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PROCEEDINGS
OF
THE CONSTITUENT ASSEMBLY

OFFICIAL REPORT

CONTENTS

TUESDAY, 6TH DECEMBER 1994

MOTION:-

Consideration of the Draft Constitution of the Republic of Uganda [Pg 2590]

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Tuesday 6th, December 1994.

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

P R A Y E R S

The Deputy Chairman, Prof. V. Mwaka in the Chair)

(The Assembly was called to order)

COMMUNICATION FROM THE CHAIR

THE DEPUTY CHAIRMAN: Hon. Delegates, yesterday as you recall, we did not pronounce ourselves on Clause 2 of article 185. We had decided to include the words "guarantee all persons" in the clause. We had debated it, but then we adjourned before we made the final decision. It seems there is nobody raising a hand so I propose that I put the question. I now put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: May I call upon Hon. Kaberuka to look at Clause 3, it seems they are not proposing any amendment.

DR. KABERUKA: Thank you, Madam Chairperson. My committee recommended that Clause 3 as it stands in the Draft Constitution be retained as it is.

THE DEPUTY CHAIRMAN: There does not seem to be any -

DR. BYARUHANGA(Kitagwenda): Point of clarification! I would like to be clarified by the Chairman of the Committee how this clause 3 takes care of loans being sought by individuals, but which are guaranteed by the government. Because what I am asking is, will also these loans which are to be guaranteed also come before Parliament? The terms and conditions, will they also have to come before Parliament, the loans that government will guarantee?

DR. KABERUKA: Thank you, Madam Chairperson, the loans which are normally guaranteed by government are loans which come through an institution like UDB, EADB and so on. But before they are lent to individuals, or to parastatals, Parliament should be able to scrutinize them.

THE DEPUTY CHAIRMAN: Is that to your satisfaction? It seems there is no controversy, clause 3 is retained. Clause 4, there is an additional (c).

AN HON. DELEGATE: The question of interest on such loans has been taken care of because when government takes goods and services, and does not pay for a year or more, and then pays the value of the goods as at the time when they were obtained, definitely the receiver of the payment is at a disadvantage, and practically, this has been a common element in government that goods and services are obtained and not paid for, even sometimes, exceeding the financial year. And yet such monies are actually budgeted for. This I consider really forced borrowing or forced lending to government by business community. I wonder how Committee 3 looked at this issue, and how they resolved it, whether they thought these provisions here are satisfactorily handling that issue. And I am raising it because later on, they propose to delete Clause 7, which I thought was trying to cover up, not satisfactorily either. But at least he was trying to cover up, those kind of non payments.

DR. KABERUKA: Madam Chairperson, as you see, Clause 4 talks about total indebtedness. Total Indebtedness takes care of both internal borrowing and external borrowing. As for the interest, that depends on the terms on which funds are borrowed. So, we felt that Clause 4, and especially sub-article (a) takes care of total indebtedness. Unless the Member thinks otherwise, that is what we thought. Thank you.

AN HON. DELEGATE: Thank you, Madam Chairperson. I wanted also to utilise the word utilisation and performance of such loans as mentioned by the Committee. madam chairperson, you see, there has been sometimes a problem. Where we get a loan, and when they are utilising such a loan, you find that, only may be a quarter of such loan go or come in sort of material. The rest, they bring personnel and then eat up this money. Have they taken into account these considerations, because we are fed up of getting people who could have done something somewhere and come and finish this kind of loan. And then we end up getting material of one quarter only. as the committee addressed -(inaudible)- Thank you.

DR.KABERUKA: Madam Chairperson, we were aware of that problem and that is why we brought on (c). That some loans are taken and some of them, in fact at the end of the day, go back un utilised. And so, we said that since in Chapter 3, we said that, the President will be addressing the nation at least - I do not remember whether we said, twice a year or once a year, that this utilisation and performance should be given so that the public know the amount of loan which was entered into, what has been utilised, and hopefully, the problems of those which are not utilised. That is why we brought in this additional (c). Thank you.

MR. OGWEL LOOTE (Moroto Municipality): I just want to supplement what the Chairman of Committee 3 said that the clause which was introduced was to address that issue. Because the committee realised that a lot of these loans either go to individual pockets or the technical assistant provided. So, you find, it is only a quarter or even sometimes nothing, the wanainchi benefit. So, they close addresses of those issues, so that it is not realised whether the majority of these funds go right up to the grassroots or it just only goes to the individual benefits. So, that is why the clause was introduced so that, all those are addressed in that clause. Thank you, Madam Chairperson.

MR. AWORI: Point of clarification! Thank you, Madam Chairperson. I am seeking clarification from the Chairman of the Committee. 4(A) also includes penalties - accumulated interests and penalties.

DR.KABERUKA: Thank you, Madam Chairperson, penalties are included.

AN HON. DELEGATE: Thank you, Madam Chairperson. At one time, even our treasury would not know the extent of our investments and had to call in a foreign expert to tell him how much we were indebted. Earlier, I do not remember the article, we passed that the President shall report to Parliament about the state of the investments in a year. Having done that, why did the committee not decide to clarify it here, that whenever the President addresses the nation about the state of the economy of the nation, you also report to the nation about this extent of our indebtedness? Because as it is here, Madam Chairperson. I do not know whether my understanding of English is

the one which is wrong, because we are saying, "the president shall, at such at time as parliament may determine..." Why are we leaving it to Parliament to determine, when earlier we did not leave it to Parliament to determine when or how many times the President was supposed to address the nation on the state of the Nation? Because this public debt is a very serious matter. We are informed, I have been reading in papers that, as far as the foreign debts are concerned, we are indebted to the tune of 5 billion dollars. When you put it per capita, it is so much money, it would virtually make me scared.

DR.KABERUKA: Thank you, Madam Chairperson. You know, we were aware of that article but we thought that Parliament need not wait for the time when he is going to report. If they feel like, they could even call upon him to report every three months or whenever. So, we did not want to tie it to that. But of course, since he will be reporting, among other things, on the state of the economy, I imagine this will form part of his address.

MR. ONEGI OBEL: Thank you, Madam Chairperson. Madam Chairperson, I do not see what the amendment aims to achieve because, I would imagine that after borrowing, the utilisation into four months of the loan is postmortem. We cannot determine the effectiveness of that loan at the time you are borrowing. And as for the suggestion made by the Hon. Member that it would perhaps eliminate the misuse of borrowed funds, I would like to inform him and the House of this that, the crooks or the thieves who steal money out of borrowed money, do so in the process of negotiating the loans so that the money borrowed has already got an in-built amount for these thieves. You borrow 100 million dollars, 10 million dollars is theirs. And the country is committed with part of the loan already determined for themselves. But only themselves know about this. So this, amendment will not help them. I thank you, Madam Chairperson.

MR. KASAJJA: Madam Chairperson I am talking in support of the additional amendment put on this Clause 4. In most cases, utilisation or performance of a loan gives an indication as to the effectiveness of that loan to the sector it was supposed to be used for. So, the information given by Hon. Atwoma may not necessary be the one which is feasible for, I think, supporting this

reason. I think if I could inform the Members, as of now, the debt, the current debt stock of Uganda is about 2.999. But many people have been complaining about the effect of this loan to the economy. If there was such a provision in a constitution of this nature, I think the Government would have been in a position to come up with a statement saying okay, the debt is like this, but we have done ABCD. Then the public would be convinced of having that debt standing at that magnitude. So, I think the committee was right to put in this constitution this amendment, or this additional amendment to make the government aware that, if they are to get an additional loan, or any loan, they will be expected to tell the nation as to what that loan has done. So, I think, it is not that when the loan has already been given, some people might have got may be the 10 per cent, which some people have always been talking about. But let us assume that that 10 percent has been taken away. But what about the remainder? We want also to know that remainder; has it actually produced the effect that is required - the economic effect, or the social effect that is required on the economy? So, I think, Mr. Chairman, this is a useful additional amendment to this article. And I support it.

MR. MULONGO (Bubulo County East): Thank you, Madam Chairperson. I rise to support the recommendation and also to applaud the reasons of those who have given support to this amendment. Madam Chairperson, as Members have put it, it is very serious when you look at the indebtedness of this country in relation to our income and at the economic performance. In this country, so many things are happening by way of corruption and we do not seem to have proper checks and balances in place. So many projects come up, financed by all sorts of institutions, you see this is for Karamoja, but the vehicles are just in Kampala, this is for Northern Uganda Reconstruction, but the vehicles are just roaming about on Luwuum Street, Nkurumah, even the stationing of the very officers, they are mostly here in Kampala. So, you wonder whether utilisation of such funds is as effective as could have been in terms and conditions, as a matter of reference. So, this being a constitutional matter, it is going to address a lot of problems in that regard.

