other Members of the Committee if there are any problems that may arise and which I may not be able to explain.

Mr. Chairman, this Article was referred to the Committee to consider whether the grounds on

which a vote of censure against a Ministry being moved to be set out in the Constitution. On considering this matter, the Committee now recommends that the grounds should be set out and they should be similar to those of the removal of the President. Clauses (1) and (3) of Article 121 should therefore be amended to read as follows. Clause (1) of Article 121: "*Parliament may by a resolution supported by more than half of all Members of Parliament, pass a vote of censure against a Minister on any of the following grounds:*

- (a) *abuse of office or wilful violation of oath of allegiance or office;*
- (b) *misconduct or misbehaviour;*
- (c) *physical or mental incapacity."*

These are the grounds that the Committee considered could be set out in the Constitution. So I beg to move that Article 121, clause (1) should be amended to insert the provisions as read out. I beg to move.

DR. BYARUHANGA (Kitagwenda county): Thank you very much, Mr. Chairman. I am seeking to understand how one can censure another because he is sick. It gives the impression - it is as if that Minister has brought the sickness on himself.

MR. NEKYON (Muruzi County): Mr. Chairman, Sir, I have seen the list of grounds for censuring the Minister as proposed by the Committee but I do not see anywhere a provision which covers inability to perform or mismanagement of the ministry. I therefore propose to move that sub-clause (d) be added to read: "*mismanagement or inability to perform."*

THE CHAIRMAN: Is that seconded? Well, it is seconded by Hon. Atamuvaku, Hon. Kabugo, and Hon. Wanendeya.

MR. NEKYON: I am moving this because this is a very important area in the running of a ministry. A Minister may not abuse his office or wilfully violate his oath of allegiance or oath of office and he may not misbehave but it is possible that a Minister who genuinely wants to run the government fails to run it because he is just incapable of running it. He may not have the know-how to run the Ministry but he is acting in good faith. He only finds that he cannot control the staff, so they embezzle public funds left and right, right beneath

his or her nose but in the end, you find that the Ministry is running bankrupt, the Minister remains there sitting not knowing what is happening. You cannot say that he has misbehaved, you can not say that he is abusing his office because he is actually acting in good faith but he is unable to run the Ministry, he does not know how to run the Ministry. So I want to cover this area because this is where many things have gone wrong. Somebody is put in a position which he cannot manage because he is related to somebody in the government so he is appointed there and then he makes a mess of the whole thing. So I want this person to have a vote of no confidence brought on him on this ground. I beg to move.

THE CHAIRMAN: Let us first of all get clearance as to what it is. Hon. Nekyon is moving that we add paragraph (d). Could you read it please?

MR. NEKYON: It is to read: (d) "*mismanagement or inability to perform."*

THE CHAIRMAN: "*Mismanagement or inability to perform."* That is what you would like added on that Motion and it was seconded.

MR. BAGEYA (Kigulu North): Thank you very much, Mr. Chairman. Mr. Chairman, before I can make comments on Hon. Nekyon's Motion, I had a problem with (c) whereby I see a certain group marginalised of the disabled persons.

THE CHAIRMAN: Are you debating Hon. Nekyon's Motion?

MR. BAGEYA: I had put up my hand earlier, Mr. Chairman, and since we are going beyond, I wanted to make my comment on (c) and then probably proceed to say that I do understand Hon. Nekyon's Motion and when we are trying to look at it, what he was suggesting was not catered for here. I would therefore stand to support that particular Motion purely because there are people who are appointed in a job hoping against hope that they are capable of performing and they come out to be totally incompetent but for the purposes of saving ourselves, I feel strongly that this (d) should be incorporated in the Constitution to save such embarrassment at a future stage.

MR. OGOLA (West Budama South): Mr. Chairman, on the face of it, one would be persuaded to go

along with this position. My difficulty is that we have already adopted a position that Ministers shall be appointed by the President with the approval of Parliament. Now, if Parliament turns around and censures the Minister whom they have themselves approved, that is alright but can you, in that case, censure that Minister without also censuring the President who appointed him? And therefore, it may be necessary to re-think whether this would be the proper place to censure the President and on that ground, I am hesitant and I stand to oppose this amendment, Sir. Thank you very much.

MR. OBIGA KANIA (Terego county): Thank you very much, Mr. Chairman. I would like to pick from where Hon. Ogola has left. In fact, if we have to censure the Minister and therefore indirectly the President, I think the Parliament that approves it should also censure itself but the most important point is that in my view, mismanagement or inability to perform is a performance appraisal and it is therefore an administrative function which should be performed by the appointing authority. Unless we are saying that Ministers are going to be administered by Parliament, in which case there is no reason why the President should be held responsible for any act of the ministers, and therefore, it may be necessary to rethink whether this would be the proper place to censure the President. So I strongly oppose this amendment in order to give the administrative function in managing Cabinet Ministers to the President who is responsible for their appointment. And on that ground, I am hesitant and I stand to oppose this amendment, Sir. Thank you very much.

MR. ATAMVAKU (Arua Municipality): Thank you, Mr. Chairman. Mr. Chairman, I will concur with the mover of the Motion. I think the opposition to this Motion has been advanced on some grounds which I think are rather misconceived. Mr. Chairman, Parliament cannot censure itself when it censors the Minister because Parliamentary approval of a minister is based on certain grounds not only on the person of a minister who is appointed but also on the supposed qualifications. But now, censureship of the minister is based upon subsequent performance and Parliament cannot hold itself responsible for the subsequent performance of a minister if the performance falls short of the actual expectations. This is an ethical issue which we are missing, if we are going to oppose this Motion.

Secondly, when a minister is censured, it does not necessarily follow that the President is censured, because these are two different human persons. A President may be responsible where a minister goes wrong, but that fact in itself is not a necessary condition. In other words, when a minister goes wrong, it does not necessarily mean that the President is responsible for his wrong doing. Therefore, there is no necessary connection between the wrong performance of a minister and that of a President. Now, Mr. Chairman, the Motion is quite clear, we are saying that somebody can be appointed to a position, he has the qualifications and, therefore, our expectations are well grounded. Unfortunately, factors extraneous to our earlier position may creep in and he fails to perform, and it is on this basis that such a person can be censured not that our earlier expectations must of necessity be fulfilled. Thank you, Mr. Chairman, I beg to support the Motion.

REV. FR. BATANYENDA (Presidential Nominee): Thank you very much, Mr. Chairman. Mr. Chairman, I feel the Motion moved by Hon. Nekyon is a repetition, his fears are catered for in sub-clause (b). Mr. Chairman, according to the Oxford dictionary, new edition, "misconduct" which appears in subclause (b) means bad behavior and mismanagement. So, I feel, Mr. Chairman, that instead of being repetitive in this Motion of Hon. Nekyon, I think he could be contended with subclause (b) and his fears would be catered. So, I would ask him to be happy with clause (b).

MR. ABALIWANO (Bugalula South): Mr. Chairman, I do support this particular point on the basis that in a situation like the one in which we are, we are not talking about a minister as a minister to the extent that he is part of that of government, I think we are talking about a minister as an individual. Can he perform, is he capable of managing what has been given to him or to her? It is to this extent that, I think, this question of censure to this as an individual becomes very critical. Because as Hon. Atamvaku has said, Parliament would approve by name and by whatever C.V. has been placed on this gentleman or lady as presented by the President. What happens after that, the President remains to see and the Parliament remains to see! So, it is only fair that once it comes to the actual performance, we need, as Parliament, to censure this person that you are a performer or you are non-performer. It is only on this basis that we would be in a position to censure him as an individual.

I am looking at a case where, for instance, we may have a political party in the majority, where for instance once it comes to this they will say; okay you raise a no confidence vote in government we would defeat it. But there could be a case where in extreme cases a minister definitely is incapable of performing, and it will have nothing at all to do with a no-confidence vote in a government in question or that particular political party. If it is a political party, as far as some of us have seen the political parties how they have performed in this country, definitely that minister will not be censured, they would simply come up and say this is almost a no-confidence vote in us, we are not willing to relinquish this minister. But if we can look at it from the performance point of view, I think, if the President is adamant and sometimes they can be adamant in terms of, if they lacked a person, whatever you will say they can simply say, I like the man or the woman I do not care a damn, you can go to hell. If this is the case, then Parliament would have a way of saying, as an individual minister, we are not happy about his management and his performance, and I think it is because of this that we should support this particular Amendment. Thank you.

MR. RWOMUSHANA (Bujumbura County):

Thank you, Mr. Chairman. Mr. Chairman, we have given powers to Parliament to censure ministers but never-the-less, we are restricting them on these obvious cases; abuse of office, wilful direction of the oath, misconduct, misbehaviour but we have left the crux of the matter; his real purpose, the purpose of performing, the purpose of management. Mr. Chairman, there are obvious cases where you find a minister does not have resources, where you find a minister does not have the power to appoint the personnel. But then there is where you find the ministry is stocked, it has the personnel, the minister is just busy asleep, busy drinking and there is famine, people are dying he is just keeping quiet, he cannot even give a statement. There is trauma, people are dying and he cannot even come to their rescue; there is insecurity but because he has got bodyguards, he does not mind, he thinks everything is okay, and then he remains! Let Parliament investigate and if it is necessary to have him censured, they have him censured and he goes to rest. So, I support the amendment wholly and let it be passed. Thank you, Sir.