In Committee 3, we debated this matter at good length and we thought that it was wise that such a clause be put in the constitution. Some Members think that, after all, you are doing a postmor-

tem and therefore, you will be saving nothing, since the thieves will have had an in-built mechanism right at the beginning. But I was saying that, in article 3, such conditions will be clearly looked through before the loan is put into operation. And also, to follow up that, you are saying in this Clause 4 that actually, the extent of the utilisation and performance will also be scrutinised at close detail. So, I think if Members support this, it will be a long way to solve some of the problems of corruption, some of the problems of none performance, some of the problems of poor performance. I thank you, Chairman.

DR. ODUR: Thank you, madam Chairperson. I just wanted to add more reasons to why we included this particular clause regarding the utilisation and performance of loans. I think many of us will still remember that even during the process of this constitutional making exercise, one of the donors actually froze the further utilisation of funds for the exercise until some explanations were given as to how the previous loans were utilised. So, it is quite necessary that we remind government from time to time that, when they borrow money, they should at the same time keep track of how that money is used and if it is not properly being used, then some steps should be taken to ensure that loans are properly utilised. So, this clause we found was very necessary in this aspect of government borrowing. Thank you, very much.

MR. ATWOKI (Youth Delegate - Northern): Madam Chairperson, as a Member of Committee 3, before I go ahead to talk in support of the Motion, I have a feeling, after consulting my neighbour Awori, that we should move a small amendment to this amendment. I seek your permission, Madam Chairperson. Madam Chairperson, we think that, the word status of the loan should be included so that it reads, "*the status, utilisation and performance of such a loan*". Madam Chairperson, "*status*" here, we are trying to say that, after taking into account how far the loan has been utilised, and how far it has performed. We are just saying that, it is important also to inform the public, through Parliament, of the outstanding balance on loan, both internal and external.

Madam Chairperson, I now rise to talk in support of the Motion. Hon. Onegi Obel has said that there is no need to include this provision, but we

in Committee 3 believe that there is no way we can leave an opening so as not to allow accountability on the use of public funds. Madam Chairperson, it is important to realise that our total indebtedness does not only arise from the external loans we normally acquire. We have very good examples here on the social scale, recently, it was exposed by one of the news papers. I believe that all these loans which are extended to the members of the public should also be taken into account, and their level of utilisation and performance should be sought from whichever intermediary was involved in the lending of such funds.

Madam Chairperson, we also believe that this provision will strengthen another provision we have passed under the Auditor general which emphasizes, audit for money value. The principle here is utilisation. Despite disbursing the funds, we are saying that the authorities concerned will go ahead and look at the situation on the ground showing how far the money which was disbursed has been utilised. So, Madam Chairperson, I believe that this provision would go a long way to strengthen our financial institutions. It will give them the backing to take action against those local borrowers who add on to the misery of the masses. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: I think we have really had enough on the justification. Now, we want to zero down on the inclusion of the word "status".

MR. AWORI: Thank you, Madam Chairperson. I would like to second the amendment, the Motion by my Hon. Neighbour here, and also to add that, earlier on, there has been an explanation by the Chairman of the Committee and I sought clarification on whether penalties have been included. He said yes. But according to my previous experience, usually certain multi-lateral institutions do not charge interest. They charge you a penalty on non utilisation of a particular loan within a specified period. So, I think it is very important that they consider adding that word. If I may make an amendment later on, that they consider adding that word "penalty". Otherwise, Madam Chairperson, I wish to support the amendment that we add the words "the status of utilisation and performance of the loan". This also, if I may add at international level, particularly after the Paris Club meeting, generally you get a report on what your status is on a particular

loan, whether multi-lateral or bilateral. That is why I think it is important that the government must report to Parliament. Parliament must be informed of the status not just performance by the status. Because you also have some loan which may not be grants and may not be in use yet. So, we want to know their status. Thank you. I beg to support it.

MR. CHEBET MAIKUT(Kween County): Thank you, Madam Chairperson. Madam Chairman, I support wholly the amendment moved by Hon. Atwoki. Madam Chairperson, it will be recalled that one of the main cancers of the developing countries, including Uganda, is the ever increasing debt burden which is always borne by the ordinary citizens of their respective countries, and Uganda is not an exception. In many cases, these loan funds, including grants, have ended up in what has been termed the bottomless pit and a good part of it is always returned out of the country in form of capital flight.

So, Madam Chairperson, to me, the amendment moved by my Hon. Colleague there, I think seeks, in principle, to enshrine a constitutional provision which will require the parliament of the day to closely look at any particular funds that come in our country, whether it is a grant or soft loan. By this provision, parliament will have to look in totality the conditions of a particular loan, so that as representatives of the people, the legislature can have a good say in any loan that comes to this country. So, in principle, I think when we include the word status, it is clearly important in that the nation and the people of this country will be fully aware of any assistance, any monies whether strings are attached or not so that, when it comes to repayment, people will be fully aware.

So really, in short, I would like to say that this is a very good amendment which should be supported by everybody. Because as some Hon. Colleagues have said, our debt burden is increasing and income per capita is reducing now. I do not have the figures here, but somebody was quoting about 2.9 billion US dollars as of now. And Uganda is not the only country suffering from this problem. If anything, it is many developing countries and we have seen "assistance" in many cases has ended up giving more burden to the ordinary citizens of that country. So, I think it is

high time that our country took stock of this particular experience so that we redress the problem in future. In essence this means that any loan that is being solicited for and disbursed to this country will be put into meaningful projects that can bear fruit of multiplier effect for the people of this country. So, I support wholly that Motion moved by Hon. Atwoki. Thank you, very much.

THE DEPUTY CHAIRMAN: Hon. Wanendeya, are you still interested?

MR. WANENDEYA: Thank you very much, Madam Chairperson. First of all that, I thought you were pointing at me when last time you granted permission to somebody, but that be as it is, I am sorry about it. All that I would say is, I am correcting that impression. Madam Chairperson, I fully support the amendment and what we put down as an addition to what was already in the Draft Constitution. Madam Chairperson and Hon. Members, you find that, a lot of our money is not properly utilised. And if you look at the Background to the Budget 1994/95, you find that, even the 2.9 Billion Dollars is not audited to the great shame. So, putting that additional clause would strengthen the way loans should be utilised when borrowed. Currently, in fact there is hardly anything to show that loans have been utilised and I know a lot in that direction and it is a shame that nobody takes care of that kind of indebtedness for the people of Uganda, especially if loans are not audited.

Madam Chairperson and Hon. Members, I only would wish if my brothers Hon. Atwoki and Hon. Awori could be agreeable by even adding further the words, "*by annual audits*" towards the end of that sentence in addition to "*status*". That will make it an obligation to the president and whoever is in charge of finances in Uganda, to make sure that there is an annual audit which must be conducted as an obligation. Currently, it is not there. And if you read in the Background to the Budget as I said before, Madam Chairperson, it is a shame that our loans are not audited. I do not know even where our Auditor General is, and this is a challenge even to my friend, Hon. Ruzindana, to see that something is in the background to the Budget and our loans are not audited. It is a shame. And this is a challenge.

DR. KABERUKA: Thank you, Madam Chairperson, but I want to point out that this new

amendment is already covered. When you talk about the extent of total indebtedness, it is the status which is covered. When you talk about performance what is performance? You say what has been used and what has not been used. So, really to me, I feel that word is just redundant.

MR. NDEGE: Thank you very much, Madam Chairperson. I am in support of including the word 'status'. This lunch time I was listening to the news, and in Tanzania, the Ministry of Finance could not account for 140 million dollars. This is a lot of money and that prompted a reshuffle. In Uganda, we have been borrowing and nobody wants to say what is the status of all these loans. When you look at the PAPSCA Loan, they do not tell you how much has been borrowed, how much has been used, until we study in these sectoral committees. And even in the first year of the Sectoral Committees, some Ministers refused to appear before them because they thought they were above Parliament. So, in my opinion, the farmer is going to pay back this money; but the Parliament is representing the farmer. So, they are entitled to know every detail. So, I am in support that we include also the status. Performance yes, but what is the status?

What has happened? You can say it is performing well. You can get away with it, and say it is doing very well. But what is the state of affairs of a particular situation? I support the additional amendment whatever was recommended by the Committee 3. Thank you very much.

LT COL. KIIZA BESIGYE: Yes, Madam Chairperson, I had my hand up to precisely say that the word "status" is totally unnecessary. Once you have already talked about the utilisation, what is referred to there as performance of the loan is precisely the status of the loan. What else is performance of the loan, if it is not the status? You have to say, how much was borrowed, how much has been utilised, how much is the interest and how much is outstanding, and so on. This is the performance of the loan. Therefore, I think that, it is necessary, it is not harmful of course, but it is superfluous. And to that extent, Madam Chairperson, I would request that we do not spend a lot of time debating whether we include status or not. You put the question and if "status" is included, there will be no harm. If it is rejected as it is useless, there will be no harm.