MR. DIDI (Moyo West County): Thank you, Mr. Chairman, I wish to address myself to the Mover of

this Motion and request that he either considers rephrasing it or withdrawing it. Because as a very experienced former minister, the Mover is in a better position to know that one, the range or the scope of work that a minister does is set out either by the schedule that is given to him or by the - if it is where there is just a few ministers, say if he is Minister for Health - but what I am trying to say is, the Parliament, if you do not know what somebody should be doing or if you do not know what he is not doing, in what condition would you be to evaluate that person? Because here we have a situation where Parliament ordinarily does not sit to evaluate the performance of individual ministers! Now, if there was a situation like, for example, PAC examining ministries in detail and he had made this recommendation that where PAC finds - because in the ordinary investigation, they said okay, we are investigating the Minister for Agriculture, we found eight billion has been missing now, PAC may find out that the minister may have some blame in that mismanagement. It could be a situation where being a non-accounting officer he did not know anything about it. I am limiting myself to the question of mismanagement not inability because the question of inability had a beginning either by pretenses - if somebody is given a bigger C.V. than he always holds, subsequently maybe PAC or a subcommittee of Parliament can find out. What I am trying to beg here is, unless you have a section which can investigate what the fellow is supposed to do, you will not be in a position, it will be just like - the other day I visited a friend, he said my houseboy here speaks very good French, but when I investigated I found the person does not know French himself. So, I asked myself, this host of mine who did not know French, in what position was he to judge somebody else and even evaluate to tell me that this fellow spoke better French! We have a similar situation in the House, and we are going to find ourselves in a situation where the people are going to censure ministers, not because they are bad managers.

Now, having said that on a question of inability that is obvious, if it is not covered sufficiently in (a), probably he could strengthen his argument where it is obvious like Hon. Rwomushana has said, somebody does not go to the office, he is doing other things, and maybe because he belongs to a ruling party, he will be protected. In situations like that, a Committee - either PAC or something - if it comes out from their report, then maybe Parliament can

take action. But if it is just like mismanagement, inability, I think it is too vague. I thank you.

THE CHAIRMAN: Let us decide on this one. The Motion is by Hon. Nekyon that in the report of the Committee on this matter we, add another paragraph (d) "*mismanagement or inability to perform*" as a ground upon which a Motion of censure maybe moved in Parliament against a minister. Let me put the question.

(Question put and agreed to)

MR. WACHA (Oyam North): Thank you very much, Mr. Chairman. Mr. Chairman, I want to make very few comments in respect to clause 1 (c). The Vice Chairman of our Committee said that the paragraph in the clauses were meant to correspond with the grounds for the removal of the President. Now, Mr. Chairman, I find a problem in paragraph (c) of Clause (1) because when we were dealing with the removal of the President under Article 110, we provided under clauses 11 to 13 the creation of a Medical Board for purposes of determining the medical capacity or medical performances of the President before he is removed. However, what is being asked from us in Clause (3) is for us to accept that a minister can be removed or could be censured for physical or mental incapacity without us being asked to provide the basis for determining that incapacity. I think, Sir, it could be proper for us, if we provided for creation of a medical board to determine the incapacity of a minister. In this respect, Sir, I am asking the Chairman, if he is agreeable, that we create subparagraphs and create the position of a Medical Board and also the areas under which the Medical Board should determine how a minister is incapacitated or whether or not he should go. Thank you, Mr. Chairman.

THE CHAIRMAN: Hon. Delegate, what really happened is this. In the original formulation which came to the House from the Committee, the formulation was wider, it simply said: "*Parliament may, by resolution supported by more than half of all Members of Parliament, pass a vote of censure against a minister.*" Then some people said that there should be grounds stated, otherwise it was normal situation where Parliament could censure a minister. Now, in attempting to give grounds, they have brought in situations like mental and physical incapacity. Now, physical and mental incapacity in some pieces of legislation we do put it there without

having the requirement of a Medical Board. If you look at appointments of people to various positions as general managers and so on and so forth, by Statute, they provide for these routine grounds. Hon. Ben Wacha is saying, having mentioned this, we should go on to set up a whole rigmarole of how the minister will be checked in the head before the Parliament can decide whether he is or he is not capable. Should we go into all these details or should we really have taken the general proposition and left it there?

MR. OKALEBO (Bukedea County): Thank you, Mr. Chairman. I do appreciate the fears of Hon. Ben Wacha, but I am not convinced that we should go into the rigors of establishing a Medical Board as he so wishes because the procedure of censuring a minister is so elaborate as already given. It is not so sudden, he is not taken unaware; Members of Parliament have to write a Motion to the President telling him that these are the grounds for us to say so and so should be censured, and these are outlined in the Constitution and a notice of this will be sent to the Speaker who will send it to the person concerned, and then the person concerned is entitled to a hearing for his defence on the day when they are discussing his censure in Parliament. And by way of his defence, when he has received the notice that Members of Parliament intended to move a Motion of censure against him, if it is based on the ground that he is mentally defective somewhere, he will not just sit idle without seeking support of his doctors who will come there and, maybe, give a report in defence of this particular minister. So, we cannot just go into the rigors of establishing a whole board for every aspect where we think defence is needed in Parliament, Mr. Chairman. For me, I am saying that the provisions of this Constitution are enough and a person who is to be censured is a person who can bring that matter in his defence since he is entitled to appear and defend himself.

MR. MAZIMA (NUDIP): Thank you, Mr. Chairman. I have a problem with paragraph (c) and I would like to add on what Hon. Ben Wacha has said, but I would like to go deep because if an expert comes and finds out that I am physically incapacitated or mentally incapacitated, that one is not enough. Because the other time when Hon. Malinga got an accident, he could not put on his suit and he was performing well here. So, I think the clause should be focused on whether this person is able to

perform the function he is supposed to do. If we leave it hanging, it can be a problem. We had handled Article 110 for the removal of the President; 136 for MPs, and 165 for Judicial officers, and we came with details and we did mention that the only issue should not be physical or your mental capacity, but whether this mental or physical capacity affects your performance and I think if the Chairman of the Committee could borrow the wording of some of those clauses, it would be better.

THE CHAIRMAN: Okay, let us do it this way. I think we do not seem to be agreeing on the wording. Can I say that, Chairman of the Committee, in view of what Hon. Mazima has said, we can stand this one over while he checks how we worded other provisions relating say to Judges and so on and so forth, then come back with a new formulation? Agreed?

MR. RINGWEGI (Padyere County): I thank you, Mr. Chairman. Mr. Chairman, although personally I do not see any problem with the interpretation of physical or mental incapacity because they relate to the capacity to perform, if it is the desire and intention that we should be uniform, I have no disagreement that this matter can be stood over and then we check the provisions relating to - similar provisions relating to mental or physical disabilities and then we marry the same for purposes of being neater. I have no objection to the suggestion made, Mr. Chairman.

THE CHAIRMAN: I would like to suggest that we adjourn at this stage for a lunch break and we resume at 3 O'clock. We stand adjourned to resume at 3 o'clock.

*(The Assembly rose and adjourned until
3 O'clock the same day)*

THE CHAIRMAN: Hon. Delegates, when we adjourned, we had decided that we refer 121 back to the Committee for further polishing up, but I do not think the Chairman is ready with 121 or we move to 122.

MR. RINGWEGI: Thank you, Mr. Chairman. Mr. Chairman, I had the opportunity of discussing with some other Members of the Committee and also Hon. Delegates who are not Members of the Committee, but who felt concerned about the need

to retain the provision as it is. They are saying that when we talk about physical or mental incapacity, we are actually talking about incapacity related to the performance of the job or the duties that may be assigned to the particular person concerned and therefore, they do not see it conflicting in any way with the interpretation that, Hon. Mazima would want us to adopt. Because we are not saying that because somebody is either physically deformed, he is therefore a subject censure. We are not saying that. We are saying that the incapacity must relate to his abilities to perform those particular duties for which he has been appointed. So, the reference to physical or mental incapacity is a reference to performance. So, Mr. Chairman, I am wondering whether Hon. Mazima would still insist that this formulation should be changed.

MR. MAZIMA: Mr. Chairman, it is assumed that this interpretation is clear. But talking from experience, a lot of people have been victimised. And it is that victimization that I am trying to avoid. And when you go to interpretation, to me it does not make sense to have provisions talking about the same thing, but which are worded differently. 110 clause (1) is worded differently, talks about the same thing; 136 clause (3) is talking about the same thing worded differently; 165 clause (3) is talking about the same thing worded differently. I would suggest that it does not even waste a lot of time if the Technical Committee looked at it and worded it in the same way. Otherwise, I am not a lawyer. But I would find a lot of wrangles in interpreting the verses. That is where my problem really lies. And the other one is, our experience is a third experience, and whatever we do, we should try to avoid it. Thank you very much.

THE CHAIRMAN: Hon. Ringwegi, what Hon. Mazima is saying is that, we should be a bit consistent. Because if you look at what we approved in 110 Clause (1), then in (a) we were more specific. 110, 1(c) reads that, the President may be removed on the following grounds. "*Physical or mental incapacity, namely that he or she is incapable of performing the functions of his or her office by reason of physical or mental incapacity.*"

MR. RINGWEGI: I thank you, Mr. Chairman. Mr. Chairman, I am glad that you have actually pointed out this fact to the Assembly. The edition that Hon. Mazima is insisting on is a specific qualification. We are trying to define what a physi-

cal or mental incapacity is. But you will see that, we also again end up with the same words or the same phrase saying physical or mental incapacity. But I think really there is no harm in adopting that formulation if only for the sake of consistency. Therefore, I would move, Mr. Chairman, that paragraph (c) of this clause should read: "*physical or mental incapacity namely that, he or she is incapable of performing the functions of his or her office by reason of physical or mental incapacity.*" I beg to move.