MR. KAGWA (Kawempe Division, South): I rise to oppose the inclusion of the word "status" because I was just looking through the dictionary here, and the simple definition is "A persons' legal, social, professional position". Now, I know that we have passed here that, before government borrows, it will have to go to parliament. So, the legal Status would have been determined. So now, why over use the words unnecessarily. And as my colleagues have said, performance say utilisation - because first of all, the status we want to establish will not arise unless the loan has been legally obtained through the procedure of setting the constitution. The other issue we would want to know is how it is being serviced, what interest and what it has been used for. So, I want to urge Members to drop the extra use of those unnecessary words. I beg to move.

THE DEPUTY CHAIRMAN: Perhaps Hon. Ambrose Atwoki, you can revisit your -

MR. ATWOKI: Madam Chairperson, I am not ready to withdraw.

THE DEPUTY CHAIRMAN: Okay, that is fine. Because I wanted to ask you. Now, we have two things to consider: One, the inclusion of the word "status" and then two, the retention of that third Clause in the constitution. Now, I will handle, the first one. I now put the question.

(Question put and negatived)

MR. WANENDEYA: Thank you, Madam Chairperson. I move that the words "by annual audits" be included at the end of the phrase which is here, Madam Chairperson.

THE DEPUTY CHAIRMAN: Is that seconded? Seconded by Wambede. I think Hon. Wanendeya, you have already substantiated. Can I request Hon. Wambede to talk to his secondment?

MR. WAMBEDE: Madam Chairperson, it will be completely awkward where we shall have no books audited, Madam Chairperson. I would support the idea of where whoever is presented - presenting all those audits or the books or the balance sheet, it must be audited. It will serve no purpose for one to say, now look here, our loans or our grants have performed extremely well without showing us how were they used, and

maybe what are the balances and whatever is remaining. So, on those, grounds, Madam Chairperson, I would wish to second my neighbour here, Hon. Wanendeya. Thank you, very much.

THE DEPUTY CHAIRMAN: Can we get the proper wording of your amendment?

MR. WANENDEYA: Thank you, Madam Chairperson. Madam Chairperson, I request that at the end of the words which are in Clause 4, we should just add the words "by annual audits" so that the phrase reads as follows: "The utilisation and performance of such a loan by annual audits" so that it is only the addition, the words "by annual audits" which will be added and nothing more. And Madam Chairperson, unless we want to encourage corruption, this will be the logical way, if I have to advise my country in the best interests of utilising loans.

THE DEPUTY CHAIRMAN: There is information.

LT COL. KIIZA BESIGYE: Point of information! Madam Chairperson, I would like to draw the attention of Hon. Wanendeya, to the proposed article 188 in the Report of Committee 3. You will realise that, Clause 2 of that recommended article is providing for the Auditor General to audit and report on all Public Accounts of Uganda and on all Public Offices. And paragraph (b) of Clause 2 talks about the conduct of finances and the value for money audit. And Clause 3, says that that report shall be annually, six months after the end of the immediate financial year. So, all finances, including these loans, would have to be audited, and the report given every year.

MR. WANENDEYA: Madam Chairperson, as much as Hon. Kiiiza Besigye has said so, but I can challenge him that the annual audits of our foreign indebtedness has never been introduced to Parliament and the Auditor General - I mean Hon. Ruzindana Augustine who is the IGG, here can also testify to this. And not only that, Madam Chairperson, if we get the Background to the Budget, Hon. Delegates will see that this is not done. And therefore, if it is included here on this particular clause, it will be the best way, Hon. Delegates, so that we can get these annual audits of this borrowing and therefore, utilisation of our foreign indebtedness. I thank you, Madam Chairperson.

PROF. SENTEZA KAJUBI (Kyadondo North): Point of clarification! I was going to seek clarification from the Member on the floor, but since he has left the Floor, may be I can make a substantive - -*(Interruption)* - Madam Chairperson, I should like to draw the attention of the Members to the stem of this clause. "The President shall, at such times as parliament may determine, cause to be presented to Parliament such information concerning any loan as is necessary to show". Now, parliament is the one which is going to determine at what intervals that the president should present the information. How Hon. Wanendeya's Amendment ties Parliament to annual audit whereas parliament may, six months after the acquisition of the loan, ask for this information, even when it is not yet annual and it is not going to be possible for the President to show an annual audit of a loan which has not yet lasted the life of a loan. So, in view of that, I am wondering whether Hon. Wanendeya may wish to modify or withdraw his amendment.

THE DEPUTY CHAIRMAN: I think we have had enough time. Let us put the question on Hon. Wanendeya's Motion. I now put the question. Somebody tried to rig there. So let us have it again.

(Question put and negatived)

THE DEPUTY CHAIRMAN: I think I should put the question on the inclusion of sub-article (c) in the constitution. I now put the question.

(Question put and agreed to)

THE DEPUTY CHAIRMAN: We have cleared 4, can we go to 5.

DR. KABERUKA: Thank you, Madam Chairperson. My Committee deliberated on Clause 5 and found that there was an aspect which was lacking and that was giving of grants. So, we thought to modify the article to allow government to give loans or grants. When that was accepted, we found that the English required us first of all, the word "grant" to be changed and we substituted it with the word giving, so that the new article reads that, "*Parliament may, by resolution, authorise the government to enter into an agreement for giving all the loan or grant out of any public fund or public accounts*". I beg to move.

MR. KARURANGA: Ma lam Chairperson, I have noted the explanation given by the Chairman Hon. Kaberuka, and Madam Chairperson, I have the following observations to make. First, the way the whole paragraph as proposed is written, is subject to lots of interpretation and is capable of becoming contentious and vague. In law, when you use the word "or", it is used in the alternative and in the interpretation of that sentence, you are likely to come up with about three different interpretations because of the way they have used the words "or" twice in the same sentence. Now, Madam Chairperson, let me read so that Members can follow carefully because this is a little bit - "*Parliament may, by resolution, authorise the government to enter into an agreement for the giving of a loan. That alone can stop there and it would be a sentence, and then you say "or". And once you say "or", then you start from the beginning. "Parliament may, by resolution, authorise the government to enter into an agreement for giving of a grant out of any public fund" and then you can stop there. So far so good. Or then you can now go back and read "Parliament may, by resolution, authorise government to enter into an agreement for the giving of a loan or a grant from Public Accounts". Now, that is one way. The other interpretation which the Committee gave was that, "or" is a loan or a grant and "or" is fund or Public Accounts. So, that is another correct interpretation.*

Now, to solve these problems one needs to be neater in writing this. And I know that, they got into this problem because they picked also a mistake which had been brought in the Draft. Because also in the Draft, they had carried that same blunder, but in the Draft, they were a little smarter because they used the word "or" once, not twice but the Draft had "funds or public accounts" and then they carried that on and brought the confusion in what they had actually cited. So, my proposal to solve this problem is this, if they delete the last "or Public Accounts" and pluralised the word "fund" to "funds", then the construction would be neat and would not introduce any more confusion and would be left with only one "or" in the whole text such that it would read as follows, Madam Chairperson, "*Parliament may, by resolution, authorise the government to enter into an agreement for the giving of a loan or a grant out of any public fund*".

MR. MUSUMBA (Buzaya County): Thank you very much, Madam Chairperson. Madam Chairperson, Hon. Elly Karuhanga has treated us to a most educative and a very very helpful interpretation of these things. But Hon. Chairperson, we are generally men here, and the principle in my mind is clear. Hon. Elly Karuhanga is on the Legal and Drafting, if I am not mistaken. May I suggest that, this matter which is really very fine be referred where it will be dealt with, because I know, in our procedure, we have a stage where all these will go back to the Legal and Drafting for putting in the proper English and the proper law and all that. May I suggest, Madam Chairperson, that we do not waste time on this one. The principle is very clear. We are saying, if Government is to grant a loan out of Public Funds or Public Accounts, there should be a resolution. If it is to give a grant from the Public Fund or Public Account, there should be a resolution. Madam Chairperson, I just want to beg the Hon. Members to agree with me that, this is a legal matter for the lawyers, who will in fact look at this when the stage comes. I beg to move Madam Chairperson. Thank you.

MR. RWOMUSHANA (Rujumbura): Thank you, Madam Chairperson. Madam Chairperson, I support the spirit of the Amendment but before the country gives a loan, or a grant, it should first have the backing of the resolution of parliament. Nevertheless, I still support very diligently the idea of Hon. Karuhanga. The Constitution is not according to the interpretation of those who make it, it is according to the interpretation of the judges. So, it is not important to say, at least for us we conceive it this way, and therefore, miraculously the judge will also conceive it the way we conceived it. What is important is what we have laid down. It is very pertinent that we should lay down something which is very clear and which shall be universally interpreted by judges. Therefore, what we write down is very important, and I therefore I agree with the idea of Hon. Karuhanga, and we are blessed by the presence of many lawyers. Let them help us and we have a proper drafting and we pass it. We should not pass something which we doubt. Thank you, Madam Chairperson.

DR. KABAYO: Point of clarification! Thank you, Madam Chairperson. Mine is a point of clarification from Hon. Karuhanga whether he

perceives a difference between a Public Fund, and Public Account?

MR. KARUHANGA: I want to inform Hon. Kabayo that, there is nothing to perceive here, these are facts. So, I am not giving him what I perceive. Public funds are kept on Public Accounts, they can never have any public fund which is just not kept on an account, and most of the Public Accounts have got funds. If the Public Account is reading zero, that account is closed. So, this is not the question of perceiving things, this is a fact, and that is why I wanted to eliminate the double message of these words, which have nothing but confusion in the text.

DR. HIGIRO: Thank you, Madam Chairperson. What is here, the principle is clear and simple, and it appears we all agree that the principle is acceptable. What Hon. Karuhanga has said, which I liked very much, is a matter of editing, and Madam Chairperson, I think that we could vote on this amendment and the editors and the lawyers will improve on it, Madam Chairperson.

THE DEPUTY CHAIRMAN: Let us hear from a Member of the Committee. Hon. Med, you had your hand up. Are you not a Member of Committee 3?

MR. MED KAGGWA: Thank you Madam Chairperson. After consulting from the accountants who are neighboring me, that "public fund" and "public accounts" are the same thing, then I realise Hon. Elly Karuhanga had logic in what he was saying. So, I got educated in that manner and now I feel we should go along with that.

DR. KABERUKA: Thank you Madam Chairperson. Hon. Karuhanga before he moved this, he did consult me and I pointed out to him that if "public fund" and "public account" mean the same, then the committee is willing to go with his amendment.

MR. MUSUMBA: Point of information! Madam Chairperson, you can have public funds which can be eaten and they are being eaten everyday without necessarily touching what is known as a public account. What is it that people are saying public funds are necessarily the same as public account?

MR. ELYAU: Madam Chairperson, the accounts cannot be fund unless there is some funds to spend. So, all the same, the committee has tried to separate the two because in case of a loan outside, the government can guarantee and then Parliament can actually make a resolution. But if there is some fund of the government to a particular organisation like local government and so on, definitely that is a different fund. But all the same, they do not seem to be very different but in the actual sense, the public fund is already something with government. But when you talk about loans, it is something the government can also borrow from somewhere on behalf of the particular set thing. So, I think the amendment as I see, the context in the draft sounds a bit more fair. Thank you very much.

LT. COL. KIIZA BESIGYE: Madam Chairperson, I would like to get some clarification from the Members of Committee Three. I do not fully understand the meaning of clause (5) whether it by implication prohibits government from giving of a loan or a grant without a resolution by Parliament because it says Parliament may by resolution authorise government. Does it by implication mean that government, if it gave a loan or grant from public funds, it would contravene this provision? Secondly, if that was to be the case, I would like to know whether, like the President goes and donates to some organisation from the President's funds, which I believe are part of the public funds, whether that would then need a resolution of Parliament? Even public corporations, from time to time give grants or donations and I do not know whether also those would require such a resolution!

MR. KARUHANGA: Madam Chairperson, from reading this text, it is obvious that they would like Parliament to be - as a condition precedent - as something that must be done before something else gets done. They are saying that Parliament may, by resolution, authorise government or may not authorise government to enter into agreement for giving of a donation or a grant or a loan. This is actually what it means. Now, I do not want to go into this but I had raised it with the chairman because what my intention had been at the beginning was to cure the confusion. Then after curing the confusion, then we could go into the merits of Hon. Besigye. If there is an earthquake in Fort-Portal and there is a big disaster, the

import of this is that government would have to summon Parliament to get them to authorise a grant to Kabarole District Administration which had not been budgeted for or if government has not got a disaster fund and has now to just create or there is famine in Teso and one billion shillings has to be looked for in the accounts and spent, Parliament will be summoned and then will approve that.

This is the import of this sentence and it is up to this House to see whether they want to cure that but I was saying that before we even address that, we should cure the current confusion in it itself. Of course there is the other interpretation that that does not cover that. The other interpretation I got from the chairman was that no, no, that is not what we mean. Here, what we mean is grants and loans which are supposed to be granted to various organisations like the grants you give to OAU or to universities or to outside organisations. But the re-reading of it can go wider than that. Thank you.

MR. MOSES WAGIRA: Madam Chairperson, I was just answering that same question of Hon. Kiiza Besigye that Parliament may and I do not think I should say - because exactly what Hon. Karuhanga was saying is the import of this. I do not subscribe to the second part of his contribution. But the first is that by saying "*Parliament may by resolution...*", it is actually a procedural requirement that if Parliament is to grant any loan out of a public fund, or a public account, then it is procedurally constitutional that that has to be under the authority of a resolution by Parliament. That is what I was attempting to answer. I thank you.

DR. KABERUKA: Thank you, Madam Chairperson. First of all, I want to answer this question of whether donations are included. First of all, to my understanding, donations are not included in this article because Presidential donations are part of the yearly budgeting and when Parliament passes the budget, it is in effect passing a resolution that the President can give donations because that appears as an item on budgeting. But here what we are thinking of are loans or grants. I was explaining to Hon. Karuhanga that why we introduced grants is that in some countries, they do offer scholarships to foreigners, that in future we may also find ourselves, Uganda offering scholarships which are grants to foreign students

and in that case, that is why we brought that here. So, we are looking at grants to outsiders or to nationals which are outside the budget. But Presidential donations are part of the yearly budgets. Thank you.

THE DEPUTY CHAIRMAN: I think let us handle Hon. Karuhanga's amendment. He says that we strike off "public account" and put the words "public funds".

DR. KABERUKA: Madam Chairperson, thank you for giving me the Floor. As I did point out to Hon. Karuhanga, it is that his amendment as you can see, the first "or" is between "loan and grant", that the government can enter into an agreement of giving a loan or a grant. That is clear. Now the second one is that this loan or a grant can either come from public funds or from a public account. Now if it is clear that in his mind, in financial circles, public funds are the same as public account, then definitely I have no quarrel.

THE DEPUTY CHAIRMAN: Okay, there was also another submission by Hon. Musumba that perhaps this is an editorial issue where a comma should be, where there should be a semi colon and so forth. So, why do we not pass or reject the amendment and then we give to the technical committee? That was his proposal.

MR. MULENGA: Thank you, Madam Chairperson. But after we pass it or reject it, there will be no need to go to the Technical Committee. But my view Madam Chairperson is, "funds" covers both because public funds are either outside in a box or an account but they are all public funds. The idea is to limit or to prescribe how government may give the loan or a grant from monies of the public which I called public funds wherever they may be, whether on account because account contains funds also.

THE DEPUTY CHAIRMAN: Okay, thank you very much for that clarification. I think we have had enough debate. Let us clear Hon. Karuhanga's amendment. Question put. Why are the other people indifferent? *-(Interruptions)-* Sorry, I am saying that one, I cannot take it because there was only one voice and all the other people were quiet.

MR. SABIITI: Thank you, Mr. Chairman. I think I need more clarification from Hon. Kaberuka. The point raised by Hon. Mulenga is valid, valid in a sense -

THE DEPUTY CHAIRMAN: Order! Hon. Karuhanga, what is your problem?

MR. KARUHANGA: Madam Chairperson, when we were voting, we cannot be in the middle of a vote and then at the same time be in the middle of another debate.

THE DEPUTY CHAIRMAN: What I said was, people never responded. Okay, let me put the question again. *-(Interjections)-* No, it is on the amendment. Then you can bring your own amendment later on. Okay, now I put the question on Hon. Karuhanga's amendment.

(Question put and negated).

THE DEPUTY CHAIRMAN: Now we have one more step to go.

MR. SABIITI: Thank you Madam Chairperson. The word used here, "any public fund", to me if you use "any public fund" or "public account", I think it does not rhyme well in finance management. I think what they intended was because we had already passed two things that either the public funds could be in Consolidated Fund or in public account, so, here either they say grant out of any of Consolidated Fund or Public Account. *-(Interjections)-* Yes, they are not the same.