THE CHAIRMAN: Agreed? So, I take it that with that clarification, we accept Clause (1) of 121, and then there was also a recommendation of Clause (3).

MR. RINGWEGI: Mr. Chairman, the Committee reconsidered Clause (3), and has come up with this formulation. "Proceedings for the *censure* of a minister shall be initiated by a petition to the President through the Speaker, signed by not less than one third of all Members of Parliament, giving notice that, they intend to move a motion of and setting out particulars of the ground in support of the Motion". I beg to move.

THE CHAIRMAN: Agreed. Now, let me put 121 to stand part of the Draft Constitution as amendment.

(Question put and agreed to)

THE CHAIRMAN: That takes care of 121. We go to 122.

MR. RINGWEGI: Mr. Chairman, Article 122 Clause (5), referred to Committee 2 to consider whether the provision could be restructured with a view to catering for a period before Parliament makes a law exempting the type of agreement from application of the clause. You will recall Hon. Delegates, that we had provided in Article 122 that, all agreements, contracts, treaties, conventions, documents by whatever name, to which government has an interest or is a party should first be looked through or scrutinised by the Attorney General. But then, a point was raised by the Hon. Chairman of the Assembly which point was very valid that, that would make it difficult for governments to function because, if we are to subject every contract to the scrutiny of the chief legal officer, then we would have situations whereby when you

need small purchases for stationery and the likes, all those should also go to the Attorney General, and that would make the working of government very difficult. There was therefore, need to provide for an exemption.

Hon. Delegates, the Committee considered this matter and we observed that the present situation is that, all government departments are expected to seek advice of the attorney general on all such agreements. And the standing orders have an elaborate provision on the procedure for obtaining advice. But in practice, this is often ignored. Secondly, the Committee observed that this trend of ignoring to seek legal advice is what has made us to recommend that a constitutional provision should be inserted so that in future, instead of having merely standing orders or practice, the various officers of government will be obliged by a constitutional provision to seek this advice. So, we have come with the following recommendation. That a clause should be inserted in the transitional provision of this constitution to enable the Attorney General to grant exemption until Parliament makes the law which we are talking of. The law which will stipulate what kind of contracts require scrutiny by the Attorney General and which ones are exempted. In the mean time, before that law is made by Parliament, we should provide for a transitional provision in this constitution which would allow the Attorney General using statutory instruments to legislate for such exemptions which would include purchases of the nature that were raised by the Hon. Chairman.

It is therefore, the Committee's considered opinion, and it does recommend here that we should insert this provision as Clause (5) to read as follow: "*subject to the provisions of this Constitution, no agreement, contract, treaty, convention or document by whatever name called, to which the government is a party, or in respect of which the government has an interest, shall be concluded without legal advice from the Attorney General, except in such cases and subject to such conditions as Parliament may by law prescribe.*" We would go further to recommend a transitional provision that should now read as follows: "*until Parliament makes the law referred to in Clause (5) of Article 122, the Attorney General may, by statutory instrument except any particular category of agreement, contract, treaty, convention, or document, from the application of that clause.*" I beg to move.

THE CHAIRMAN: Yes, this is a recommendation from the Committee to us. I do not see any difficult with it really.

MR. KOMAKEC: Point of clarification! Mr. Chairman, I am seeking clarification from this transitional provision. Where will it be, will it be part of the constitution?

THE CHAIRMAN: This is a transitional provision because it ceases to have effect when Parliament has made the law envisaged under (5). But it will depend on the technical team. If they think that it will form part of the transitional provision elsewhere in terms of the laws that have to be saved or matters that must be given effect to immediately, they will do so, so that those which lapse - but really, that is a question of technical work. What we do is, we approve the substance, and in the rest -

MR. WACHA: Thank you, Mr. Chairman. Mr. Chairman, I think our concern, when we referred this matter back to the Committee was that it would be difficult to implement in respect of making small day to day agreements or contracts by different departments. I do not think Sir, that we extend this matter to treaties or conventions. I think if we leave the transitional provisional in this manner, we run the risk of the Attorney General making laws by statutory instruments in connection with treaties and conventions which should under normal circumstances, first be referred to the Attorney General. I do not know whether you are getting my concern, Mr. Chairman.

THE CHAIRMAN: It also struck me but I do not think we are worried that government may be prejudiced in its work because treaties have not been signed. But I think we are concerned about governments of a regular nature, rather than treaties and conventions. And so, I think what Hon. Ben Wacha is saying is that we have opened too much. If that be my understanding - if my understanding be correct -

MR. RINGWEGI: Mr. Chairman, your concern and that of Hon. Ben Wacha is being made in the light of the fact that we could have formulated this transitional provision to read: "until Parliament makes the law referred to in Clause (5) of Article 122, the Attorney General may, by statutory instrument, exempt any particular category of agreements" and maybe that would cater for our interest.

But I would state here Mr. Chairman, that your fears should not be much because when we continue to provide for agreement, contract, treaty, convention or document, we are actually providing - in Legal Drafting, we are only saying that, we have made a provision which would require that all these categories of documents or negotiations or contracts are to be referred to the Attorney General. And we have also gone further to say that, Parliament will be the body that will legislate for which particular agreements can be exempted from this other broad categories. But in the mean time, even before Parliament, does that, as a transitory measure, the Attorney General, to enable government to function can, by statutory instrument, limit his exemption to those which require the exemption. He needn't exercise that exemption to cover even treaties. So, I do not see any harm whether this provision is left to cover contract, treaties, convention or document? Because in Legal Drafting, I think we are just trying to be very inclusive, we are not trying to exclude, there should be no harm, Mr. Chairman in my opinion.

MR. OKALEBO: Thank you, Mr. Chairman. I do vividly remember that, our fears in the recommendation of the Committee was that, the way was too wide for the Attorney General to sanction on contracts and conventions. And I remember the Chairman of the Assembly was mostly concerned with matters like purchase of stationery to run a ministry; repair of vehicles in a particular department, would that actually need going to the Attorney General to seek his permission? So, if there is any transitional provisions here, it must relate to matters of a local nature but not necessarily opening the way to the Attorney General even to give exemptions to the very contracts where we expressed fears. Because our fears were that some contracts and treaties were entered into not in the interests of the state, mostly maybe on the interest of the individuals. So, I think this transitional provision needs to be improved, Mr. Chairman.

MR. KWERONDA RUHEMBA(Kajara): Mr. Chairman, I am a member of Committee 2, and I do not remember us opening so wide, a box. What our concerns were in the Committee after this matter had been referred to the Committee, we tried to take into account what was expressed by the Chairman in this Plenary. That, what would you do in respect of local purchase orders for instance, where, for instance, these local purchase orders were issued,

would you also have to go to Attorney General to sign a contract? That is it not cumbersome for the day to day operations of the government? And we tried to put these provisions which the Chairman of the Committee has just read, to cater for this kind of eventuality, the eventuality that the government must continue to run and it should not be paralysed. But I think during the drafting after giving our concept, it looks as if the Chairman mistook us to have said that agreements, conventions and all those should be provided for in the transitional chapter. That was not our intention and I think it could have been a result of misunderstanding. What actually we meant to be ironed out in the transitional chapter were those matters that relate to local purchases, car hire, car repair, that are normally carried out using an instrument called LPO.

So, Mr. Chairman, I wish to request the Chairman Committee 2, which committee I belong to, to concede that actually we did not give this authority to open up so widely. Because even in the transitional period, there will be a government running, there will be civil servants working, and somebody could take advantage to commit government to large sums of money in terms of agreements. And since he is expecting a new government to come in, and since he will have had time, maybe, to run away, we could have problems with that provision. So, Mr. Chairman, I wish to agree with Hon. Okalebo that we limit it to local purchases and LPO and so on - you know, things of that nature. I thank you.

MR. KABUGO: Thank you, Mr. Chairman. The issue of committing government by public servants and those members who are holding responsible offices would not arise because we have an established Central Purchasing Corporation whereby Ministers and other government departments have to send their requisitions and I take it that since this is a transitional period, and the ministries submit their requisitions, so in this case we would not be very much worried about committing government by entering into very expensive contracts, Mr. Chairman.

MR. ONEGI OBEL: Thank you, Mr. Chairman. Mr. Chairman, I agree with fears that the recommendation here is a bit too wide, and could be taken advantage of to get the country in problems. What Hon. Kabugo said, I think we would take care very

well of - the local purchases we are talking about. The Central Purchasing Corporation and then even before that, we have all along had these local purchases - local requirements taken care of by the Central Tender Board which looks into the day to day needs, and even sometimes goes on to examine what we require even from abroad. That therefore, should take care of or remove our fears of too much reference to the Attorney General. I mean otherwise, Mr. Chairman, the law is very specific about treaties, charges on borrowing, charges on commitments of international nature that the Attorney General must give his consent in writing before we get into a commitment. And that should take away all this consideration of local nature about requirements like stationery. The tender board will take care of that or the Central Purchasing Corporation. So, Mr. Chairman, I am saying that the clause here gives the Attorney General too wide a scope which could easily be abused legally. Thank you, Mr. Chairman.