THE DEPUTY CHAIRMAN: Now, let us have it clear. We have just cleared Hon. Karuhanga's amendment and Hon. SABIITI is bringing another amendment. We had not decided whether we have cleared number five. So I gave him the Floor to make his arrangement which I think is quite in order.

MR. SABIITI: Yes, thank you Madam Chairperson. Madam Chairperson, I would suggest that we delete the word "public fund" and put there "consolidated fund" or "public account" because both these two accommodate public funds. Now, when you say public funds or public account, really it does not make sense. So I am proposing, Madam Chairperson, that we delete "any public fund" and we insert the words "consolidated fund" or "public account."

DR. KABERUKA: Madam Chairperson, it is true that consolidated fund and public account are different. But I think the way it is here is more encompassing public funds because you may have public funds which are not yet on any of those two accounts and which are in transit. And therefore this one, the formulation as it is, where we have "public fund" is more encompassing than "consolidated account". Thank you.

THE DEPUTY CHAIRMAN: Incidentally, I overlooked something. Hon. Sabiiti's motion was not seconded. Who is seconding it? Okay, it is seconded by the neighbour Rwomushana.

DR. BYARUHANGA: Point of clarification! I am seeking clarification from the chairman of committee three. Often, Parliament sets up special funds like the National Social Security Fund, like some scholarship funds we used to have. Now, are these funds also included under "public fund" because government transfers money from the Consolidated Fund to these funds?

DR. KABERUKA: Madam Chairperson, the institutional funds are treated differently. National Social Security Funds are funds which belong to that institution.

MR. RWOMUSHANA: Madam Chairperson, I also would like to seek clarification from Hon. Kaberuka, the Chairman of the committee.

THE DEPUTY CHAIRMAN: I thought you are seconding your Friend. You said you are seconding his motion. That is where we should start.

MR. RWOMUSHANA: Madam Chairperson, I seconded my neighbour because I know all public monies, most of the public monies are kept on the Consolidated Fund. Most of the monies of government are kept on the Consolidated Fund and others in Public Accounts. Even article 185 which we have already passed, part 3(b) states that after receiving the loan, that money shall be put on the Consolidated Fund. So I have supported him simply because I would like that before money is drawn from the consolidated fund for a grant or for a loan, there should be a resolution. Madam Chairperson, that was the reason why I supported him and I was further seeking clarification before I leave the Floor

Madam Chairperson if you could grant me the permission. Madam Chairperson, Hon. Kaberuka, in moving this amendment, the mother amendment, stated that the input was to give government the authority to lend foreign students for scholarship or probably to give a loan or a grant to foreign institutions or organisations notwithstanding other funds like the national social security fund to mention but a few. Where does the fund like *Entandikwa* fall?

DR. KABERUKA: Thank you Madam Chairperson, I think the more time we spend on this, the more we get confused. First of all, institutional funds are institutional funds. They are not for government use. They are only used as per law establishing those institutions. That is one. Two, I did point out that why we brought in grants, because in the Draft Constitution, they have loans. I was giving an example that other countries do have grants which they offer for instance to foreign students in form of scholarships and therefore, in that case you cannot treat them as loans because they do not expect you to pay. So we envisaged a situation where Uganda may at one time also join the Commonwealth Universities and offer scholarships. So, we included loans. But as I said, these loans or grants can either come from the public funds or from the public account. Now the consolidated fund is of course like a store for government but there are funds which are still on the way, which have not reached that account which government can take liberty to use in the way it wants and that is why I said that "public fund" is more encompassing than the consolidated fund. I thank you.

MR. KARUHANGA: Thank you Madam Chairperson. I think having listened to an amendment proposed by Hon. Sabiiti saying that the words "public funds" should only be limited to consolidated fund, I find that this is just ridiculous. I do not know whether this confusion is brought by the confusion which was brought in the Odoki Draft and then carried on by the Kaberuka Committee and now has been brought further and people are defending. Dr. Byaruhanga asked a valid question and he got a wrong answer. He said, what about social security funds? These are also funds and they are public funds and they are contributed through an Act of Parliament and people are compelled to give these funds. These are public funds, they are not private funds. Okay, let us just

show you how ridiculous the amendment proposed by Hon. Sabiiti can be. If you say that public consolidated fund or public account, now can public accounts - have you ever heard of an account called public account anywhere? The word public account is not kept by any bank anywhere. There is no such a thing like a public account. There are public funds and public accounts which could be various accounts for the public. But I think now where we are caught up is that we have rejected a valid amendment and now we have to find a way of rigging out and certainly the way Hon. Sabiiti is coming up is totally not an amendment which is going to help us.

THE DEPUTY CHAIRMAN: Okay, now I put the question on Hon. Sabiiti's amendment. Okay, let us hear Hon. Rhoda Kalema.

MRS. RHODA KALEMA: Thank you, Madam Chairman. Madam Chairman, before we - *(Interjections)*- I am free to say Madam Chairman because that is what I am used to and once I say Madam, it indicates I am referring to the Chairman who is a lady. Madam Chairman, the point I wanted to make is that we are wasting a lot of our time on just the words "account" and "fund" because I think the main essence in this amendment, in this motion is that what we are trying to seek is that Parliament may by resolution, authorise the government to enter into an agreement for the granting of a loan out of any public fund. Madam Chairman, I consider that an account is one of any public fund and a consolidated fund is also a public fund. So, I do not see the point of us going on to distinguish between an account and a fund because anything even a grant, whatever it is, it is a fund. So I feel that we should really stop there.

THE DEPUTY CHAIRMAN: Okay, thank you very much. Now I put the question.

(Question put and negated)

THE DEPUTY CHAIRMAN: I think now I put the final question.

(Question on Clause 5 put and agreed to)

THE DEPUTY CHAIRMAN: So five is through. Now 6, there are proposals that it

remains unchanged. Okay, I think the proposal is retained that Clause 6 remains as it stands in the Draft Constitution.

DR. KABERUKA: Thank you Madam Chairperson. My committee deliberated on Clause 7 and we came up with a view that Clause 7 seeks to define the word loan and that the definition of whatever is in this Draft Constitution goes, I think, to article 286 and after a long deliberation, we decided that Article 7 should be deleted, if it is necessary to be retained, it should go to article 286 where definitions are. I beg to move.

THE DEPUTY CHAIRMAN: Are you saying now that that is a new proposal other than what is in the -

DR. KABERUKA: No, after deleting, we have two new clauses to bring in.

THE DEPUTY CHAIRMAN: That is 7 and 8?

DR. KABERUKA: Yes please. We deleted this and then we brought in two new articles. Can I go ahead and introduce the new article?

THE DEPUTY CHAIRMAN: Yes.

DR. KABERUKA: Okay! Madam Chairperson, my committee introduced a new article. I want to draw the Delegates attention to an amendment. First of all, when I was submitting my report, I did point out that there were some omissions and some mistakes. So, I circulated on first of December an amendment, I mean a new page 10 which has got correct formulation of the new Clause 7 which reads - and I did read it during my submission, but I want to repeat it here, which reads that *"Notwithstanding provisions of this Article but subject to Clause 8, the President may borrow, guarantee or raise a loan on behalf of government, public institutions or authority but the President shall report his or her action to Parliament for ratification within 30 days if Parliament is sitting or if Parliament is not in session, within 30 days after Parliament has commenced sitting"*. I beg to move.

MR. LIIGA: Thank you Madam Chairperson. Madam Chairperson, when we look at clause one of article 185, it says, *"subject to the provisions of this constitution, government may borrow*

from any source''. However, the new proposal or the new formulation seeks, I think, to exclude the provisions of the Constitution applying, that is clause one of article 185 where he says, *''notwithstanding the provisions of this article''*. I seek some clarification from Hon. Kaberuka as to what he meant by that. Thank you Madam Chairperson.

THE DEPUTY CHAIRMAN: Hon. Kaberuka, can you clarify? He is asking for clarification.

DR. KABERUKA: Madam Chairperson, as I did point out during my submission, I pointed out that article 185 as it stands does not in any way authorise anybody, unless you have gone through Parliament, to acquire a loan. But we did recognise that there are some instances when government of the day may for some circumstances - maybe emergency or what - may want to borrow when either Parliament is not in session or conditions do not permit to consult Parliament so that this government borrows and then reports to Parliament within this specified period. Now in existing external loans Act, we do have a provision where Parliament empowers a Minister and there is no contradiction. As I did point out yesterday that when we talk about President, we are including his subordinate staff, that here we thought that as I am pointing out, that in the existing External Loans Act, there is a provision which allows a Minister to borrow to a certain tune, a certain amount of money and then report to Parliament after. Now, why we are subjecting this clause to Clause 8 is that in Clause 8, we are saying that Parliament will make laws which govern internal borrowing and external borrowing and therefore, to accommodate that aspect, we saw or thought that we should bring it in where the government of the day is given latitude that when circumstances do not permit to consult Parliament, they can go ahead but Parliament would have limited them to a certain amount. As of today, I think the amount is about 80 million, during the colonial time, it used to be 10 million. It was in that spirit that we brought in this new amendment to accommodate those exigencies. I thank you.

MR. KARUHANGA: Point of clarification. Thank you Madam Chairperson. Could the Chairman and Hon. Kaberuka, please clarify to me two points. One, why then did they delete 7 because

7 has nothing to do with the proposed amendment. Article 7 has existed in the draft. He is talking about totally different things as from what is the replacement. So that is one point. Point number two, can he clarify to me why they have now introduced 8 which reads, for simplification: *''Parliament may make laws for giving effect to the provisions of this article''*, when already 185 (2) reads the same; *''Government shall not borrow or raise a loan on behalf of itself or any public institution or authority except as authorised by or under an Act of Parliament''*. So, why have they brought us into this confusion? I have no quarrel myself with the argument that the President or government can borrow funds. That is another point. But why mix? This is what we call in my language, *''Okukuserera omukatare, okutonganisa omuhanda''*. And what is being deleted is very valid. What I said in my language, Madam Chairperson is that when you go to the market place and you buy things at a very expensive rate, then you find out that you bought very expensively, then on the way you start quarrelling with the way which took you there. This 7 is good, we should not delete it. It is an operational definition. Thank you very much.

MR. WAGIRA: Point of order! Madam Chairperson, is Hon. Karuhanga in order to unleash on this House, words which we cannot comprehend without substantiating?

THE DEPUTY CHAIRMAN: No, that is not a point of order. You have asked for him to clarify more.

MR. WASSWA LULE: Thank you very much Madam Chairperson. I would like the Chairman of the Committee to clarify two things. One, if Parliament were to refuse to ratify the actions of the President, where would the country stand? And secondly, why is it that in the previous articles, the powers of borrowing are given to government but here, this exclusive right of the power to sign away is given to the Presidency as opposed to the wider government?

THE DEPUTY CHAIRMAN: Okay, Hon. Kaberuka, let us have the clarifications and then you will answer so that we save time.

MR. KASAJA BYAKIKA: Thank you Madam Chairperson. Madam Chairperson, I stand to oppose the deletion of clause 7.

THE DEPUTY CHAIRMAN: But you said you wanted clarification. Somebody wanted a clarification. So let him clarify first.

MAJ. GEN: TINYEFUZA: Point of procedure! Thank you Madam Chairperson. Madam Chairperson, I would like to draw your attention to rule 48(17) and see whether it does augur well with what actually Hon. Kaberuka's committee is trying to say, because in 85(2), we did enshrine in this draft constitution a principle which makes Parliament the only authentic body to allow government to borrow money. Now at the same time, it is not only a derogation clause but it is even consistent already with 85(2) which has already been passed. And rule 17 says, "*No amendment shall be made which is inconsistent with any article already agreed upon by the Assembly*". Now 85, of course I am aware that it talks about an article which is already passed and we are talking about clauses. So, I do not know what this amendment he is proposing is trying to do. We are enshrining a principle of supremacy of Parliament as the only authentic body to allow borrowing, lending and whatever. Now he is coming and saying, the President now may do it and only seek approval. So procedurally, Madam Chairperson, I do not know how we surmount that.

THE DEPUTY CHAIRMAN: I do not think that is a procedural matter. It is a matter of content. As long as the committee detected a difference between 185(1) and why they are introducing number 7 -I think now at this point, Hon. Kaberuka, you can clarify.

MR. MWONDHA: Thank you very much, Madam Chairperson. We have already passed 185(3) which says that "*An Act of Parliament made under clause (2) shall provide, (a) that the terms and conditions of the loan shall be laid before Parliament and shall not come into operation unless they have been approved by resolution of Parliament*". What opportunity will Parliament have to determine the terms and conditions of a loan which has already been procured? I would like the Chairman to clarify on that matter.

MR. SEBAANA KIZITO: Madam Chairperson, I want to bring to your attention the fact that there is an amendment on this clause (7) proposed by Hon. Byakika and supported by fifty Hon.

Delegates. I would therefore like to suggest that we do not to waste a lot of time to put this amendment to debate because it will answer a lot of questions Madam Chairperson.

THE DEPUTY CHAIRMAN: Yes, but probably we have to understand what they are debating.

MR. SEBAANA KIZITO: They will do that in the course of debating this amendment.

THE DEPUTY CHAIRMAN: I do not have it tabled, so you are telling me something new which I am not aware of.

MR. SEBAANA KIZITO: I am sorry, I thought your secretary was efficient but I am sorry.

DR. KABERUKA: Thank you, Madam Chairperson. After consulting the people who are conversant with the drafting, I have been informed that actually Clause (8) is redundant because clause (2) does what Clause (8) seeks to do. So for that matter, Madam Chairperson, Clause (7) should now read, "*Notwithstanding provisions of this article but subject to clause (2)*" - subject to the provisions of clause (2).

MR. MUSUMBA: Thank you very much Madam Chairperson. Madam Chairperson, this is a very important amendment which was very well thought out before it was made. It seeks, in fact, to derogate from the provisions of other aspects of 185 except to the extent that it still retains being subject to Parliament which shall - because it says, "*notwithstanding the provisions...*", the other provisions in the article, but it is subject to being given effectiveness by Parliament which is in Clause (8), President may borrow. The meaning of this was, Madam Chairperson and Members, I entreat you to give me a chance to explain this very clearly. The purpose of this was that it is agreed that no money should be borrowed unless Parliament says so, unless Parliament scrutinizes the terms and conditions. However, Parliament may wish to give an executive President some power to say that anything beyond say, five million or below five million dollars, you can go ahead and borrow and come and tell us. However, anything beyond five million dollars, we shall have to sit down and examine the terms and conditions, and that is the import of Clause (7) - the proposed Clause (7) as amended.

MR. BAGEYA: Thank you very much, Madam Chairperson. Madam Chairperson, I am one of the Members of select committee three which dealt with finance and dealt with this particular item we are with. Right from the word go, I was not happy with the import of this particular clause and at a later stage, I would like to oppose the inclusion, very strongly, of this clause in our constitution and given a chance to give my reasons, Madam Chairperson, I would like to oppose this particular motion on the following grounds. I would like to oppose this provision, clause (7) and I would like to move that this amendment be deleted from our constitution.

AN HON. DELEGATE: Madam Chairperson, the moving of this amendment on the Floor actually ignores that there is already a similar amendment by Hon. Byakika and others supported by over 53 people. So I would suggest Madam Chairperson, that we go along with this amendment to delete Clause (7) of Article 185 because 53 people have already signed for the deletion and that should be in order. Thank you Madam Chairperson.

MR. MED KAGGWA: Point of order! Thank you very much Madam Chairperson. Is it in order for the Member to bring an amendment which is not circulated and he is talking from what we do not have?

MR. MUSUMBA: Thank you very much, Madam Chairperson. Madam Chairperson, these here included in clause 7 are the recommendations that were made to the plenary. Until now, Madam Chairperson, when they are being debated by the plenary, it is not procedurally correct for anyone to say that he is now challenging these recommendations because they had not gone to the plenary yet. Now, they have been presented before the plenary.

THE DEPUTY CHAIRMAN: Okay, I do not see any problem. We have this clause being proposed by the committee and my interpretation is, it is a new provision because the former (7) is talking about a different thing. So it is not a replacement of (7) which means, the new (7) we can debate it, then we shall vote - those who want it to stay because it is new and those who want the original and we would have cleared the air. So, I do not see the purpose of this thing which has

been just circulated to me and just from the blue. So there is nothing, the paper will not make any difference if we debate. People say, okay, we want this to remain or the reasons why it should not remain. Then we vote on it and that will have cleared the air.

DR. BYARUHANGA: Madam Chairperson, you have rightly said that we have in the report the new clause. It is not an amendment to the (7) which we had in the original draft and therefore, the proper course should be that we first debate whether we agree with the recommendation of the committee to delete the clause seven which we have in the draft. Now, whatever way this one goes, we can still debate the Clause (7) in the report as probably a new Clause (8) supposing we agree that the seven of the draft remains, because if we debate the way you have told us, some of us may be of the view that we should have both the (7) in the draft and the (7) in their report as a new (8). But once you debate it the way you have said, then it will not be possible because we shall have either of the two.

THE DEPUTY CHAIRMAN: Okay, let us hear from the Chairman of Committee Three. One, the original number (7). What are the commonalities of the original number (7) which is being replaced by the new (7)?