THE CHAIRMAN: Would Members be happy if we deleted "treaty" and "convention"?

MR. RINGWEGI: Mr. Chairman, in fact in the light of the argument advanced by Hon. Kabugo and Hon. Onegi Obel, it would appear that if the practice is that the Central Purchasing Corporation handles all the Local purchase on behalf of government without reference to the Attorney General, and the practice has been going on smoothly, and it seems to have allayed all the fears of the Hon. Delegates, that the Attorney General in that case would not cooperate with any particular Minister to commit government in a fraudulent transaction. I would find it even better, instead of limiting it to agreement and contract, to withdraw the whole transitional provision because really, what the Committee had intended was to put in a stop-gap measure until Parliament provides for the substantive law. But if there is already in practice a measure which caters for all this, then the transitional provision would be irrelevant and I think the Committee would not mind withdrawing it.

THE CHAIRMAN: Hon. Ringwégi, I do not think that information was quite correct 100 percent. The Central Purchasing unit or department, right now is actually competing side by side with suppliers from the open market. Sometimes they do not stock everything, in fact one time they were only selling tractors which some of us wondered

how they were part of the immediate needs of the Central Government Department. But that is a different matter.

MR. KARUSOKE(Ntoroko): Mr. Chairman, without arguing either in favour or against the matter on the floor, I just want to inform you to confirm what you have said. The Central Purchasing no longer enjoys a monopoly on supply to government. So, it cannot be quoted here as an example for either way of the argument.

THE CHAIRMAN: Thank you. Hon. Ringwegi, therefore I think the matter has to continue.

MR. RINGWEGI: Mr. Chairman, in view of that, I am trying to move and find out whether Hon. Delegates and particularly Members of Committee 2, would be agreeable to a formulation which would read thus: "*Until Parliament makes the law referred to in Clause (5) of Article 122, the Attorney General may, by statutory instrument, exempt any particular category of local agreements and contracts.*"

THE CHAIRMAN: Agreed! I think we do not have to debate this any further really.

MR. RINGWEGI: So, I beg to move that the provision should only read up to "local agreements and contracts" and stop there, the other words should be deleted.

THE CHAIRMAN: No, but it should be from the application of that clause. We delete "treaty" and "convention" and then "local agreement or contracts" from the application of that clause.

MR. KIRENGA(Mityana North): Mr. Chairman, I am not happy with the word "local", may be we can leave it to the Technical Committee because I do not think we would make matters clear by just saying local agreement. A local agreement could mean an agreement made here but relating to some things which are not necessary local. I do not know, maybe we require something to be better drafted, to reflect what he is trying to say.

THE CHAIRMAN: Elyau, would you want to inform him, I think we should close this one with that.

MR. ELYAU: Point of information! Thank you, Mr. Chairman, I want to inform Hon. Kirenga that

it has been a problem here during the contracts before Asians were handed their properties. Government spent a lot of money renovating certain programmes, and of late, they were not properly given a good contract and a lot of money has been spent. For example, the Imperial Hotel; we found out that the contract was sub-standard and since the contracts were done without the Attorney General, so it is necessary to include local. Because we waste money there. Thank you.

THE CHAIRMAN: Anyway, the recommendation is that we insert those two provisions to clear that issue which was outstanding. Can I now put 122 as amended to stand part of the Draft Constitution?

(Question put and agreed to)

THE CHAIRMAN: That ends the job of the Chairman of Committee 2. Now, that ends Chapter 7 as such. It is now complete. Now, we go to Chapter 8. Delegates, we turn to Chapter 8, Article 131, Clause (1). I may re-fresh your memories as follows. Provisions of Article 131, Clause (1) came to the Committee by way of a report. Article 131 relates to Composition of Parliament, and it states that: "*Parliament shall consist of Members directly elected to represent constituencies.*" That is paragraph (a). (b), "*one woman representative for every district,* (c) *representatives of the Army, Youth, Workers, persons with disability and such other groups as Parliament may determine, and (d) the Vice President and Ministers who shall be ex-officio members but not entitled to vote.*" Of course that will be re-visited in view of the decision we made this morning - by the Technical Committee. We do not have to go through a formal process of amending it.

Then on the mode of election, it is - Clause (3), it was passed that: "*the representatives referred to in paragraph (a) of Clause (1) of this article shall be elected on the basis of a universal and adult suffrage and by secret ballot.*" When that one was recommended to the House by the Chairman of the Committee, Hon. Magezi David sought to amend that clause to extend its application to women representatives so that instead of reading the representatives referred to in paragraph (a), that is those representing constituencies, he sought to add "and (b)" so that it means that not only would Members representing constituencies be elected directly, but also the women representatives, one from each district.

When this matter was discussed, the motion of Hon. Magezi was discussed and it was put to vote, and the matters proceeded to a division. The results of the division in the lobby were as follows: For Hon. Magezi's Motion, 111; against Hon. Magezi's Motion 73; that is, 111 were in favour of women being directly elected by universal adult suffrage and by secret ballot. And 73 were against it. Then, because the two thirds majority was not obtained as required by our statute and rules, the Chairman then ruled that the matter be stood over. Because even in the reverse, it would not have been possible to pass the other provision, it would not have achieved the required majorities, you would have been deadlocked and begin walking towards a referendum. And so the Chairman said, let the Members go and think over this matter, consult further and be the subject of another vote. And so, the question is quite simple. Article 131 Clause (1), paragraph (b), provides for representation of women one from each district. Paragraph (3) says those who are in constituencies should be directly elected. Clause (4) was saying that Parliament should make procedures or provisions for the others i.e. the women, the army, NUDIP and all the others. But Hon. Magezi moved and had the following to say, it should be by direct suffrage, by secret ballot as far as the election of women is concerned.

My view is that, we should not go into unnecessary debates on the matter, these issues were debated, I do not think we should re-open debate on the subject matter. What we need is to make a decision, and I think we should go back by the same method we used the other time. Now we are voting on Hon. Magezi's Motion. Hon. Magezi's Motion was that the women should be elected by universal suffrage, by a secret ballot. So those who support Hon. Magezi's Motion will go to the Chairman's right, those who say they should not be elected by universal suffrage, to the Chairman's left, those who have no views on the matter, come to the poll here in the centre.

(The Assembly went in Division)

THE CHAIRMAN: Could you resume your seats please, Hon. Delegates, please resume your seats! Hon. Delegates, the results of the division are as follows - remember the division was on Hon. Magezi's Motion that women representatives to Parliament should be elected by universal suffrage and secret ballot. The results were; there were 185

Members at the time of the division; there were no abstentions, those for Hon. Magezi's Motion were 63, those against it were 122. Since 63 is less than half of 185, the Motion by Hon. Magezi is lost. Now, Hon. Delegates, there is a note in my copy of this Chapter by the Technical Committee saying a decision on Clause (4) of that article was stood over, pending a decision on Hon. Magezi's Motion. Clause (4) reads: "*Parliament shall by law prescribe the procedure for elections of representatives referred to in Paragraph (b) and (c)*" i.e. *paragraph (b), the women representatives, paragraph (c) representatives of other interest groups.* And so, we have to make a decision on this paragraph as well. The recommendation from the Committee was stood over because we had to make the decision we had just made. In view of that decision, now you can make your views known or your position known on Clause (4) which provides that Parliament shall have the power to make laws - to set out procedures for elections of the women and also of the interest groups. Shall I put the question.

(Question put and agreed to)

THE CHAIRMAN: Now, let me put the question on 131 - yes, Hon. Kabugo, what is it?

MR. KABUGO: Thank you very much, Mr. Chairman. When I read Clause (2), there is a note which states that, "stood over with the impossibility of putting it in a chapter on transitional provisions." Are we transferring this to that chapter or we are now going to vote?

THE CHAIRMAN: Yeah, Clause (2), the matter was stood over because I think, some Members thought it should go to transitional provisions. What I would suggest we do, Hon. Delegates, Clause (2) reads as follows: "Upon the expiration of the period of ten years after the commencement of this Constitution, and therefore every five years, Parliament shall review the representation under paragraph (b) and (c) of clause (1) of this article for the purpose of retaining - I do not know what they mean by "creating", or was it I think meant to be - "increasing or abolishing any such representation and any other matter incidental to it." In my view, this cannot be a transitional provision. Because it is saying, "after ten years". You cannot say transitional. Okay, if they decide, then of course it will remain just as a dead letter in the Constitution

unless they abolish it, assuming they do not, then you leave it where it is.

So, I would say that really we can make our decisions on this one now. Should we make a provision that 10 years from the coming in force of the Constitution, Parliament will re-visit the provision relating to paragraph (b) and (c), and that could be done every 5 years. Can I put the question on Clause (2)?

(Question put and agreed to)

THE CHAIRMAN: I will now put the question on Article 131 to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: That finishes the stood-over matters in relation to Chapter 8 and therefore, Chapter 8 is now complete. Now, we go to Chapter 13 Article 205 and so on. There were outstanding matters and matters referred to what we called the Kaberuka Committee. So, let us start with matters which went to the Committee 4. Mr. Katenta Apuuli, could you lead the House please.

MR. KATENTA APUULI: Mr. Chairman, thank you. Mr. Chairman, I think there are no matters outstanding on Article 205. I think our responsibility starts on Article 208 Clause (2). Article 205 was stood-over only very temporarily, and after we had disposed some items I do not exactly remember, we went ahead and dealt with Article 205.