DR. KABERUKA: I want to raise a point of clarification Madam Chairperson before I answer those questions. First of all, I have seen this amendment which has been circulated and which raises a point which I want cleared. Madam Chairperson, you realise that when amendments come, they are always debated. Not everybody says I agree with that. Now I can see Hon. Byakika and Hon. Bageya and Wanendeya. They are Members of Committee Three. This amendment was there. Dick Odur who is my deputy was there. Definitely there were people who were against this motion but they were defeated on the Floor. I would want to know if one goes on the Floor and his motion is defeated and then goes to raise the names everywhere and comes that he has his amendment. Is that in order Madam Chairperson? They were opposing definitely and therefore they should have brought everybody whose motion was defeated, they would have gone and gathered people and brought an amendment. So, I want to be clarified whether this is in order really.

THE DEPUTY CHAIRMAN: You see the problem is the fact that the original seven and the new seven are in contest. So that is why we asked for that clarification first so that we can know where we are.

DR. KABERUKA: Thank you Madam Chairperson. I did point out that we had a motion to delete Clause which motion was carried. (*Interjections*) - No, in our committee. This was carried. Then we introduced two new clauses and I did point this out before we went into debating. So definitely, this Assembly has to debate whether clause (7) should be deleted. When we have passed the deletion of clause (7), then we brought in a new clause seven and a new clause eight.

THE DEPUTY CHAIRMAN: Okay, now that is cleared. The situation is like this, the original seven, you are proposing that it should be deleted. Then the second scenario is after deletion, there is no relationship between the two clauses. Then two, we are saying that we introduce a new clause seven. That is a numbering problem. You could call it eight/nine. So we have to set whether we delete seven or not. Then two, we will debate whether we agree to the new seven or not. Then three, whether we will go to the new eight or not. Now if you take that procedure, this motion will not be necessary. It will just cause us more confusion. So, can we go back to clause seven the original. Can we have the committee clarifying to us why they are proposing to remove the original seven?

DR. KABERUKA: Madam Chairperson, as I did point out, my committee deliberated on clause seven as it stands and as I did point out, it deals with definitions and the proper position for a definition is in Article 286. So, in our wisdom, we said that instead of going into the definition, this Article should be deleted and I did point out if this Assembly thinks that it is necessary, then it should be accommodated under the Article which deals with definitions.

THE DEPUTY CHAIRMAN: So, the proposal is that the original Article 7 was - they suggested that it should be deleted because it was given definitions and definitions have a different section where they should be handled.

MR. MALIRO GASTON (Mwenge County North): Thank you, Madam Chairperson. Madam Chairperson, I oppose the deletion of this Clause from this Article for the following reasons. Madam Chairperson, the fact that it is a definition and that there is a section where they are dealing with definitions, does not warrant its deletion from this particular Article. It is not the first time we have made a definition under an Article for the purposes of emphasis. If you revisit our Chapter on Human Rights, you remember we defined what a child is for the purpose of that Article and here, they are specific, they are saying, for the purpose of this Article, loan means what they are saying. It means in a general definition, loan could mean something else, but for the purposes of this Article, it means what is stated here.

Madam Chairperson, this is very important because it is necessary that when you are reading an article, you clearly know what you are talking about. Whereas one may skip seeing the definition at the end, one may not think very quickly that this word was defined, because all the words which are used here are not defined in the Constitution. So, the definition may escape the person reading the Constitution and therefore, may misinterpret the Article. Therefore Madam Chairperson, I think this Clause should remain where it is because it has not harm. I thank you.

LT. COL. KIIZA BESIGYE: Point of Procedure! Madam Chairperson, I have procedural problems, like Hon. Kaberuka had talked about. I consider that once we resolved to go into committees, we agreed that whoever has an amendment, will go and move it in that Committee and whenever we get a report of the committee, those who have differing views from the report of the committee shall file minority reports. If we are going now to start moving amendments and I have no doubt, they will be many because, most people never had occasion to go into other committees - (*Interruption*)

THE DEPUTY CHAIRMAN: You see, we are impatient, we are not ready to listen. Let him complete so that you understand what he is talking about.

LT. COL. KIIZA BESIGYE: Madam Chairperson, the reason we abandoned the idea of dealing with every Article and every Clause here,

in the Plenary was so that we may go and debate these things in detail in the committees. Whoever has an amendment on any Article would go to that committee and move his amendment and a decision would be taken and if you have a dissenting view, you would submit a report to that effect. Otherwise, if we adopt a procedure of now moving fresh Amendments as or when we require, then there will have been absolutely no purpose for our going into these committees. I seek for clarification on that procedural point, Madam Chairperson.

THE DEPUTY CHAIRMAN: Actually, my interpretation is, the problem we have on Floor, the deletion of (7) from the Draft Constitution. This was discussed by the Committee, the committee decided that it should be deleted. Now, Members of the other groups are debating whether it should be deleted or not, otherwise, we shall be rubber stamping.

I do not know. (*Applause*). You see, we have three items. One, the old seven. The other Members of the committees feel that that definition is necessary. So, even if we leave it there, it would just remain in the Constitution as it was. The other members are saying, whether it remains or not, we shall debate it and vote on it, whether it remains or not. Then after that, we shall go to the proposed seven which will become eight and eight becomes nine, should the original seven remain. So, I do not see any problem of order.

MR. BATEGANYA (Bukooli Central): Thank you very much Madam Chairperson. I want to express my displeasure with the proposed deletion on the following grounds. One, when we were laying down our Rules, as read out by Maj. Gen. Tinyefuza, Rule 48(17), we said we would not contradict ourselves. Now, this particular Rule, deletion is dragging us into a contradiction. We stated in the first Article we passed that, all power belongs to the people and in this particular case, the power - all powers are deposited in the Parliament which should sanction all monies and how they are acquired. So, in this particular case, when they suggest a deletion, they are going against the wishes of the people and I would like to quote from the Odoki Report, page 615, paragraph 22.17 which says that the people want to have, directly or through their representatives in

the way of revenue, they want to know how revenue is acquired, or expended. But when they say they want to delete this particular article that is guaranteeing Parliament's role in the acquisition or how revenue is expended, I think they are negating the wishes of the people what sent us here to make good laws for them. The people of Bukooli especially, are against this business of entrenching too much power in the President to borrow money on our behalf without our consent - (*Interruption*)

THE DEPUTY CHAIRMAN: Do not mix the two, we are on the original, whether it remains, or whether we carry the proposal by the committee.

MR. RUZINDANA (Ruhama County): The original text in the Draft should remain Madam Chairperson. The Committee tells us that because it looks to be a definition, it should not be in the text. I think it was an error on the part of the committee, because a loan is a very important thing which we should understand. If we are talking about a loan, we should know what it is and the definition is quite strict and it does not go beyond. We already have heard people here, bringing in things which are budgeted for like "*Entandikwa*" and all these other things. But here, it tells us what we mean by a loan in this Constitution and it is not strange that certain important terms should be defined in the Constitution and I therefore, not see any contradiction in having this very important term defined here in the Constitution. I therefore request you, Madam Chairperson to put the question because this is quite an evident thing - (*Applause*)- and then we move on to the next recommendation from the committee which is the new (7) and which will become (8). Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Okay, before I come to that level, I want Hon. Kiiza Besigye's problem of debating whether the article should be deleted or it should remain from the main text cleared. Article 184 (1), the committee had proposed that Article be deleted, but the House reversed the proposal and it remained. So, it was on that earlier trend that, I am saying that this committee can propose a deletion, but the House can decide that it remain as we did for 181. - (*Applause*) So, the recommendation was actually rejected, but let us hear from Hon. Kabayo. Let us be sure of what we are talking about because it is an important provision.

MAJ. TUMUKUNDE (Rubabo County): We sat in Committee 3, spent so many hours discussing this subject. We agreed that even in Article 185 alone, there are so many important words - if I am to use the argument of Hon. Ruzindana - that should have been given a definition. One of them for example, is "borrow". Why do we not discuss the definition of the word "borrow", how about "any source", why do we not define that? So, Madam Chairperson, we are agreed that "loan" is like any other word that is so vital to this Constitution and that there is no specific reason why we should give a special definition only to the word "loan".

Early morning today, Madam Chairperson, we were sitting in another committee and we have agreed on the importance of standardisation of our method of drafting this Constitution. It helps tomorrow's interpretation. So, Madam Chairperson, I do not see - we have just introduced the word "grant" for example. Why do we not define the word "grant"? So, Madam Chairperson, I insist that we leave definition to the definition areas and we shall continue to find many other important words. These should not in anyway bring in so many paragraphs and Clauses of interpretation.