THE CHAIRMAN: It was according to the note here that in 205, we had two matters stood-over. There was paragraph (a) of Clause (2), stood-over pending determination of provisions on election of district Chairman and then Clause (3), also stood-over pending determination of provisions relating to election of Chairman. But I thought those were done.

MR. KATENTA APUULI: Yes, 205 was done in its entirety.

THE CHAIRMAN: Where is the provision relating to the election of the Chairman?

MR. KATENTA APUULI: We did it Sir. That was done.

THE CHAIRMAN: I think there was a mistake by the technical team here. Because the election of the Chairman was settled. So, we go to 208.

MR. KATENTA APUULI: Mr. Chairman, the Committee considered Article 208 Clause (2) in consultation with technical team and has the following to recommend. "A person is not qualified to be elected to district Chairman unless he or she is; (a) qualified to be elected a Member of Parliament (b) at least 30 years and not more than 75 years of age and the person ordinarily resident in the district." Mr. Chairman, I beg to move.

THE CHAIRMAN: Hon. Katenta Apuuli, I thought, what I read here is 35!

MR. KATENTA APUULI: There was an amendment that was accepted to 30 years Sir.

THE CHAIRMAN: Mr. Obua Otoa, does your memory serve you the same way as mine?

MR. OBOA OTOA: Thank you, Mr. Chairman. Mr. Chairman, my recollecting is exactly the same as yours. I do not know where the Chairman of Committee 4 is reading his note from. But anyway, the problem is that some of us have left our notes behind and we cannot confirm in one way or the other. But I want to support your position rather than that of the Chairman of Committee 4. I do, trust my memory and that is why I am questioning the report of the Chairman of Committee 4. I thank you Sir.

MR. MALIRO (Mwenge North): Thank you, Mr. Chairman. I would not like to oppose my Chairman but the record I have here reads, 35 years and not more than 75 years of age. I think we agreed that this person would have the same qualification as that one of the president, as far as age is concerned. And, Mr. Chairman, I think it was a long debate here whether we should have really a youngster being a head of a district, a person whom we say is equivalent to a president or a governor. So, I think 35 was the minimum and 75 the maximum, Mr. Chairman.

THE CHAIRMAN: Who is informing me?

MRS. SSEBAGEREKA (Women Mukono): Thank you, Mr. Chairman. I am a Member of Committee 4. Original we said 35 and then there

was an amendment and the report I have which was on 24th of April says 30 years. *(Applause)*

MR. SABITI(Rukiiga): Mr. Chairman, I recall very well that initially we had set 35, but then after looking at the type of people we want particularly in districts where you find we might lack people of the right education, we felt that really, we should lower the age to include those young men and women of 30 to be involved. So, I think there should not be much debate on this, we agreed on 30 and I think we put the question.

MR. SEBALU(Youth Central Region): Thank you very much, Mr. Chairman. The proper account of the matter was that we agreed on the age of 30. In fact the amendment was moved by Hon. Kasajja and I seconded it. I remember very well. And Hon. Sekitoleko wanted to put it to 25. So, the compromise was 30 and that is what we agreed upon, Mr. Chairman.

THE CHAIRMAN: But the person who moved it has been very quite.

MR. SEBALU: He has just entered, he is Kasajja Patrick.

THE CHAIRMAN: Not Kasajja Byakika?

MR. SEBALU: Yes. In fact he did a lot of good lobbying to support it and we did.

MR. MULINDWA(Bukoto West): Thank you, Mr. Chairman. Mr. Chairman, in this amendment, years were lowered from 35 to 30, when Members realised that some of us who are not yet 35 can be very good Chairmen of districts. And it was passed, without opposition, Mr. Chairman.

MR. ADYEBO(Kwania): Thank you, Mr. Chairman. Mr. Chairman, you see there are some districts in Uganda which are as old as Uganda itself. And two, we have problems, different problems in different districts. But there are some very serious problems in certain districts which really need the head to handle them. If we are going to put the minimum age to 30, in my opinion, this is not correct. 35 years, really is a better minimum age of a district Chairman. Mr. Chairman, the Chairman of the district is going to sit amongst problems. And unlike the President, this person is not going to have advisers. And he must be a matured person. I am therefore appealing to those who are for the amend-

ment to re-think and endorse 35 years as the minimum for the district Chairman. Thank you.

THE CHAIRMAN: Hon. Delegates, I can see we are going into a debate. What I was trying to find out was whether we agreed on 30 or on 35. From the evidence on the Floor, it would appear actually the age was lowered from 35 to 30. If you want to re-visit it, we shall do so at the reconsideration stage. So, now, what we have on the Floor is a recommendation from Hon. Katenta Apuuli that his Committee has reformulated Clause (2) of 208 as to a person who wishes to be elected Chairman of a district. He should first of all be fit to be qualified to enter Parliament, should be 30 years and above but not more than 75 years, and should ordinarily reside in the district which he wants to rule. I put the question.

(Question put and agreed to)

THE CHAIRMAN: Hon. delegates, by that let me see. Yes, it was only that which was holding up 208. Was it not? So I put the question on 208 to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Hon. Katenta Apuuli, we go to 213.

MR. KATENTA-APUULI: Mr. Chairman, in Article 213, clauses (3) to (7) were outstanding and were referred back to the Committee and the Committee would like to recommend that the Plenary adopts the following formulation. Clause (3): "A notice of censure shall be initiated by petition to the Chairman through the Speaker, signed by not less than one third of all the members of the district council to the effect that they are dissatisfied with the conduct or performance of the members of the executive committee."

Mr. Chairman, I beg to move.

THE CHAIRMAN: Okay, I put the question

(Question put and agreed to)

MR. KATENTA-APUULI: Clause(4): Mr. Chairman, the Committee recommends that we adopt this formulation: "The Chairman shall, upon receipt of the petition, cause a copy of it to be given to the members of the executive committee in question." Mr. Chairman, I beg to move.

(Question put and agreed to)

MR. KATENTA-APUULI: Clause (5). The Committee recommends that we adopt the following formulation. *“The motion for the resolution of censure shall not be debated until the expiry of 14 days after the petition was sent to the Chairman.”* Mr. Chairman I beg to move.

(Question put and agreed to)

MR. KATENTA-APUULI: Clause (6): *“A member of the executive committee in respect of whom a vote of censure is debated under clause (5) of this article is entitled, during the debate, to be heard in his or her own defence.”* Mr. Chairman, I beg to move.

(Question put and agreed to)

MR. KATENTA-APUULI: Clause (7): *“For the avoidance of doubt, nothing in this article shall prevent a person being re-elected to the executive committee of the district council.”* Mr. Chairman, I beg to move.

(Question put and agreed to)

THE CHAIRMAN: That ends 213. Is there 8? The copy I have was up to 7. And so, I now put the question on Article 213 to stand part of the Draft Constitution.

(Question put and agreed to)

MR. KATENTA-APUULI: Mr. Chairman, before we move on to 215, my attention has been drawn to the wording in clause (7) “re-elect”. The drafting committee should look at this again and insert instead of “re-elect”, “re-appoint” because this office is not elective. The Chairman appoints, he does not elect, for consistency.

THE CHAIRMAN: Yes, they will synchronize those in the Technical Committee. Thank you. Now 215 -

MR. NDEGE: Thank you, Mr. Chairman, there were some matters which were stood over on the Fourth Schedule, Article 214, like number seven. It appears as if they have missed (7) and (8) or something like that -

MR. KATENTA APUULI: But we have not got to that stage Mr. Chairman.

THE CHAIRMAN: Well, according to the order paper, we were going to 215.

MR. KATENTA APUULI: I thought what the Hon. delegate is referring to is 217.

MR. NDEGE: 214 - Fourth Schedule - functions and services exclusively reserved to the government. (7) says, *“land, minerals, mines, water resources and the environment shall be exclusive to the government”* and we said we stand it over until we finish land. (8); *“national parks as may be prescribed by Parliament”* and I think there was another article. Maybe my Chairman could expound much better, the Chairman of Committee one. Thank you.

MR. KATENTA-APUULI: Mr. Chairman, I explained that particular item under heading (d) of the Fourth Schedule on page three of my report. I thought we could deal with the articles in sequence and then come to the schedule separately.

THE CHAIRMAN: Okay, I agree, let us do it that way. Then we shall come to the schedule later. Let us do 215. Is this the matter which was referred to the Kaberuka Committee?

MR. KATENTA APUULI: No, 215 was referred to my Committee. Mr. Chairman, Article 215 Clause (1). The Committee considered this article and would like to recommend the following, One: *“local government shall have power to levy, charge, collect and appropriate fees and taxes in accordance with any Act enacted by Parliament by virtue of Article 178 of this constitution.”* Mr. Chairman, I beg to move.

(Question put and agreed to)

MR. OGOLA: Mr. Chairman, thank you very much. Mr. Chairman, I seem not to have a documentation to which the Chairman who is presenting these matters is referring and I am finding it - I know I have the order paper but the documentation which was prepared by that Committee is not available Mr. Chairman. I have not got it. May I be assisted to have it if it is available Sir, otherwise I am finding it very difficult to follow.

THE CHAIRMAN: Maybe you could borrow or share with Dr. Odur.

MR. OGOLA: My experience is that he is suffering the same fate like me.

MR. WANENDEYA: Thank you, Mr. Chairman. Mr. Chairman, this order paper was prepared before the delegates were aware of it and yet we had agreed on an order paper being prepared the previous evening or the previous day so that when we come, we are very well armed in getting some of these. But I understand somebody is saying that I did not pick it. If I did not pick it Mr. Chairman, that is anyway the problem. But Mr. Chairman, the point is that when we got some of these things, I do not know whether, when it comes to 217, whether the Members are well armed with it or not. I thank you, Mr. Chairman.

THE CHAIRMAN: Anyway, let us first of all sort out 215. We have approved the formulation which was drafted with the assistance of the Technical Committee. So I want to put 215 to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: Then we have 217 or the schedule first? Let us go to the schedule first which is schedule four.

MR. KATENTA APUULI: Mr. Chairman, after considering Chapter 17, I would like to report that the regulation of land was vested in the district land boards by the CA when it considered Chapter 17. Mines, mineral and water resources and the environment remain on the central government exclusive list. Mr. Chairman, I beg to move.

THE CHAIRMAN: This is to re-synchronize what you have decided under Chapter 17?

MR. KATENTA-APUULI: Yes.

THE CHAIRMAN: Thank you. I think we take note of that and the technical team will adjust.

MR. KATENTA-APUULI: All other matters remain as they are when we considered them.

THE CHAIRMAN: What about item 8?

MR. KATENTA-APUULI: Item 8 remains under the exclusive list.

THE CHAIRMAN: That is national parks?

MR. KATENTA APUULI: Yes.

THE CHAIRMAN: And 24?

MR. KATENTA APUULI: It is also on the exclusive list.

MR. KIWANUKA KAGIMU: Thank you, Mr. Chairman. I am seeking clarification on item seven. I thought that for the minerals, they were to be shared between the individual, the central government and the local government. I think if you say that we leave it as it is for the Technical Committee, maybe they may get confused. I think Mr. Chairman, you take note of that that they have to be shared between the individual, the local government and the central government. Thank you Mr. Chairman.

THE CHAIRMAN: But I think there is specific provision under 17 which says that in exploiting minerals and such things, the government shall take into account the interest of the land owners and local governments and so on, but the responsibility still remains with the central government. So this is correct. So we adopt the schedule to stand part of the Draft Constitution.

(Question put and agreed to)

THE CHAIRMAN: The fourth schedule is adopted. Now 217 was a matter that was referred to the Kaberuka sub-committee to come back and report.

MR. KABERUKA: Mr. Chairman, it is 217 and 218. Thank you, Mr. Chairman. Mr. Chairman, it will be recalled that when this Assembly debated Chapter 13 on local government, it referred the entire Article 217 and parts of 218, especially Clauses (4) to (7) to a committee chaired by myself and Hon. Dick Nyai, Hon. Okullo Epak, Hon. Isaac Musumba and Hon. John Ndege as Members for study and formulation. Subsequently, the Committee co-opted Hon. Kitariko whose expertise and experience in financial matters was of great help to the Committee. The Committee sat for five times and on three of those sittings, our deliberations

were enriched by the contributions of experts from the decentralization secretariat of the Ministry of Local Government and the budget department of the Ministry of Finance and Economic Planning. Having benefitted from consultations from various individuals and numerous literature on the subject matter, my Committee was able to formulate the two articles as presented in the report that is before this Assembly.

Mr. Chairman, Article 217 was re-formulated by first of all identifying the various grants that the local governments can obtain from central government. These are unconditional or block grants, conditional or development grant and deprivation grants. Then we proceeded to define each of these grants and how each one was to be given to the local governments. Article 218 was re-formulated by adding on to the functions of the local government finance commission, two more duties namely that the Commission should consider and recommend to the Executive, potential sources of revenue for local governments and to advise the local governments on appropriate tax levels to be levied. In the process Mr. Chairman, two clauses, one from Article 217 and the other one from Article 218 fell by the way-side as is indicated in the report. Mr. Chairman, I beg to present the report.

THE CHAIRMAN: Okay, so the report is received and we thank you for the work done. Let us take 217 as recommended by the Kaberuka Committee and we go through the clauses one by one.

MR. KABERUKA: Article 217 - Clause (1). My Committee recommends that Clause (1) of Article 217 reads as follows: *“The President shall for each financial year, in accordance with this Constitution, present to Parliament proposals as to the monies to be paid out of the consolidated fund as;*

- (a) unconditional or block grant in accordance with Clause (2) of this article.*
- (b) Conditional or development grant in accordance with Clause (3) of this article,*
- (c) Equalisation grant in accordance with Clause (4) of this article.”* I beg to move.

THE CHAIRMAN: What is the difference between an unconditional grant and a block grant?

MR. KABERUKA: Mr. Chairman, unconditional is the same as block grant.

THE CHAIRMAN: But for us lawyers, we prefer to use one word when it comes to describing things. You can call it a block grant if you wish, you can also call it an unconditional grant if you wish, then correspondence can be going out. Some of it is making reference to the block grants, another one is making reference to unconditional grants when actually they mean the same thing. I do not know whether what I am raising makes sense.

MR. MUSUMBA(Buzaaya): Thank you very much, Mr. Chairman. Mr. Chairman, it was important in the report and in the Constitution to reflect that the monies that will be released will be released unconditionally and that is why it is called unconditional grant. However, it is also to be released in a block form and that is why it is called block grant. So the two terms were retained for the avoidance of any doubt.

MR. BIDANDISSALI: In which case, Mr. Chairman, the “unconditional” should be qualifying “block grant” so that it becomes “unconditional block grant”.

THE CHAIRMAN: Is that alright? Hon. Sabiti you have some ideas?

MR. SABIITI: Thank you, Mr. Chairman. I am not clear about (a) and (b). May I know from the Chairman whether unconditional block grants are basically for recurrent expenditure and (b), the conditional grant for development because I see, when you look at both with the role of this money from the Treasury, it is intended to develop the districts. Other than (c), I find (b) and (a) to perform the same function. Unless you are going to distinguish between recurrent expenditure and development expenditure and that you are tying development expenditure to certain conditions, may I have this explanation from the Chairman?

THE CHAIRMAN: But I thought my confusion was in question of having the word or in relation to “unconditional” and “block”. The answer has been given that it is good to use the two terms because it is released as a block but it is also unconditional. So Hon. Bidandi Ssali rightly said then we should be referring to unconditional block grants. And my understanding was that block grants - sorry, unconditional money is paid to the budget for use by the district but conditional grants are specifically tied to some particular job to be done. You cannot use

it anyhow. Either it is for Education or for a particular specific purpose. But maybe the Chairman can clarify.

MR. KABERUKA: Mr. Chairman, Hon. Sabiiti's confusion, I do not see it because the two aspects are defined in two and three. However, in our Committee, first of all, as Hon. Musumba has pointed out, one is called "unconditional grant" but if there might be confusion, I am prepared that we use one term and maybe leave the other. Either we take "unconditional grant" or we take "block grant". Any of those will do. If you think that using both of them will confuse -

THE CHAIRMAN: But if you are going to use "conditional" in (b), then you are better off with "unconditional" in (a).

MR. KABERUKA: Okay, then we adopt "unconditional" for two and "conditional" for three and therefore we drop "block grant" in (a) and we drop development in (b).

THE CHAIRMAN: Hon. Delegates, we drop the words "or development" in (b), "or block" in (a) and the rest is editorial. Can I take it that we approve Clause (1)?

MR. BIDANDI SSALI: Mr. Chairman, I am seeking clarification on a procedural point. If we approve one, does it mean that we have automatically approved (2), (3) and (4)? Because I do not see us approving one and then we go into (2), (3), (4).

THE CHAIRMAN: In fact we are saying there will be unconditional grants which will be in accordance with (2), conditional grants in accordance with (3) and then equalisation grants in accordance with (4). Those go together but I was calling them out in case Members need some clarification. That is all. I will take it that really, unless you have serious objections, (1), (2), (3) and (4) go together. Agreed? Then (5).

MR. KABERUKA: Thank you Mr. Chairman. We recommend - *(Interruption)*

MR. BYAKIKA (Bunyole): Thank you Mr. Chairman. Mr. Chairman, I have a problem in understanding item number two in this formulation where it says that an unconditional or block grant is a minimum grant that shall be paid to local govern-

ments to run decentralised services and shall be calculated in the manner specified in the seventh schedule of this constitution. Mr. Chairman, when I look at the 7th schedule, I find that the manner in which this unconditional grant has been calculated -

THE CHAIRMAN: No, we shall come to the schedule as a separate matter. Because our rules say that schedules are taken as substantive enactments. So while we have pronounced ourselves to that, we can then go and discuss the schedule in its own right whether I think it is okay or not.

MR. BYAKIKA: Thank you for your advice Mr. Chairman.

MR. BIDANDI SSALI: The reason why I had earlier asked for clarification Mr. Chairman, is for us to be clear of what we mean in (4). "Equalisation grant is the money to be paid to local governments for giving services or making special provisions for the least developed districts." Which are these? That one is a question subject to a number of interpretations especially when pecuniary interest is demanding, equalisation grants comes in and then it shall be based on the degree to which a local government unit is lagging behind in national average standard for a particular service. What decides the degree of lagging behind? Normally there should be a reflection of the ability of a district to finance that service and the recognition of the limitation of that district which makes it impossible to provide service to the national standard and that can be scientifically arrived at. But when we say least developed, in what sense? Which ones are these? For example, Mr. Chairman, somebody was saying that one of the poorest - and I am quoting, I am not stating - one of the poorest districts is Kotido. Somebody was saying that and they were basing it on the revenue collection and somebody else was saying no, in fact Kotido is richer than a district like Hoima potentially because a person in Kotido who has 50 animals is considered a normal peasant as it were and if he had to be requested to give up one cow every year, then potentially Kotido is much richer than Hoima.