Then, Madam Chairperson, on Procedure. Our Committee had the easiest method of pleasing everybody even when you disagreed, but that people are here raising these issues which they raised and we defeated them in the committee or whether some of us were defeated, is not in order, Madam Chairperson. Therefore, we request that if we intend to move, Madam Chairperson, it should be agreed that if you have discussed a topic or advanced a view and it was defeated, this is not the most appropriate time to raise it. Therefore, the more reason why we should not have had Committee or we should have continued rather in the Plenary, Madam Chairperson.

PROF. KABWEGYERE (Igara County West): Thank you, Madam Chairperson. Frankly, I am beginning to wonder as to what really is in Clause (7) - in the original because when you read it, Madam Chairperson, "For the purpose of this Article, the expression loan includes any money lent or given to or by the Government on condition of return or repayment and any other form of borrowing or lending in respect of which mon-

ies..." Now, in fact, this very presentation is so clumsy, if you look in a dictionary, the word "loan" is even shorter and I do not see really the attachment that some of us seem to have to this particular physiology. In the proposed (7) by the Committee, it is different, it is very clear and the word "loan" also appears there and you could even talk of defining "public institution", you could talk of defining so many things and so on. Madam Chairperson, if the issue of deletion is what is at stake, if people think that we are losing something, please, let those people who have that view be assured that it is going to be in the area where definitions are so that this is not a deletion from the Constitution, but the transfer from here to another place. Otherwise, Madam Chairperson, if we are going to now permit reversion to debate in committees, we might as well, instead of asking for six months, ask for six years.

MAJ. GEN. TINYEFUZA (NRA Delegate): Thank you, Madam Chairperson. I am really, I was first of all pleased by your ruling that, we do discuss what this Committee reported because I think once the committee report was presented to the Plenary, it became a working document of this Plenary and this is what we are discussing and among the things proposed by this Committee, in substance, is to delete the original 7. Now, if people say we are not entitled to debate this, then, what are we talking in the Plenary? Because it says, first of all, in their report, they recommended that Clause (7) be deleted and the following new Clause be inserted. Now, people are turning this that we are debating, are we supposed to say that we adopt this report as it appears? So, we are saying, yes, you have said, let us delete. Are we agreeing to delete or not and the Motion, Madam Chairperson, was put up, that a question be put. Once that Motion is put by our rules, we have nothing else to do. So, I therefore, would reinforce that, that you put the question about deletion of the original 7 and then we move.

THE DEPUTY CHAIRMAN: My Attention has been drawn to a notice by the Clerk, that we are only 100. So, we can just go on debating, but we cannot vote. We have to be 140.

MR. KUTESA SAM: Thank you Madam Chairperson. I want your guidance on this matter. I agree entirely that this House has the power to debate and propose amendments to any of these

reports that are made by Committees. However, if you look at Rule 31, sub-Rule 6 of our Rules, there is a procedure of how to reach decisions in committees and it is hoped that most decisions will be reached by consensus. If there is no consensus, then, there will be a majority report and a minority report on a subject. So, I would imagine that the import of sub-rule 6 of Rule 31 is that, if there are members of a committee who are dissatisfied with the majority decision, they circulate a minority report. I would therefore expect that Amendments that do not constitute a minority report could only come from Members of the Assembly, who are not members of that committee. Otherwise, if you allow Amendments which are not in the form of minority report from members of a committee, I think the purpose for which Rule 31 (6) was intended will be abused. I would like to seek your guidance on that matter, Madam Chairperson.

THE DEPUTY CHAIRMAN: Okay, that is some clarification on the Rule 31. Then, according to your interpretation, that will call for being specific. Where there is any non-member of the committee who feels contrary to what the committee decided, according to your interpretation, this should not be there. But as somebody from this end, I would not know who is a member of that committee or not, but that is good, then I could ask, perhaps we could have a non-member of that committee who feels that this provision should be reinstated.

AN HON. DELEGATE: Point of Order! Thank you Madam Chairman. With all due respect, since the Clerk to the CA, has pointed out that we do not have a quorum, I wonder whether it is in order for us to continue debating issues. So, I am moving a Motion, if I'm in order that we adjourn until tomorrow. Thank you.

THE DEPUTY CHAIRMAN: Okay, there is a Motion on the Floor, that we adjourn, but when there is no quorum, even in your Committees, is that how you operate, that when there is no quorum, you can continue debating so that you clear the air. But you do not vote, and we still have - it is only 5.30 p.m. So. I think we better, to me we can really debate and clear the air, because people still have points to raise, but we are not going to vote.

AN HON. DELEGATE: Point of clarification! Madam Chairman, I do not know what Hon. Kutesa was actually talking about, because the issue has already been dealt with by the Chair and what we are debating now is not a Motion from a Member, it is a Procedural Motion arising out of the report from Committee Three. So, I do not see the worry of Hon. Kutesa to say that a Member is moving a Motion to that respect.

MR. WANENDEYA (Budadiri East): Madam Chairperson, I want to correct the impression given by Hon. Dr. Kaberuka that we were there, the truth of matter is that, I was not there when they were debating the Motion and hence, that is the reason why we moved that this matter comes up before the Plenary and that is the reason why we brought it over here and therefore, we are perfectly entitled to getting this matter cleared because with my knowledge, I would not allow - *(Interruption)* -

THE DEPUTY CHAIRMAN: Hon. Wanendeya I think you are out of focus, because that is not what we are discussing at the moment. You can raise your order.

MR. KASAIJA TIGWEZIRE (Bunyangabu County): Thank you very much, Madam Chairperson, is it in order for the Hon. Wanendeya to misinform this House and to mislead this House by saying that since he was not present by the time we came to certain decisions, therefore, he is not party? Secondly, I want you to allow him, Madam Chairperson, to inform this Hon. Assembly, that what we are discussing now, is actually a majority report, as a report from the Select Committee. Now it is entirely up to the Plenary to agree or disagree with the Report from the Select committee. That is why some of us are of the view that, you put the question, if we had the quorum anyway. So, with those observations, Madam Chairperson, perhaps I would request you to adjourn so that tomorrow we come with fresh minds and you put the question. Thank you, Madam Chairperson.

THE DEPUTY CHAIRMAN: Okay, there is a Motion on the Floor. that we adjourn, but before I put the question, I have received a note from the Clerk that tomorrow there is Parliament and that they are going to discuss very important issues so that all NRC Members are requested to attend

without fail. That means that all non-Members should turn up tomorrow so that we realise a quorum because we will be missing 103 people, if you all go to NRC. So, please let us make sure that all the others come up so that really we do not waste two days, after all, we have been sitting concurrently - Parliament and CA.

AN HON. DELEGATE: Point of Information! Madam Chairperson, I think it is not fair for us to sit here, a section of us, when by law, people who are going to attend NRC are also Members of this House - of this Assembly. Therefore, Madam Chairperson, what is going to be discussed tomorrow is of such gravity that I would suggest that if possible, we would meet as a complete House, not just to have a partial House and rig a decision, Madam Chairperson. So - *(Interruption)*

THE DEPUTY CHAIRMAN: Just give me more time - this is the note from Hon. Kavuma, the one in-charge. Hon. Kavuma asked me to request you to announce that there will be an NRC Session tomorrow and it is important that all NRC Members who are also CA Delegates attend in their full numbers. An appeal should be made to the rest of CA Delegates to attend tomorrow's afternoon Plenary Session so as not to fail to realise a quorum. That is from Hon. Kavuma.

BRIG. KYALIGONZA MATAYO (Buhanguzi County): Madam Chairperson, with due respect, I am very grateful about your announcement and I would appeal to the Chair and Hon. Members of the CA, to come and give the moral support over the Motion that is going to be tabled in the National Assembly, which concerns both of us and I would therefore, Madam Chair, request this House, if there is a matter which is urgently required to be discussed that we convene in the morning up to 2.00 o'clock then, Members of NRC would proceed to the Assembly. I thank you Madam Chair.

THE DEPUTY CHAIRMAN: There is a Motion that, instead of having the Committee meeting in the morning, we have the Plenary in the morning and then, people go to - But how would the other Members be informed?

DR. KANYEIHAMBA: Point of Order! Madam Chairperson, I rise on a point of order, you had already informed us that this House was not forming a quorum and if we do not form a quorum, we are not able to make any decision on this matter. So, I would suggest that you rule on this matter and your ruling stays, rather than us the House to vote on a matter when we do not have a quorum.

THE DEPUTY CHAIRMAN: That was also my problem as I had indicated that, we are not there. So, the others would not have been party to the decision. So, we adjourn until tomorrow in the afternoon. Please, those who are able to turn up, really other members please turn up. We adjourn until tomorrow same time.

(The Assembly rose and adjourned until 8.30 a.m. Wednesday, 7th December, 1994).