So this interpretation of least developed could cause some sort of problem. So I do not know, I am just pointing it out so that we pass something over which we are clear that it will have a clear interpretation and that districts will not claim to be least developed where they have only failed to tap their revenue base.

THE CHAIRMAN: For me, when I read that, I took it that Article 218 which provides for the local government finance commission and sets out its functions will be the vehicle for determining that sort of thing before they make a recommendation for equalisation grants to the President. Can we now go to (5) please?

MR. KABERUKA: We recommend that Clause (5) reads that district councils shall be obliged to indicate how conditional and equalisation grants obtained from central government are to be passed on to the lower levels of local government.

Clause 6: We recommend that Clause (6) reads: The proposals made by the President under Clause (1) of this article shall be made at the same time as the estimates of revenue and expenditure under Article 181 of this Constitution and shall state the sums of money that are to be paid to each local government. I beg to move.

MR. WANENDEYA: Thank you very much Mr. Chairman. I had passed an amendment to you in connection with sub-article 7.

THE CHAIRMAN: We were coming to it.

MR. WANENDEYA: I thank you Mr. Chairman.

MR. KABERUKA: The Committee recommends that Clause (7) reads: "*The proposals of the President under this article shall form part of the Appropriation Act as provided for in Article 182 of this Constitution.*" I beg to move.

MR. WANENDEYA: Thank you very much, Mr. Chairman. Mr. Chairman, I beg to move an amendment to Article 217 to read as follows: "For the purpose of its functions and services, at least 40 per cent of revenue collected by the central government shall be retained in the districts from where it was earned. Mr. Chairman, this amendment was seconded and therefore I would go into the logic of it like this.

THE CHAIRMAN: Was it seconded?

MR. WANENDEYA: It was seconded by Hon. Dan Wadada Nabudere and Hon. Byakika Kasajja and it was circulated to Members.

THE CHAIRMAN: Okay go ahead and make your justification but be brief please.

MR. WANENDEYA: Mr. Chairman, the point is that we are starting unity from the top for Uganda and this is the same unity which was started from the top in the former Soviet Union and all those Socialist Republics. Mr. Chairman, when making his reasoning of the grants and schedule or whatever was attached to Hon. Kaberuka's document, he was reasoning grants to districts from grants which were allocated every year to different districts. Mr. Chairman, these are grants which have no formula which they followed except that if somebody smiled very nicely to someone at the top, then that is the way the grant was given. As an example Mr. Chairman, Mbale District collects or is taxed from coffee some 30 million dollars on the average in a year. But if you look at this decentralization which is going to be in place, only about four billion or four million dollars will be returned to Mbale and therefore Mr. Chairman, it is not only for Mbale but indeed for other districts which have not been progressing and there is no capital goods or capital development in most of the district because most of the money after having collected at the centre, it is dished out in some cases for intelligence work so that Ugandans spy on each other and as a result, you find that there is nothing really in place when it comes to the ground.

Mr. Chairman, in the past when districts used to get enough revenue, there were capital development projects all over the country and therefore, if you want true decentralization next to what Hon. Kaberuka had recommended of some 36 or 38 per cent, it should be that at the time when coffee taxes are being levied for Mbale, 40 per cent of that should remain in Mbale and concurrently sent to Mbale District Administration. Indeed this is not a new thing Mr. Chairman. But you will find that the 50 per cent which was agreed to by NRC from graduated tax is worth and therefore if you want developments in districts, we should follow this formula where by 40 per cent is handed back to those districts. Mr. Chairman, the remaining 60 per cent can go to the central government and 30 per cent should be as blocks in grant to other districts and 30 per cent should remain for the central government's services. Mr. Chairman, it is no good saying that Uganda is one. Yes, it is one I agree and I support that idea but Mr. Chairman, the point is that if we are to get together, it is no good saying that

if Kotido is going to get gold there and therefore we must all share equally, it will be like me sharing my assets with Hon. Kasajja or some other person or if I have nine wives and somebody has got one, then we should share them altogether. Mr. Chairman, it does not work that way.

Mr. Chairman, the whole idea is that if enough funds are left in the districts, they will develop those areas and when they develop them, you find that instead of people coming to towns, they remain where they are because there will be development projects there and therefore, it will be in the best interest of the country because people who are good mannered usually are in villages where they have all their relatives and they tell those children the way to behave. Mr. Chairman, I would like Hon. Members to take this as a serious thing so that they vote for 40 per cent and indeed Hon. Kaberuka agreed and said it was 36 per cent but now that I am making it 40 per cent, it should go straight to those districts and therefore it will be in the best interest of the country and that is the way forward to development. I thank you, Mr. Chairman.

DR. BYARUHANGA (Kitawenda): Thank you, Mr. Chairman. When I put up my hand first, I wanted to give information. But that one passed and now I wish to contribute to this debate. The problem with Hon. Wanendeya's motion is that it is based on false data. For example, he talks of 30 million dollars tax coming out of Mbale coffee. The truth is that Mbale is now exporting 5000 tons of coffee whose value is not even 30 million dollars. The value of the total quantity of Mbale coffee is less than 30 million dollars. Secondly, for the last three years, government has not been imposing an export tax on coffee and therefore, as far as national revenue is concerned -

MR. WANENDEYA: Point of order! Thank you, Mr. Chairman. Is it in order for Hon. Dr. Byaruhanga to confuse himself and think that I do not have statistics when I have those statistics? I said plainly that on the average for the last 30 years and the records are there and indeed Uganda House in New York was solely purchased or built by monies from Bugisu Coffee Trust Fund. So is it in order Mr. Chairman, for Hon. Byaruhanga to be confused and think that I am talking rubbish?

THE CHAIRMAN: Okay, you have informed him.

DR. BYARUHANGA: I was coming to that Mr. Chairman. At one point in time, in the 1960s, Mbale was able to produce 20,000 tons of coffee. At that time, whenever the price of coffee was above three dollars per kilogram, Mbale would definitely get about 60 million dollars and since government was at that time taking more than 50 percent of the value, one can agree that at one time government was getting 30 million dollars from Mbale. But presently, because the economics of the area has changed, even if we went by what Hon. Wanendeya has said, Mbale would not receive this 30 million dollars or 30 billion he is talking about because as we talk now, most of the income of government is coming from import taxes, income tax and sales tax which money is actually raised here in Kampala. 80 per cent of the taxes are paid here in Kampala. Unless he is saying that we should give all the money to Iga and his citizens in Kampala, we shall get problems with this amendment. Therefore, I would wish to propose to him that since this issue is no longer feasible and would be even disadvantageous to us who are in the rural areas although we are productive, let it lie and let us go by the amendment proposed by Hon. Kaberuka's group which gives us a good share of whatever is collected by the nation or by the central Treasury. Thank you.

MR. KABAYO: Thank you, Mr. Chairman. Mr. Chairman, in Article 216 Clause 1(b), we passed that: "*Parliament shall by law provide for local government to retain for the purposes of its functions and services a specified proportion of the revenue collected for or on behalf of the government from the district.*" Mr. Chairman, I wonder whether that clause does not cater for the amendment proposed by Hon. Wanendeya.

THE CHAIRMAN: Could you repeat what you passed?

MR. KABAYO: We passed in Clause (1) of Article 216 paragraph (b) on page 12 of the matters which passed through the Plenary that Parliament shall by law provide for local government to retain for the purposes of its functions and services a specified proportion of the revenues collected for or on behalf of the government from the district.

THE CHAIRMAN: But that is if they have been given to collect on behalf of government. But if they are direct, their administration is different. I think that is what he is talking about.

MR. NDEGE: Thank you, Mr. Chairman. I think Hon. Wanendeya is not very clear on what we passed in (1) where we have said: *“there will be unconditional grants and these will go to pay for all services which government has transferred to the districts.”* Then (2), *“there will be conditional grants for specific projects”*. So if Mbale has a project and it is or they convince this Committee which is there that this project is viable and good, then it will be funded by (b). If Iganga has a problem of development, they will put in their problems. But we cannot predetermine that one until districts put in their proposals through this Committee which is under 218. Three, we have the equalisation grant where least developed districts are given some special grant for areas like education or roads infrastructure or anything, in Karamoja or in Mbale, or if it is Iganga, they will take advantage of the equalisation grant and this again will be done and processed by this Committee. So details of this nature are worked for by the districts through this Committee.

Now what Hon. Wanendeya is assuming is that if Iganga produces a lot of maize, all taxes from maize are collected at source which is not the case. All taxes are collected centrally by the central government, by Uganda Revenue Authority. The result of this revenue plus grants and stabilization funds where government can spend and are telling them that this is the way you should spend the money. But you must make sure that services transferred to the districts are provided for unconditionally. So I would request my Brother Hon. Wanendeya to appreciate that if 36 per cent will go to the recurrent expenditure of transferred services of total government revenue less what we have paid for our foreign debt, then on top of that, you add unconditional grants and on top of that, you add equalisation grants, surely, his argument does not hold water. So I would like to appeal to him to be a bit patient and follow and do not confuse the whole issue. It is money coming from top to bottom and not money being collected from bottom and have a retainer. I think he is putting us the other way round. I hope with this explanation, my brother will accept and withdraw and allow us to continue. Thank you very much, Mr. Chairman.

MR. MUSUMBA (Buzaaya): Thank you very much, Mr. Chairman. Mr. Chairman, I think Hon. Wanendeya's motion is not fair to this Assembly because we sat here and it is a motion in similar

terms to that which led to the appointment of this Committee. The motion was brought by Hon. Ndege if I may refresh the minds of Members and he was saying he wanted 50 per cent of all revenue collected to go back to the districts. It was later brought down to 40 per cent but since we did not have any figures, a committee was appointed to study this matter. Mr. Chairman, the Committee made a very detailed study of this matter and has come up with the recommendations to the Plenary. It is not fair therefore for Hon. Wanendeya to say in spite of what has been presented and even before it has been fully analysed, to say that we now go back to the same motion in a different way by saying a percentage must now remain at the district.

If we sat and explained to Hon. Wanendeya in detail, even his motion may end up being counter-productive because as I speak today, Hon. Byaruhanga has said there is for instance, no export duty on coffee. So the story of saying 30 million dollars are coming in everyday and it is going elsewhere other than Mbale is not true. As we speak today, the coffee that is being made in Bugisu is actually traded and sold and government is not taking any export tax from coffee. That is a point of fact. So Mr. Chairman, let people not confuse stabilization fund or tax with coffee export duty. So Mr. Chairman, I suggest that let us go and discuss the Committee report and we will find that actually the Committee report makes sufficient provision for all the concerns. That is my appeal Mr. Chairman.

MR. MUKWAYA: Thank you very much, Mr. Chairman. Mr. Chairman, although I am very sympathetic to Hon. Wanendeya's amendment, it is actually counterproductive like Hon. Musumba has said. Even if we assume that the scenario created is still pertaining as of now, the percentage referred to would actually provide 12 million dollars if it was the situation as it was when he made his calculations. And he said that currently the district gets only four million dollars. The new arrangement actually, in my view, is left to give the districts more money because it is not going to be based on actually what you produce and the taxes you collect. It will depend on what is required, the money as will be presented in the budget and the services that are going to be done and other activities which actually were or will not be collecting any tax directly to government. So I think he is living in decades backwards when actually the purpose of

this is to move forward. Hon. Wanendeya is my friend but in this aspect, I think he has lost direction and I really appeal to him to abandon his amendment.

MR. GEORGE ZZIWA(Kawempe North):

Thank you very much, Mr. Chairman. Mr. Chairman, I am not opposing my neighbour on the grounds of figures but I am opposing him on moral grounds. Mr. Chairman, Ugandans have been suffering together in poverty; they have been moving together and if one particular Ugandan comes out of this poverty and then suggests that he is going to keep 40 per cent of whatever he has got, I think that would be very unfair and very, very mean. Mr. Wanendeya, maybe the jacket he is putting on was a result of sweat from my grandparents when they grew cotton and coffee in Buganda and now that he thinks by seeing light at the end of the tunnel that he wants to get 40 per cent of his revenue as he calls it, I think that will be most unrealistic. Most of the roads in Mbale and the hospitals in Mbale Mr. Chairman, no matter how small they are, were built from our common pool as Ugandans who have been languishing in poverty together and now if he feels with the new formula that he wants to pull away from other Ugandans, Ugandans who have really helped him to put on this nice jacket and now he thinks he can go it alone, I think that is most unfair my neighbour. So I just want to ask Hon. Wanendeya that let us continue languishing in poverty together until we come out together in riches and thank you very much Mr. Chairman for letting me give my views.

MR. SEBI DATA(Koboko): Thank you, Mr. Chairman. Mr. Chairman, I am a Member of Committee Four and Hon. Wanendeya did bring up this amendment. He actually talked to me and said, how about your tobacco from Arua, why do we not organise? So we discussed. The amendment came up in the Committee, we discussed it and we synchronized that amendment and we thought that Article 215 Clause (1) which reads, Mr. Chairman: "Local governments shall have power to levy, charge, collect and appropriate fees and taxes in accordance with any Act enacted by Parliament by virtue of Article 178 of this constitution." So, we thought this would take care of Hon. Wanendeya's worries but with due respect to my old friend, Hon. Wanendeya, this same Amendment has come up again. Hon. Wanendeya, I had to be comforted, I also was worried about my tobacco, but I was

comforted by this clause here. So, rather than bring up what was probably buried, - rather than exhume this, Hon. Wanendeya, why do you not go along with me because and with draw this amendment? Thank you very much Mr. Chairman.

THE CHAIRMAN: I think let us make a decision. We have not been giving the right of reply because if we did, we would not be completing because if we have to give every Mover of the Motion the right of reply, we would never be completing. I think let us really decide, I mean - you made a very good case for your Motion. I think let us decide. Hon. Wanendeya has moved a Motion of amending 217 providing for retention of 40 per cent of revenue collected by the Central Government to be retained by the district from where it was earned. That was amendment 212, Clause (7) of 217. I will put the question.

(Question put and negatived)

THE CHAIRMAN: Now, Hon. delegates, let us now vote on 217 as recommended by Hon. Kaberuka's Committee. I put the question.

(Question put and agreed to)

THE CHAIRMAN: Then we go to the Schedule.

MR. KABERUKA: Thank you, Mr. Chairman. Clause (2) of the article we have just passed reads that "unconditional grant is a minimum grant that shall be paid to local government to run decentralised services and shall be calculated in the manner specified in the 7th Schedule to this Constitution." The 7th Schedule, Mr. Chairman, which appears on page 4 of the report, states: "in conditional grant is the minimum amount to be paid to the local government to run the decentralised services for a given fiscal year, this amount is equal to the amount paid to the local governments in the preceding fiscal year for the same items adjusted for general price changes, plus or minus the budgeted costs of running added or subtracted services." What we are saying is that, if you have decentralised two services and they cost a certain amount in the preceding year, you should be able to give the same amount that you gave this year adjusted for changes in prices and Mr. Chairman, the note which is down simply states that or shows that the unconditional grant is nothing other than the wage and none wage Bill of the recurrent budget. I beg to move.

THE CHAIRMAN: Yes, but what about these other things that appear on a piece of paper?

MR. KABERUKA: Mr. Chairman, those other things simply are rephrasing or in other words, what I have said in words is in the form that technicians would be able to understand it better.

MR. BYAKIKA KASAJJA: (Bunyole County): Mr. Chairman, the task given to the Kaberuka Committee was to determine a percentage due to Local Government in determining the sharing or distribution of the national cake. This was arising out of Hon. Ndege's Motion where the original figure was put at 60 per cent and then arguments led us to appointing this Kaberuka Committee. Mr. Chairman, when I look at the way they have formulated the percentage for the distribution of the block plant - *(Interruption)*

MR. DICK NYAI: Point of clarification! I would like to clarify to my friend Hon. Byakika that our mandate in that Committee was not to find a percentage, but to find how this money can be apportioned, because if we talk about percentages, we are talking about a different matter, because it may not be realistic as it has been shown. I think let us talk about how we thought the revenues earned can be shared between the Central and Local Government. I think that was our mandate. Thank you Mr. Chairman.

THE CHAIRMAN: What I recollect was this that the sum Hon. Ndege proposed was it 50 per cent and then some members said it was unscientific. How do you arrive at 50 per cent, and therefore, we said, let the Committee chaired by Dr. Kaberuka go and develop a formula for distributing revenue between the centre and the districts and that formula should be based on the scientific analysis of how things are done or should be done and what I can see here, they are saying that you take a best year and then you calculate from there, and then take into account factors like change in prices and so on, which in my view, answers the mandate which was given to them arising from the debate on the Motion by Hon. Ndege. But I do not think we told them to go and come back with a percentage as instructions.

MR. OBUA OTOA: Point of information! Thank you, Mr. Chairman. I do not want to be a spoiler, but Mr. Chairman, we are debating a very impor-

tant matter and I am wondering whether it is in order for us to continue with the possibility that we might have to make a decision when we do not have a quorum, Mr. Chairman. I thank you Sir.

THE CHAIRMAN: I will ask the Clerk to count in view of the fact that a matter has been raised. Could the Clerk's Office - they ring the bell as well. It would be good if we finished this thing of Local Government and then tomorrow we start on other matters. Meanwhile, could they ring the Bell for a while, we are 101. I have suspended for lack of quorum in accordance with the Rules, since our attention was drawn and members were counted.

(The Assembly was suspended due to lack of quorum)

THE CHAIRMAN: Hon. delegate, I do not think we are likely to improve our quorum situation, and it means that tomorrow we shall start with consideration of Schedule to 217, we have adopted 217, but we are looking at the Schedule, and then we shall do 128, then we shall move on to 92 and then thereafter 94 and so on and so forth. And that being the case, I think 92 has two aspects to it; there was a synchronisation of various aspects between the report of 65 and another committee and then there was a Motion which Hon. Dick Nyai was going to move and then after that, we go to 94. That being the case, I adjourn the House until tomorrow morning 9.30 a.m. We stand adjourned. Thank you.

(The Assembly rose and adjourned until 9.30 a.m. Thursday, 1st June 1995).